FEDERAL REGISTER

Vol. 87 Tuesday

No. 176 September 13, 2022

Pages 55901–56238

OFFICE OF THE FEDERAL REGISTER

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Presidential Documents

Title 3—

The President

Proclamation 10440 of September 8, 2022

Death of Queen Elizabeth II

By the President of the United States of America

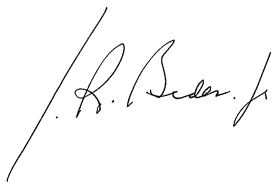
A Proclamation

Her Majesty Queen Elizabeth II was more than a monarch. She defined an era.

In a world of constant change, she was a steadying presence and a source of comfort and pride for generations of Britons, including many who have never known their country without her. Queen Elizabeth II led always with grace, an unwavering commitment to duty, and the incomparable power of her example. She was a stateswoman of unmatched dignity and constancy who deepened the bedrock Alliance between the United Kingdom and the United States. She helped make our relationship special. The seven decades of her history-making reign bore witness to an age of unprecedented human advancement and the forward march of human dignity. Her legacy will loom large in the pages of British history, and in the story of our world.

As a mark of respect for the memory of Queen Elizabeth II, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, on the day of interment. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2022–19875
Filed 9–12–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10441 of September 8, 2022

National Days of Prayer and Remembrance, 2022

By the President of the United States of America

A Proclamation

On September 11, 2001, an act of deliberate evil ripped 2,977 innocent lives from this world in a horrifying attack on our Nation. For 21 years, children have grown up without parents. Parents have grieved lost children. Husbands and wives have had to push forward without their partners by their sides. Families across our country have been left to mark birthdays and milestones with a black hole in their hearts and an empty chair at their tables.

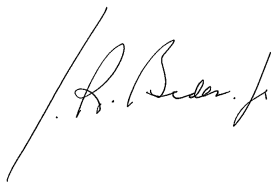
In the week after the attacks, as we first observed a National Day of Prayer and Remembrance, Americans banded together, consoled one another, and prayed for strength. We saw a true sense of national unity—in our shared resolve, in survivors' resilience, and in a new generation's readiness to defend and serve our Nation. In the years since, in New York, Shanksville, at the Pentagon, and all across our country, we have consecrated that day of observance, reflecting on the loved ones we lost, the heroes who rushed into harm's way, and the courage of so many families who lost a piece of their soul but somehow still found a way to get up and keep going. Their strength is an inspiration.

As the quote from Virgil inscribed on the 9/11 Memorial at Ground Zero reminds us: ''No day shall erase you from the memory of time.'' Each year, we have renewed our sacred vow: Never forget. Just weeks ago, we once again demonstrated our resolve and capacity to defend our Nation against threats by delivering justice to the emir of al-Qaeda—a man deeply involved in the terrorist group's activities, including 9/11 and countless other deadly attacks against Americans. Thanks to the extraordinary persistence and patriotism of our intelligence and counterterrorism communities, the courageous families who lost so much on that searing September day in 2001 will hopefully find some measure of closure.

On these National Days of Prayer and Remembrance, we come together to not only honor the memories of those lost but to build a future worthy of their dreams and to find light in darkness and strength in broken places. The great and defining truth about America is this: We do not break. We never give in. We never back down.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 9, 2022, through September 11, 2022, as National Days of Prayer and Remembrance. I ask that the people of the United States honor the victims of September 11, 2001 and their loved ones with prayer, contemplation, memorial services and visits, bells, candlelight vigils, and other activities. I invite people around the world to join. I call on the citizens of our Nation to give thanks for our many freedoms and blessings, and I invite all people of faith to join me in asking for God's continued guidance, mercy, and protection.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2022–19876
Filed 9–12–22; 8:45 am]
Billing code 3395–F2–P

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0801; Project Identifier MCAI–2022–00092–T; Amendment 39–22159; AD 2022–18–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report indicating that the vertical stop support fitting (VSSF) of certain captain's, first officer's, and third occupant's seats could fail. This AD requires modifying or replacing each affected seat, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also limits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 18, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 18, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at regulations.gov by searching for and locating Docket No. FAA–2022–0801.

Examining the AD Docket

You may examine the AD docket at regulations.gov by searching for and locating Docket No. FAA–2022 0801; 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 mandatory continuing airworthiness information (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: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198, telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0014, dated January 25, 2022 (EASA AD 2022–0014) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on June 28, 2022 (87 FR 38302). The NPRM was prompted by a report indicating that the VSSF of certain captain's, first officer's, and third occupant's seats could fail. The NPRM proposed to require modifying or replacing each affected seat, as specified in EASA AD 2022–0014. The NPRM also proposed to limit the installation of affected parts under certain conditions.

The FAA is issuing this AD to address failure of the VSSF, which could lead to flight deck seat failure and unexpected seat movement under certain loading conditions, possibly resulting in flightcrew injury and reduced control of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received two comments, one from an individual and one from The Air Line Pilots Association, International (ALPA). The commenters supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0014 specifies procedures for modifying or replacing each affected captain's, first officer's, and third occupant's seat. EASA AD 2022–0014 also limits the installation of affected seats under certain conditions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 27 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 23 work-hours × $85 per hour = $1,955	*$	*$1,955	*$52,785

*The FAA has received no definitive data regarding parts costs for the seat modification or replacement.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–18–08 Airbus SAS: Amendment 39–22159; Docket No. FAA–2022–0801; Project Identifier MCAI–2022–00092–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 18, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report indicating that the vertical stop support fitting (VSSF) of certain captain's, first officer's, and third occupant's seats could fail. The FAA is issuing this AD to address failure of the VSSF, which could lead to flight deck seat failure and unexpected seat movement under certain loading conditions, possibly resulting in flightcrew injury and reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0014, dated January 25, 2022 (EASA AD 2022–0014).

(h) Exceptions to EASA AD 2022–0014

(1) Where EASA AD 2022–0014 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0014 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0014 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0014, dated January 25, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0014, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on August 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–19746 Filed 9–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20 and 720

[Docket No. FDA–2018–N–1622]

RIN 0910–AH69

Public Information

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is issuing a final rule amending its public information regulations. The final rule revises the current regulations to incorporate changes made to the Freedom of Information Act (FOIA) by the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act) and the FOIA Improvement Act of 2016 (FOIA Improvement Act). Additionally, the final rule updates the current regulations to reflect changes to the organizational structure of FDA, to make the FOIA process easier for the public to navigate, and to make provisions clearer.

DATES: This rule is effective October 13, 2022.

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

FOR FURTHER INFORMATION CONTACT: Sarah B. Kotler, Office of the Commissioner, Office of the Executive Secretariat, Food and Drug Administration, 5630 Fishers Lane, Rm. 1050, Rockville, MD 20857, 301–796–3900, *FDAFOIA@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of the Final Rule

FDA is issuing this final rule to amend FDA's public information regulations. The regulations are being amended to incorporate changes made to the FOIA by the OPEN Government Act and the FOIA Improvement Act. Additionally, the final rule updates the regulations to reflect changes to the organizational structure of FDA, makes the FOIA process easier for the public to navigate, and makes certain provisions clearer. Taken together, these changes enhance transparency for the public about FDA activities.

B. Summary of the Major Provisions of the Final Rule

The amendments to FDA's public information regulations bring the Agency's regulations in line with statutory amendments to the FOIA, update cross references to other statutes and parts of the Agency's regulations, and clarify certain provisions with minor editorial updates.

C. Legal Authority

These amendments to FDA's public information regulations are based on our authority under the FOIA and the Federal Food, Drug, and Cosmetic Act (FD&C Act). These amendments allow FDA to more efficiently use its resources to provide information to the public.

D. Costs and Benefits

Although FDA is currently implementing the requirements of the OPEN Government Act and the FOIA Improvement Act in FOIA processing as standard practice, the requirements are not currently reflected in FDA regulations. The revisions made by this final rule are intended to incorporate all current FOIA requirements into the existing regulations. Because the Agency has already adopted many of these requirements, we anticipate no additional costs or benefits from this final rule.

II. Table of Abbreviations and Acronyms Commonly Used in This Document

Abbreviation/ Acronym	What it means
FOIA	Freedom of Information Act.
FOIA Improvement Act.	FOIA Improvement Act of 2016.
OGIS	Office of Government Information Services.
OPEN Government Act.	Openness Promotes Effectiveness in our National Government Act of 2007.

III. Background

The FOIA (5 U.S.C. 552) is a law that gives the public the right to access information from the Federal Government. There is a presumption that government records must be released under the FOIA unless they are subject to one of nine FOIA exemptions. FDA's regulations for the implementation of the FOIA are in part 20 of title 21 of the Code of Federal

Regulations (CFR). The FOIA Improvement Act (Pub. L. 114–185) specifically requires agencies to review their FOIA regulations and update their regulations for the disclosure of records in accordance with its amendments.

IV. Legal Authority

These amendments to FDA's public information regulations are based on FDA's authority under the FOIA and section 701(a) of the FD&C Act (21 U.S.C. 371(a)). These revised regulations allow FDA to more efficiently use its resources to provide information to the public.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

FDA received comments on the proposed rule (83 FR 46437, September 13, 2018) (hereinafter referred to as the proposed rule) from industry, various entities, academia, and individuals. A summary of the comments submitted to the docket and the Agency's responses follow. We have numbered each comment to help distinguish among different comments. We have grouped similar comments together under the same number and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of the responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance, or the order in which comments were received.

B. Description of Comments Regarding 21 CFR Parts 20 and 720

(Comment 1) One comment supported the proposed rule.

(Response 1) We acknowledge and appreciate the supportive comment.

(Comment 2) One comment expressed concern with FDA's characterization of the foreseeable harm standard with respect to discretionary disclosures and requested that FDA clarify that ''such disclosures are mandatory'' under 5 U.S.C. 552(8)(A).

(Response 2) Although the commenter identified 5 U.S.C. 552(8)(A), based on the content of the comment, we presume the commenter meant to identify 5 U.S.C. 552(a)(8)(A). FDA has revised the provision for clarity and to conform more closely to the text of 5 U.S.C. 552(a)(8)(A).

(Comment 3) One comment ''applaud[ed] the proposed revisions to § 20.20(c) [21 CFR 20.20(c)], which require the FDA to identify records of general interest to the public for posting on its website.'' This comment also requests that FDA ''take the opportunity to re-examine and implement the recommendations contained in the 'Blueprint for Transparency at the U.S. Food and Drug Administration', which provides a list of proactive changes that FDA can make to increase transparency under existing law.''

(Response 3) FDA appreciates this comment. In an effort to make the FOIA process easier for the public to navigate, FDA proposed this rule to provide clarity and consistency regarding the public's access to records. FDA believes the changes will promote transparency by reducing the amount of information withheld when the Agency has discretion to determine what will be withheld under the FOIA exemptions and will make release of information more efficient through the use of information technology.

(Comment 4) One comment requested clarification of the codified language of § 20.26(a)(4) [21 CFR 20.26(a)(4)]. The comment expressed concern that the language used to reflect the new statutory requirement for FDA to make available for public inspection all records ''that have been released to any person'' pursuant to a FOIA request and ''that have been requested three or more times'' may be misconstrued. The comment asserted that, as drafted, the proposed revision does not make clear that records required to be made available for public inspection must have been previously released to a person pursuant to a FOIA request. Rather, the wording of the proposal ''could be interpreted to authorize the release of any records that have been requested three or more times, regardless of whether these records have previously been released under the FOIA or are protected from disclosure pursuant to an applicable FOIA exemption.''

(Response 4) After considering this comment, FDA has amended the provision to make clear that § 20.26(a)(4) applies only to records that have been released to any person under the FOIA. Specifically, the provision now refers to records that have been released to any person in response to a FOIA request, and that (1) the Agency has determined have become, or are likely to become, the subject of subsequent FOIA requests for substantially the same records, or (2) have been requested three or more times under the Freedom of Information Act.

(Comment 5) One comment supported revisions to § 20.26(a)(4) to make records that have been released to any person pursuant to a FOIA request available on the electronic reading room site, after three FOIA requests have been made for the same records. The comment requested that FDA ''promptly comply with the requirements for posting documents on its website after three FOIA requests are received.''

(Response 5) Where a record has been released to any person in response to a FOIA request and has been requested three or more times under the FOIA, FDA intends to publicly post the record.

(Comment 6) One comment requested that FDA ''provide more information about the processing of FOIA requests, including applicable timelines, to enhance predictability and transparency.'' The comment asserted that ''there currently are no clear agency timelines associated with the processing of FOIA requests and no clear mechanism for a requester to learn the status of its FOIA request.'' Specifically, the request asked for ''more information about how it processes FOIA requests and the estimated timelines associated with each step (such as through a process flow diagram)'' and the allowance of ''sufficient time and flexibility to account for the redaction of protected information.''

(Response 6) FDA appreciates suggestions to improve the FOIA process and intends to take this comment into consideration when developing and revising processes. FDA believes including these as requirements in part 20 is not needed and could be unduly inflexible.

(Comment 7) One comment requested that FDA modify § 20.41(a) [21 CFR 20.41(a)] to include language ''clearly stating that any time limitation calculations begin at the time of receipt of a request, not the time that the request is logged.'' The comment asserted that ''[§] 20.41 of the FDA's current FOIA regulations—which is not addressed by the Proposed Rule—calculates various time limitations under the Act starting at 'the time at which a request for records is logged in by the Division of Freedom of Information pursuant to § 20.40(c) [21 CFR 20.40(c)].' ''

(Response 7) FDA is required by the FOIA to ''determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of [a] request whether to comply with such request'' (5 U.S.C 552(a)(6)(A)(i)). The FOIA states that the 20-day period commences ''on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations

. . . to receive [FOIA] requests'' (5 U.S.C. 552(a)(6)(A)(ii)). FDA logs requests in accordance with its statutory obligations pursuant to § 20.40(c), which establishes the date used to calculate time limitations under § 20.41(a).

(Comment 8) One comment requested that FDA modify § 20.44(e) [21 CFR 20.44(e)] to reflect the same language in 5 U.S.C. 552 (a)(6)(E)(ii)(I), which provides that ''a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request.'' The language of the proposed rule states that FDA ''will determine whether to grant a request for expedited processing within 10 days of receipt by the Division of Freedom of Information of all information required to make a decision.'' (83 FR 46437 at 46441) The comment asserted that because the proposed rule does not include a definition of what is considered to be ''all information required to make a decision'' in a request for expedited processing, the language should be revised to mirror 5 U.S.C. 552(a)(6)(E)(ii)(I).

(Response 8) FDA has provided for a decision within the 10-day period when it is possible based on the information submitted to the Agency. Agencies are required to provide for expedited processing of FOIA requests in cases where requests for expedited processing show a compelling need. However, the FOIA also permits agencies to grant expedited processing in other cases as determined by the Agency. In those instances where the requester does not meet the statutory definition of ''compelling need'' but demonstrates a need for expedited processing, the Agency has the discretion to grant such requests based on all information required to make a decision. We do not provide a definition of ''all information required to make a decision'' as the circumstances of each situation are unique and a decision is made on a case-by-case-basis. In some situations, FDA may ask the requester for additional information rather than deny the request for expedited process on the basis that it did not meet the required showing.

(Comment 9) One comment asked that FDA ''update its FOIA regulations to expressly require consultation and/or notification when any such information may possibly be viewed as trade secret or confidential commercial information. FDA, as part of such an initiative, should also adequately ensure that submitters of sensitive information throughout the supply chain are actually notified.'' The comment asserted that newly promulgated regulations under the FDA Food Safety Modernization Act (Pub. L. 111–353) ''require the submission of an unprecedented amount of information held by firms throughout the food supply chain, meaning such records will potentially be subject to public disclosure upon submission of an appropriate FOIA request or through other voluntary disclosure by FDA.''

Currently, § 20.47 provides that in situations where the confidentiality of data or information is uncertain and there is a request for public disclosure, FDA will consult with the person who has submitted or divulged the data or information or who would be affected by disclosure before determining whether or not such data or information is available for public disclosure. Section 20.61 [21 CFR 20.61] further provides that ''when the agency has substantial reason to believe that information in [requested] records could reasonably be considered exempt under [E]xemption 4'' the Agency must ''make reasonable efforts to notify the submitter about these facts.'' The comment alleged that although ''these regulations provide for submitter consultation and notification in certain circumstances, in practice, FDA frequently response (sic) to requests for this information without first engaging with submitters.'' Importantly, even though ''FOIA itself does not require agencies to notify submitters that confidential business information may be subject to disclosure, agencies must provide for submitter notification in their regulations or through other procedures under Executive Order 12600.''

(Response 9) FDA believes no change to the provision is needed because where confidentiality of data or information is uncertain, FDA will consult with the person who submitted the information ''or who would be affected by the disclosure.''

Agency regulations currently satisfy the requirements of Executive Order 12600, and we do not believe a change is otherwise warranted.

(Comment 10) One comment requested that FDA modify § 20.88(d) [21 CFR 20.88(d)] to clarify that FDA cannot ask State or local government entities to enter into contracts that would violate State law.

(Response 10) The final rule adopts the language proposed in § 20.88(d) and does not require State or local government entities to enter into contracts or other agreements that conflict with the requirements of their State public record laws. Under § 20.88(d)(1)(i), the State or local government agency must first provide a written statement establishing its authority to protect confidential commercial information from public disclosure. In providing a written statement to this effect, the State or local government agency should determine whether it has the necessary authority under State law to protect confidential commercial information. If so, the written agreement to protect such information should not conflict with State law. Furthermore, a written agreement would not override a State's obligation to comply with applicable law. If the State or local agency determines that it does not have such authority, it will be unable to provide a written statement and FDA, in turn, will be unable to authorize the disclosure of confidential commercial information to the State or local government agency.

C. Description of Comments Outside the Scope of This Rulemaking

(Comment 11) One comment suggested that FDA request funding to hire sufficient additional staff to expedite response capability pursuant to § 20.41.

(Response 11) The suggestion is outside the scope of this rulemaking.

(Comment 12) One comment suggested that publicly released FOIA logs should include metadata such as type of file/document released, size of the file/document released, and number of rows per file if data files are released.

(Response 12) The suggestion is outside the scope of this rulemaking.

(Comment 13) One comment suggested that exemptions used by the Federal Government should be restricted as a matter of public policy, especially when it comes to FDA.

(Response 13) The suggestion is outside the scope of this rulemaking.

VI. Description of the Final Rule

We are amending provisions of 21 CFR part 20 regarding the Agency's public information regulations. Once effective, the amendments contained in this rule will apply to all FOIA requests currently pending with, or received in the future by, FDA.

- The amendments to § 20.20 require FDA to withhold information under the FOIA only if the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. The rule further amends this provision to require FDA to establish procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible

electronic format. These changes promote transparency by reducing the amount of information that will be withheld when the Agency has discretion to determine what will be withheld under the FOIA exemptions, and will make release of information more efficient through the use of information technology. These amendments are required by the FOIA Improvement Act and are currently part of FDA's FOIA policy and procedures.

- The amendment to 21 CFR 20.22 requires FDA to indicate the exemption(s) under which information has been deleted at the site of the deletion. This change will inform requesters of the legal bases under which information has been withheld from Agency records, which promotes transparency. This change is required by the OPEN Government Act (Pub. L. 110–175) and was adopted by the Agency for FOIA processing as of the effective date of the OPEN Government Act.
- The amendment to § 20.26 requires FDA to make available for public inspection in an electronic format records that have been requested three or more times under the FOIA and have been released to a requester under the FOIA. This change codifies the long-standing Department of Justice policy of Federal agencies posting records that have been requested three or more times. The purpose of this change is to proactively release records to the public without the need for submission of additional FOIA requests. This change is required by the FOIA Improvement Act.
- The amendment to 21 CFR 20.33 requires FDA to include in FOIA response letters the contact information for the Office of Government Information Services (OGIS) and the FOIA Public Liaison. This change provides requesters with additional avenues for resolving FOIA-related disputes beyond the appeals process. This provision is required by the FOIA Improvement Act.
- The amendment to § 20.40 [21 CFR 20.40] updates the provision to include reference to the Agency's online FOIA submission portal, which has been operational since June 2012.
- The amendment to § 20.41 requires that when FDA extends the time limit to respond to requests by up to10 additional working days, FDA must notify the requester in writing of the right to contact the FOIA Public Liaison and to seek dispute resolution services from the OGIS. This change provides requesters with additional avenues for resolving FOIA-related disputes beyond the appeals process. We further amended the provision to provide that if a court determines that exceptional circumstances exist, the Agency's failure to comply with a time limit shall be excused for the length of time provided by the court order. These changes are required by the FOIA Improvement Act. The revised provision further clarifies that the Agency may toll the response period once while it is awaiting a response from the requester regarding clarification that it has reasonably requested from the requester and more than once (if necessary) while the Agency is awaiting a response from the requester regarding fee assessment. This revision is required by the OPEN Government Act. Finally the revised provision contains minor updates regarding the appeal of an adverse determination.
- The amendment to § 20.44 updates the title of the Agency official making determinations regarding requests for expedited processing.
- The amendments to 21 CFR 20.45 modify the fee schedule to prohibit the Agency from assessing fees if the Agency fails to comply with time limits to respond and there are no unusual or exceptional circumstances that apply to the processing of the request. If unusual circumstances apply, these amendments establish a process by which the Agency can work with the requester to effectively limit the scope of the request. These changes provide an incentive to the Agency to process requests as efficiently as possible and provide fee relief to requesters who do not receive FOIA responses in a timely manner. These provisions are required by the OPEN Government Act. Further amendments to this provision clarify how fees are calculated.
- The rule amends § 20.49(c) [21 CFR 20.49(c)] to require full and partial denial letters to include contact information for the FOIA Public Liaison and OGIS, and to establish a 90 calendar day timeframe for transmittal of an appeal. We also made technical revisions to § 20.49(a) to update the position title of the person who signs a denial of a request for records and to § 20.49(c) regarding information provided about appeals. These changes provide requesters with additional avenues for resolving FOIA-related disputes beyond the appeals process and provide requesters with additional time to decide whether to pursue an appeal. Some of these amendments are required by the FOIA Improvement Act.
- The rule amends § 20.61(e)(2) to allow 10 days from the date of the notice for submitters of trade secrets or confidential commercial information to object to disclosure. The revised provision further states that the Division of Freedom of Information may extend this period as appropriate and necessary. This change brings the Agency in line with HHS regulations in 45 CFR 5.42(a)(2).
- The rule amends 21 CFR 20.62 to prohibit the application of the deliberative process privilege under Exemption 5 of the FOIA to records created 25 years or more before the date on which the records were requested. This change increases transparency by requiring the Agency to release information that could otherwise fall within the deliberative process privilege. This amendment is required by the FOIA Improvement Act.
- The amendment to 21 CFR 20.82 clarifies the discretionary disclosure standard outlined in that provision that guides the Agency's determination to disclose requested information, taking into account whether disclosure of information would reasonably foreseeably harm an interest protected by an exemption or is prohibited by law as required in administering § 20.20.
- The amendment to 21 CFR 20.85 updates the statutory references.
- The amendment to 21 CFR 20.86 clarifies that the list of proceedings subject to the provision is not exclusive.
- The amendments to § 20.88 clarify that the provisions also apply to local officials and remove references to position titles that no longer exist.
- The amendments to 21 CFR 20.89 remove references to position titles that no longer exist.
- The amendments to 21 CFR 20.100 update the regulatory cross-references.
- The amendment to 21 CFR 20.120 updates the contact information for the Agency's reading rooms.
- The amendment to 21 CFR 720.8 revises the request for confidentiality of the identity of a cosmetic ingredient provision for consistency with FDA's disclosure regulation at 21 CFR 20.29.

VII. Effective Date

This rule is effective October 13, 2022.

VIII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive

impacts; and equity). This final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed revisions do not impose any burdens on FOIA requesters, including those that might be small entities, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

We expect to incur only negligible costs associated with implementing this rule. These costs result from updating titles of Agency officials, providing some additional information to FOIA requesters, and compiling information for annual reports. These requirements would not require more resources from us because we would perform these actions as part of routine FDA practices for FOIA processing. The rule enhances public access to government information as required by the FOIA Improvement Act.

IX. Analysis of Environmental Impact

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

X. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive order and, consequently, a tribal summary impact statement is not required.

List of Subjects

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 720

Confidential business information, Cosmetics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 20 and 720 are amended as follows:

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Revise § 20.20 to read as follows:

§ 20.20 Policy on disclosure of Food and Drug Administration records.

(a) The Food and Drug Administration (FDA) will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the Agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) Except where specifically exempt pursuant to the provisions of this part, all FDA records shall be made available for public disclosure. FDA will withhold requested information only if:

(1) The Agency reasonably foresees that disclosure would harm an interest protected by an exemption described in this part; or

(2) Disclosure is prohibited by law.

(c) Except as provided in paragraph (d) of this section, all nonexempt records shall be made available for public disclosure upon request regardless of whether any justification or need for such records have been shown.

(d) Under § 21.71 of this chapter, a statement of the purposes to which the record requested is to be put, and a certification that the record will be so used, may be requested when:

(1) The requested record is contained in a Privacy Act Record System as defined in § 21.3(c) of this chapter;

(2) The requester is a person other than the individual who is the subject of the record that is so retrieved or a person acting on his behalf; and

(3) The disclosure is one that is discretionary; *i.e.,* not required under this part.

(e) ''Record'' and any other term used in this part in reference to information includes any information that would be an Agency record subject to the requirements of this part when maintained by the Agency in any format, including an electronic format.

(f) FDA will establish procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting and indexing such records in a publicly accessible electronic format.

■ 3. In § 20.22, add paragraph (b)(3) to read as follows:

§ 20.22 Partial disclosure of records.

* * * * *

(b) * * *

(3) The exemption(s) under which the information has been deleted shall be noted at the site of the deletion.

■ 4. In § 20.26, revise the section heading and paragraphs (a) introductory text, (a)(4), and (b) to read as follows:

§ 20.26 Electronic availability and indexes of certain records.

(a) Indexes shall be maintained, and revised at least quarterly, and, as required, copies of electronic records

shall be made available for the following Food and Drug Administration records:

* * * * *

(4) Records that have been released to any person in response to a Freedom of Information request, and that:

(i) The Agency has determined have become, or are likely to become, the subject of subsequent Freedom of Information requests for substantially the same records; or

(ii) Have been requested three or more times under the Freedom of Information Act.

(b) Each such record and index will be made available by accessing the Agency's website at *https://www.fda.gov.* A printed copy of each index is available by writing or visiting the Freedom of Information Staff's address on the Agency's website at *https://www.fda.gov.*

■ 5. In § 20.33, add paragraph (c) to read as follows:

§ 20.33 Form or format of response.

* * * * *

(c) Response letters shall contain contact information for the Freedom of Information Act (FOIA) Public Liaison and the Office of Government Information Services.

■ 6. In § 20.40, revise paragraph (a) to read as follows:

§ 20.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be made in writing by mailing or delivering the request to the Freedom of Information Staff at the address on the Agency's website at *https://www.fda.gov,* by faxing it to the fax number listed on the Agency's website at *https://www.fda.gov,* or by submission through the Agency's online FOIA submission portal at *https://www.fda.gov.* All requests must contain the postal address and telephone number of the requester and the name of the person responsible for payment of any fees that may be charged.

* * * * *

■ 7. In § 20.41:

■ a. Revise paragraph (b)(3)(i)(A);

■ b. Redesignate paragraph (b)(4) as paragraph (b)(5);

■ c. Add a new paragrpah (b)(4);

■ d. Revise newly redesignated paragraph (b)(5); and

■ e. Add paragraph (d).

The revisions and additions read as follows:

§ 20.41 Time limitations.

* * * * *

(b) * * *

(3)(i) * * *

(A) The Agency may provide for an extension of up to 10 working days by providing written notice to the requester setting out the reasons for the extension and the date by which a determination is expected to be sent. In the written notice, the Agency will inform the requester of the right to contact the Freedom of Information Act Public Liaison and to seek dispute resolution services from the Office of Government Information Services.

* * * * *

(4) The Agency may contact the requester for clarification about the request or regarding fee assessment. The Agency may toll the 20-day period as follows:

(i) One time while it is awaiting a response from the requester regarding clarification that it has reasonably requested from the requester; and

(ii) One or more times while the Agency is awaiting a response from the requester regarding fee assessment.

(5) If any record is denied, the letter shall state the right of the person requesting such record to appeal any adverse determination to the appropriate review official, in accordance with the provisions of 45 CFR 5.62.

* * * * *

(d) If a court determines that exceptional circumstances exist, as defined by the Freedom of Information Act, the Agency's failure to comply with a time limit shall be excused for the length of time provided by the court order.

■ 8. In § 20.44, revise paragraph (e) to read as follows:

§ 20.44 Expedited processing.

* * * * *

(e) The Director, Division of Freedom of Information, (or delegatee) will determine whether to grant a request for expedited processing within 10 days of receipt by the Division of Freedom of Information of all information required to make a decision.

* * * * *

■ 9. In § 20.45, revise paragraphs (a)(1) through (3), add paragraph (b)(7), and revise paragraphs (c)(1) and (2) to read as follows:

§ 20.45 Fees to be charged.

(a) * * *

(1) *Commercial use request.* If the request is for a commercial use, the Food and Drug Administration will charge for the costs of search, review, and duplication. The Agency shall not assess search fees if the Agency fails to comply with any time limit, as described in § 20.41, if no unusual or exceptional circumstances apply to the processing of the request. If unusual circumstances, as outlined in § 20.41, apply and more than 5,000 pages are responsive to the request, the Food and Drug Administration may charge search fees if timely written notice has been made to the requester and the Agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(2) *Educational and scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, the Food and Drug Administration will charge only for the duplication of documents. Also, the Food and Drug Administration will not charge the copying costs for the first 100 pages of duplication (or its cost equivalent of other media). The Agency shall not assess duplication fees if the Agency fails to comply with any time limit, as described in § 20.41, if no unusual or exceptional circumstances apply to the processing of the request. If unusual circumstances, as outlined in § 20.41, apply and more than 5,000 pages are responsive to the request, the Food and Drug Administration may charge duplication fees if timely written notice has been made to the requester and the Agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(3) *Other requests.* If the request is not the kind described in paragraph (a)(1) or (a)(2) of this section, then the Food and Drug Administration will charge only for the search and the duplication. Also, the Food and Drug Administration will not charge for the first 2 hours of search time or for the copying costs of the first 100 pages of duplication (or the cost equivalent of other media). The Agency shall not assess search or duplication fees if the Agency fails to comply with any time limit, as described in § 20.41, if no unusual or exceptional circumstances apply to the processing of the request. If unusual circumstances, as outlined in § 20.41, apply and more than 5,000 pages are responsive to the request, the Food and Drug Administration may charge search or duplication fees if timely written notice has been made to the requester and the Agency has discussed with the requester

via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(b) * * *

(7) Requesters may contact Agency Freedom of Information Act staff or the Freedom of Information Act Public Liaison to assist in reformulating a request to meet their needs at lower cost.

(c) * * *

(1) *Manual searching for or reviewing of records.* When the search or review is performed by employees at grade GS–1 through GS–8 (or equivalent), an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14 (or equivalent), an hourly rate based on the salary of a GS–12, step 4, employee; and when done by a GS–15 or above (or equivalent), an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step in the General Schedule Locality Pay Table for the Locality of Washington-Baltimore-Northern Virginia, DC–MD–VA–WV–PA, adding 16 percent of that rate to cover benefits, and rounding to the nearest whole dollar. When a search involves employees at more than one of these levels, the Food and Drug Administration will charge the rate appropriate for each.

(2) *Electronic searching.* Charges for the time spent by the operator to search the computer, database, or network, including development of any specialized programming required to perform the search, at the rate given in paragraph (c)(1) of this section plus the cost of any materials.

* * * * *

■ 10. In § 20.49:

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

■ b. Remove paragraph (d).

The revisions read as follows:

§ 20.49 Denial of a request for records.

(a) A denial of a request for records, in whole or in part, shall be signed by the Director, Division of Freedom of Information (or delegatee).

* * * * *

(c) A letter denying a request for records, in whole or in part, shall state the reasons for the denial, the appropriate review official and address to which the appeal should be sent, and that an appeal must be transmitted within 90 calendar days from the date of the adverse determination, in accordance with 45 CFR 5.61. The Agency will also make a reasonable effort to include in the letter an estimate of the volume of the records denied, unless providing such an estimate would harm an interest protected by an exemption under the Freedom of Information Act. This estimate will ordinarily be provided in terms of the approximate number of pages or some other reasonable measure. This estimate will not be provided if the volume of records denied is otherwise indicated through deletions on records disclosed in part. The letter will also include contact information for the Freedom of Information Act Public Liaison and the Office of Government Information Services.

■ 11. In § 20.61, revise paragraph (e)(2) to read as follows:

§ 20.61 Trade secrets and commercial or financial information which is privileged or confidential.

* * * * *

(e) * * *

(2) The submitter has 10 working days from the date of the notice to object to disclosure of any part of the records and to state all bases for its objections. The Division of Freedom of Information may extend this period as appropriate and necessary.

* * * * *

■ 12. Revise § 20.62 to read as follows:

§ 20.62 Inter- or intra-agency memoranda or letters.

Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Food and Drug Administration may be withheld from public disclosure except that factual information that is reasonably segregable in accordance with the rule established in § 20.22 is available for public disclosure. The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

■ 13. In § 20.82, revise paragraph (a) to read as follows:

§ 20.82 Discretionary disclosure by the Commissioner.

(a) Except as provided in paragraph (b) of this section, the Commissioner may, in his or her discretion, disclose part or all of any Food and Drug Administration (FDA) record that is otherwise exempt from disclosure pursuant to subpart D of this part. As set forth in § 20.20(b), FDA will withhold requested information only if:

(1) The Agency reasonably foresees that disclosure would harm an interest protected by an exemption described in this part; or

(2) Disclosure is prohibited by law. FDA shall exercise its discretion to disclose such records whenever it determines that such disclosure is in the public interest, will promote the objectives of the Freedom of Information Act and the Agency, and is, for example, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

* * * * *

■ 14. Revise § 20.85 to read as follows:

§ 20.85 Disclosure to other Federal Government departments and agencies.

Any Food and Drug Administration (FDA) record otherwise exempt from public disclosure may be disclosed to other Federal Government departments and agencies, except that trade secrets and confidential commercial or financial information prohibited from disclosure by 21 U.S.C. 331(j), 21 U.S.C. 360j(c), 21 U.S.C. 360ll(d), 21 U.S.C. 360nn(e), and 21 U.S.C. 387f(c) may be released only as provided by those sections. Any disclosure under this section shall be pursuant to a written agreement that the record shall not be further disclosed by the other department or agency except with the written permission of FDA.

■ 15. Revise § 20.86 to read as follows:

§ 20.86 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Food and Drug Administration (FDA) administrative proceedings, such as those pursuant to parts 10, 12, 13, 14, 15, 17, and 19 of this chapter, or court proceedings, where data or information are relevant. FDA will take appropriate measures, or request that appropriate measures be taken, to reduce disclosure to the minimum necessary under the circumstances.

■ 16. In § 20.88, revise paragraphs (d)(1) introductory text, (d)(1)(i), (d)(1)(ii)(B) and (C), (d)(2), and (e)(1) and (3) to read as follows:

§ 20.88 Communications with State and local government officials.

* * * * *

(d)(1) The Commissioner of Food and Drugs (or delegatee) may authorize the disclosure of confidential commercial information submitted to the Food and Drug Administration, or incorporated into Agency-prepared records, to State and local government officials as part of cooperative law enforcement or regulatory efforts, provided that:

(i) The State or local government agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information provided without the written permission of the sponsor or written confirmation by the Food and Drug Administration that the information no longer has confidential status; and

(ii) * * *

(B) Disclosure would be in the interest of public health by reason of the State or local government's possessing information concerning the safety, effectiveness, or quality of a product or information concerning an investigation, or by reason of the State or local government being able to exercise its regulatory authority more expeditiously than the Food and Drug Administration; or

(C) The disclosure is to a State or local government scientist visiting the Food and Drug Administration on the Agency's premises as part of a joint review or long-term cooperative training effort authorized under section 708 of the Federal Food, Drug, and Cosmetic Act, the review is in the interest of public health, the Food and Drug Administration retains physical control over the information, the Food and Drug Administration requires the visiting State or local government scientist to sign a written commitment to protect the confidentiality of the information, and the visiting State or local government scientist provides a written assurance that he or she has no financial interest in the regulated industry of the type that would preclude participation in the review of the matter if the individual were subject to the conflict of interest rules applicable to the Food and Drug Administration advisory committee members under § 14.80(b)(1) of this chapter. Subject to all the foregoing conditions, a visiting State or local government scientist may have access to trade secret information, entitled to protection under section 301(j) of the Federal Food, Drug, and Cosmetic Act, in those cases where such disclosures would be a necessary part of the joint review or training.

(2) Except as provided under paragraph (d)(1)(ii)(C) of this section, the provisions of paragraph (d) of this section do not authorize the disclosure to State and local government officials of trade secret information concerning manufacturing methods and processes prohibited from disclosure by section 301(j) of the Federal Food, Drug, and Cosmetic Act, unless pursuant to an express written authorization provided by the submitter of the information.

* * * * *

(e)(1) The Commissioner of Food and Drugs or (delegatee), may authorize the disclosure to, or receipt from, an official of a State or local government agency of nonpublic, predecisional documents concerning the Food and Drug Administration's or the other Government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of efforts to improve Federal-State and/or Federal-local uniformity, cooperative regulatory activities, or implementation of Federal-State and/or Federal-local agreements, provided that:

(i) The State or local government agency has the authority to protect such nonpublic documents from public disclosure and will not disclose any such documents provided without the written confirmation by the Food and Drug Administration that the documents no longer have nonpublic status; and

(ii) The Commissioner (or delegatee) makes the determination that the exchange is reasonably necessary to improve Federal-State and/or Federal-local uniformity, cooperative regulatory activities, or implementation of Federal-State and/or Federal-local agreements.

* * * * *

(3) For purposes of paragraph (e) of this section, the term *official of a State or local government agency* includes, but is not limited to, an agent contracted by the State or local government, and an employee of an organization of State or local officials having responsibility to facilitate harmonization of State or local standards and requirements in the Food and Drug Administration's areas of responsibility. For such officials, the statement and commitment required by paragraph (e)(1)(i) of this section shall be provided by both the organization and the individual.

■ 17. In § 20.89, revise paragraphs (d)(1) introductory text and (d)(1)(ii) to read as follows:

§ 20.89 Communications with foreign government officials.

* * * * *

(d)(1) The Commissioner of Food and Drugs (or delegatee) may authorize the disclosure to, or receipt from, an official of a foreign government agency of nonpublic, predecisional documents concerning the Food and Drug Administration's or the other Government agency's regulations or other regulatory requirements, or other nonpublic information relevant to either agency's activities, as part of cooperative efforts to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements, provided that:

* * * * *

(ii) The Commissioner (or delegatee) makes the determination that the exchange is reasonably necessary to facilitate global harmonization of regulatory requirements, cooperative regulatory activities, or implementation of international agreements.

* * * * *

■ 18. In § 20.100:

■ a. Revise paragraph (c)(6);

■ b. Remove and reserve paragraphs (c)(20) and (21); and

■ c. Add paragraph (c)(48).

The revision and addition read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(6) Information on thermal processing of low-acid foods packaged in hermetically sealed containers, in §§ 108.25(k) and 108.35(l) of this chapter.

* * * * *

(48) Status reports of postmarketing study commitments in §§ 314.81(b)(2)(vii)(b) and 601.70(e) of this chapter.

■ 19. In § 20.120, revise paragraph (a) to read as follows:

§ 20.120 Records available in Food and Drug Administration Public Reading Rooms.

(a) The Freedom of Information Staff and the Dockets Management Staff Public Reading Room are located at the same address. Both are located in Rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. The telephone number for the Docket Management Staff is 240–402–7500; the telephone number for the Freedom of Information Staff's Public Reading Room is located at the address on the Agency's website at *https://www.fda.gov.* Both public reading rooms are open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal public holidays.

* * * * *

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

■ 20. The authority citation for part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

■ 21. In § 720.8, revise paragraphs (e) and (g) to read as follows:

§ 720.8 Confidentiality of statements.

* * * * *

(e) If, after receiving all of the data that are necessary to make a determination about whether the identity of an ingredient is a trade secret, FDA tentatively decides to deny the request, the Agency will inform the person requesting trade secrecy of its tentative determination in writing. FDA will set forth the grounds upon which it relied in making this tentative determination. The petitioner may submit, within 60 days from the date of receipt of the written notice of the tentative denial, additional relevant information and arguments and request that the Agency reconsider its decision in light of both the additional material and the information that it originally submitted.

* * * * *

(g) A final determination that an ingredient is not a trade secret within the meaning of § 20.61 of this chapter constitutes final Agency action that is subject to judicial review under 5 U.S.C. Chapter 7. If suit is brought within 30 calendar days after such a determination, FDA will not disclose the records involved or require that the disputed ingredient or ingredients be disclosed in labeling until the matter is finally determined in the courts. If suit is not brought within 30 calendar days after a final determination that an ingredient is not a trade secret within the meaning of § 20.61 of this chapter, the records involved will be available for public disclosure in accordance with part 20 of this chapter.

Dated: August 31, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–19736 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0628]

Special Local Regulations; Marine Events Within the Seventh Coast Guard District

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Captain of the Port (COTP) Savannah, Georgia will enforce a special local regulation for the Ironman Triathlon in Augusta, Georgia, on September 25, 2022, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District identifies the regulated area for this event in Augusta, GA. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 100.701 will be enforced for the location identified in Section (d), Item 3 of Table 1 to § 100.701, from 6:30 a.m. until 10:30 a.m., on September 25, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, contact Coast Guard Marine Safety Unit Savannah, Office of Waterways Management, by calling or emailing MSTC Ashley Schad, telephone 912–652–4353 ext 242, or email *Ashley.M.Schad@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a special local regulation in 33 CFR 100.701, Table 1 to § 100.701, Section (d), Item 3, for the Ironman Triathlon, from 6:30 a.m. to 10:30 a.m., on September 25, 2022.

This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh Coast Guard District, 33 CFR 100.701, specifies the location of the regulated area for the Ironman Triathlon which encompasses portions of the Savannah River and its branches. During the enforcement periods, as reflected in 33 CFR 100.701(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, and marine information broadcasts.

K.A. Broyles,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2022–19741 Filed 9–12–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0653]

Special Local Regulation; Marine Events Within the Eleventh Coast Guard District—San Diego Bayfair

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the waters of Mission Bay, CA, during the San Diego Bayfair on September 16, 2022, through September 18, 2022. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels of the event, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 for the location listed in Item 9 in table 1 to § 100.1101 will be enforced from 6 a.m. until 6 p.m., each day from September 16, 2022, through September 18, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Junior Grade Shera Kim, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the location identified in Item 9 in table 1 to § 100.1101, from 6 a.m. until 6 p.m., each day from September 16, 2022 through September 18, 2022, for the San Diego Bayfair in Mission Bay, CA. This action is being taken to provide for the safety of life on the navigable waterways during the event. Our regulation for recurring marine events in the San Diego Captain of the Port Zone, § 100.1101, Item No. 9 in table 1 to § 100.1101 specifies the location of the regulated area for the San Diego Bayfair, which encompasses portions of Mission Bay. Under the provisions of § 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area

unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: September 7, 2022.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2022–19764 Filed 9–12–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0443; FRL–10193–02–R1]

Air Plan Approval; Rhode Island; Prevention of Significant Deterioration Infrastructure State Implementation Plan Elements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving three elements of a State Implementation Plan (SIP) revision, which was submitted by the State of Rhode Island on December 6, 2017. This revision addressed the infrastructure requirements of the Clean Air Act (CAA or the Act) for the 2012 annual fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). On May 31, 2022, EPA approved much of the submission, but did not act on three elements related to the infrastructure requirement to have a comprehensive Prevention of Significant Deterioration (PSD) program. In today's action, EPA is approving the three remaining elements of the state's December 2017 infrastructure SIP submittal based on a previous EPA approval of Rhode Island's Air Pollution Control Regulation (APCR) No. 9. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective November 14, 2022, unless EPA receives adverse comments by October 13, 2022. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0443 at *https://www.regulations.gov,* or via email to *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

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

Table of Contents

I. Background and Purpose

On December 6, 2017, Rhode Island submitted a SIP submission addressing the ''infrastructure'' SIP requirements of the Clean Air Act (CAA or Act) for the 2012 annual $PM_{2.5}$ [1] NAAQS. Infrastructure SIP requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA for implementation of the NAAQS. On February 1, 2019, EPA published a Notice of Proposed Rulemaking proposing to approve most elements of the submission and to conditionally approve the submission for the infrastructure SIP requirement in CAA sections 110(a)(2)(C), (D)(i)(II), and (J) to have a complete Prevention of Significant Deterioration (PSD) permitting program.[2] *See* 84 FR 1025.

On May 31, 2022 (87 FR 32316), EPA published a Notice of Final Rulemaking (NFRM) finalizing approval of most elements of the infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS but withdrawing the proposed conditional approvals of the above-mentioned requirements in section 110(a)(2)(C), (D)(i)(II), and (J) related to the state's PSD program and taking no further action on those elements. EPA stated that it would issue a separate action at a future date providing an evaluation of Rhode Island's SIP for these PSD-related requirements for the 2012 annual $PM_{2.5}$ NAAQS. The reasons for that action are given in the NFRM and are not restated here. *See* 87 FR 32316.

In this action, EPA is approving Rhode Island's SIP for the PSD-related infrastructure SIP requirements of section 110(a)(2)(C), (D)(i)(II), and (J) for the 2012 annual $PM_{2.5}$ NAAQS. To

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as ''fine'' particles.

[2] In particular, EPA noted that Rhode Island's SIP did not yet incorporate: (1) a requirement to identify NO_X as a precursor to ozone in the definition of ''major stationary source'' from EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline,'' 70 FR 71612 (November 29, 2005); and (2) definitional changes required under an EPA Rule entitled ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration'', 75 FR 64864 (October 20, 2010); *see* 84 FR 1025 at 1027–28 (February 1, 2019). EPA had previously found, in the context of infrastructure SIP actions on other criteria pollutants, that Rhode Island's SIP did not incorporate these requirements. *See, e.g.,* 81 FR 58849 (August 26, 2016); 81 FR 23175 (April 20, 2016).

address deficiencies in its PSD program that EPA had previously identified, *see, e.g.,* 81 FR 10168, 10171–73 (February 29, 2016), Rhode Island revised its Air Pollution Control Regulation No. 9, Air Pollution Control Permits (APCR 9), which contains the state's PSD permitting program. The state submitted these revisions to EPA on March 26, 2018, and a clarification letter on February 6, 2019.[3] EPA reviewed Rhode Island's proposed revisions to APCR 9, determined that they are consistent with EPA's PSD program regulations, and, on October 2, 2019, approved the revisions into the Rhode Island SIP. *See* 84 FR 52364. In the October 2019 notice, EPA also fully approved infrastructure SIP requirements related to Rhode Island's PSD program for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 1997 and 2006 $PM_{2.5}$ NAAQS. The rationale for EPA's determination that the revisions to APCR 9 satisfy EPA's PSD program requirement and infrastructure SIP requirements is given in the NPRM and will not be restated here. *See* 84 FR 35582 (July 24, 2019).

EPA has determined that the previously SIP-approved APCR 9 also rectifies the deficiencies indicated in our proposal to approve Rhode Island's 2012 $PM_{2.5}$ infrastructure SIP. *See* 84 FR 1025 (February 1, 2019). The rationale for this determination is the same as that given for our approval of the March 2018 revisions to APCR 9 and will not be restated here. *See* 84 FR 35582. In addition, EPA reiterates and incorporates by reference into today's notice the discussion in our February 1, 2019, NPRM explaining that Rhode Island's SIP satisfies the other requirements for a complete PSD permitting program covering all regulated NSR pollutants. *See* 84 FR at 1027–29. Therefore, in today's action we are approving the three PSD-related elements—CAA section 110(a)(2)(C), (D)(i)(II), and (J)—of the state's 2012 $PM_{2.5}$ infrastructure SIP submission.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Final Action

EPA is approving three PSD elements, including CAA section 110(a)(2)(C), (D)(i)(II), and (J) of Rhode Island's 2012 $PM_{2.5}$ infrastructure SIP, which was submitted on December 6, 2017.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective November 14, 2022 without further notice unless the Agency receives relevant adverse comments by October 13, 2022.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 14, 2022 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

[3] Copies of Rhode Island's March 2018 SIP submission and clarification letter are included in the docket for this action.

States Court of Appeals for the appropriate circuit by November 14, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 7, 2022.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart OO—Rhode Island

■ 2. In § 52.2070, in paragraph (e), amend the table by revising the entry for ''Infrastructure SIP and Transport SIP for the 2012 $PM_{2.5}$ NAAQS'', to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
*	*	*	*	*
Infrastructure SIP and Transport SIP for the 2012 $PM_{2.5}$ NAAQS.	Statewide	12/6/2017	May 31, 2022, 87 FR 32320 and September 13, 2022 [Insert **Federal Register** citation].	This submittal is approved with respect to the following CAA elements: 110(a)(2)(A); (B); (C); (D); (E); (F); (G); (J); (K); (L); and (M). This submittal is disapproved for (H). This approval includes the Transport SIP for the 2012 $PM_{2.5}$ NAAQS, which shows that Rhode Island does not significantly contribute to $PM_{2.5}$ nonattainment or maintenance in any other state.

[FR Doc. 2022–19693 Filed 9–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2022–0419; FRL–9830–02–R7]

Air Plan Approval; Missouri; St. Louis Area Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve, through parallel processing, revisions to the Missouri State Implementation Plan (SIP) relating to the St. Louis area's vehicle Inspection and Maintenance (I/M) Program received on November 12, 2019, March 2, 2022, and May 24, 2022. In the submissions, Missouri requests the EPA's approval of revisions to a regulation and related plan that implement the St. Louis area's Inspection and Maintenance program called, Gateway Vehicle Inspection Program (GVIP). We are approving Missouri's removal of vehicles registered in Franklin County, unless the vehicle is primarily operated in the rest of the area, from the Gateway Vehicle Inspection Program. The revisions to this rule include amending the rule exemption section for vehicles subject to the rule, removing unnecessary words, amending definitions specific to the rule, updates due to technology changes, and other minor edits. These revisions do not interfere with attainment or maintenance of any National Ambient Air Quality Standard (NAAQS), reasonable further progress, or other Clean Air Act (CAA) requirements. Approval of these revisions will ensure consistency between state and federally approved rules.

DATES: This final rule is effective on October 13, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2022–0419. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: *wolkins.jed@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

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I. Parallel Processing

The EPA is using parallel processing to approve this SIP. Parallel processing refers to a process that utilizes concurrent state and federal proposed rulemaking actions, consistent with the provisions of 40 CFR part 51, appendix V. Generally, the state submits a copy of the proposed regulation or other revisions to the EPA before conducting its public hearing and completing its public comment process under state law. The EPA reviews this proposed state action and prepares a notice of proposed rulemaking (NPRM) under federal law.[1] If, after the state completes its public comment process and after the EPA's public comment process, the state changes its final submittal from the proposed submittal, the EPA evaluates those changes and decides whether to publish another NPRM in light of those changes or to proceed to taking final action on its proposed action and describe the state's changes in its final rulemaking action. Final rulemaking action by the EPA only occurs after the final submittal has been adopted by the state and formally submitted to the EPA.

Missouri provided its state-approved nonregulatory changes to the EPA on November 12, 2019. On March 2, 2022, Missouri submitted a supplemental revision, containing the not yet finalized revised regulation and supplemental emission controls to the EPA. Missouri's public comment process was completed for this revision, but the implementing state regulation in the submittal had not been formally submitted by the state to the EPA at the time of our May 19, 2022, proposed approval.

In accordance with the parallel processing provisions in section 2.3.1 of 40 CFR part 51, appendix V, the State has been provided an opportunity to consider the EPA's comments prior to submission of a final plan for the EPA's review and has submitted a schedule for final submittal of the state regulation. Specifically, Missouri's schedule included publication of the order of rulemaking in the Missouri Register on April 15, 2022. The final state regulation was published in Missouri's Code of State Regulations (CSR) on April 30, 2022 and became effective on May 30, 2022.

Because the State had satisfied all requirements for parallel processing concerning the March 2, 2022, submittal, the EPA proposed to approve the submittal through parallel processing on May 19, 2022.

Missouri formally submitted the final regulation package to the EPA on May 24, 2022. The May 24, 2022, submittal contained two changes to 10 CSR 10–5.381. The changes are:

1. In 10 CSR 10–5.381 (1)(B)8. Missouri changed ''biennial'' to ''biennially''. The sentence in the March 2, 2022 submittal was ''Motor vehicles driven fewer than twelve thousand (12,000) miles biennial that receive a mileage based exemption described in subsection (4)(H) of this rule;'' (emphasis added). The sentence now is ''Motor vehicles driven fewer than twelve thousand (12,000) miles biennially that receive a mileage based exemption described in subsection (4)(H) of this rule;'' (emphasis added).

2. 10 CSR 10–5.381 (2)(O) Missouri moved ''pounds'' behind the numeric version of 8,500. The sentence in the March 2, 2022 submission was ''Light Duty Truck (LDT)—Any motor vehicle rated at eight thousand five hundred pounds (8,500). . .'' (emphasis added). The sentence is now ''Light Duty Truck (LDT)—Any motor vehicle rated at eight thousand five hundred (8,500) pounds . . .''(emphasis added).

The EPA has evaluated these revisions and finds them to be grammatical in nature, not substantially changing the purpose and intent of the rule, and not requiring another proposal or comment period. Therefore, in this final action, the EPA is approving these changes to the rule.

II. History and Current Status of St. Louis Area Air Quality

A. The Ozone NAAQS

The St. Louis, Missouri-Illinois bi-state area, which has been designated as nonattainment for several Ozone NAAQS, has historically included the counties of Franklin, Jefferson, St. Charles, and St. Louis, and St. Louis City in Missouri, and the counties of Madison, Monroe and St. Clair in Illinois (hereafter referred to as the St. Louis area unless otherwise noted). For all Ozone NAAQS, except for the 2015 Ozone NAAQS, the St. Louis area has been redesignated to attainment as described in this section.

On May 12, 2003, the EPA redesignated the St. Louis area from Serious nonattainment to attainment for the 1979 Ozone NAAQS. (68 FR 25418). On June 15, 2005, the EPA revoked the 1979 1-hour Ozone NAAQS for all areas except the 8-hour Ozone nonattainment early action compact (EAC) areas. (70 FR 44470). The St. Louis area did not participate in the EAC and therefore, the 1-hour standard was revoked for all areas in Missouri effective June 15, 2005.

On February 20, 2015, the EPA redesignated the St. Louis area from Moderate nonattainment to attainment for the 1997 8-hour Ozone NAAQS. (80 FR 9207). On March 6, 2015, the EPA revoked the 1997 8-hour Ozone NAAQS. (80 FR 12264).

On September 20, 2018, the EPA redesignated the St. Louis area from Moderate nonattainment to attainment and approved a maintenance plan for the 2008 8-hour Ozone NAAQS. (83 FR 47572). The 2008 8-hour Ozone NAAQS has not been revoked.

On November 16, 2017, the EPA designated all areas of Missouri except the St. Louis area as attainment/unclassifiable for the 2015 8-hour Ozone NAAQS. (82 FR 54232). On April 30, 2018, the EPA designated Boles Township of Franklin County, St. Charles County, St. Louis County, and St. Louis City as Marginal nonattainment for the 2015 Ozone NAAQS. (83 FR 25776). As part of that same action, the EPA designated Jefferson County and the remaining portion of Franklin County as attainment/unclassifiable. On July 10, 2020, the District of Columbia Circuit Court remanded the Jefferson County designation (among other designations) back to the EPA. The Court upheld the EPA's designation of Boles Township as nonattainment and the remainder of Franklin County as attainment/unclassifiable.[2] In response to the Court remand, the EPA revised the Jefferson County designation to nonattainment on May 26, 2021. (86 FR 31438).

B. Other NAAQS

On March 29, 1999, the EPA redesignated a portion of St. Louis County and St. Louis City from

[1] Although not the case in our proposed rulemaking on May 19, 2022, in some instances, the EPA's NPRM is published in the **Federal Register** during the same time frame that the state is holding its public hearing and conducting its public comment process. The state and the EPA then provide for concurrent public comment periods on both the state action and federal action.

[2] *Clean Wisconsin* v. *EPA,* 964 F.3d 1145 (D.C. Cir. 2020).

nonattainment to attainment for the 1971 Carbon Monoxide (CO) NAAQS (64 FR 3855).

On August 3, 2018, the EPA redesignated Franklin County, Jefferson County, St. Charles County, St. Louis County, and St. Louis City from nonattainment to attainment for the 1997 Annual Fine Particulate Matter ($PM_{2.5}$) NAAQS (83 FR 38033).

A portion of Jefferson County is currently designated nonattainment for both the 2008 and 1978 Lead NAAQS. This nonattainment area is currently monitoring compliance with both the 1978 and 2008 Lead NAAQS.[3] The rest of the St. Louis Area is designated attainment/unclassifiable for both the 2008 and 1978 Lead NAAQS.

On January 28, 2022, the EPA redesignated a portion of Jefferson County from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS (87 FR 4508). The rest of the St. Louis Area is designated as either attainment or unclassifiable for the 2010 SO_2 NAAQS.

The St. Louis Area is designated attainment/unclassifiable for all other NAAQS.

III. Background of Missouri's I/M Program

Under sections 182 (b)(4) and (c)(3) of the CAA, vehicle I/M programs are required for areas that are classified as Moderate or above nonattainment for Ozone. As a result, Missouri has previously submitted, and the EPA has previously approved into the SIP an I/M program for the St. Louis Area of Franklin County, Jefferson County, St. Charles County, St. Louis County, and St. Louis City.[4] At the time of the program's inception, the program was based on tailpipe testing. In 2000, the EPA approved Missouri's switch to Onboard Diagnostic testing for the same geographic area, consistent with our regulations and section 182 of the CAA.[5] In 2015, the EPA approved revising and recodification of the I/M program.[6]

IV. What is being addressed in this document?

The EPA is approving, through parallel processing, revisions to the Missouri SIP received on November 12, 2019, March 2, 2022, and May 24, 2022. In the November 12, 2019, submission, Missouri requested the EPA's approval of revisions to the vehicle I/M Program also known as GVIP, for the St. Louis area. The revisions remove both Franklin and Jefferson Counties from the GVIP; however, the EPA is only taking action on the removal of Franklin County from the GVIP in accordance with a subsequent request from Missouri.

At the time of the November 12, 2019 submission, Missouri had not yet revised the implementing GVIP regulations nor provided supplemental emission controls to offset the emission increases resulting from ceasing vehicle emission inspections in the Boles Township portion of the nonattainment area, in accordance with CAA section 110(l), 42 U.S.C. 7410(l).

At the time of Missouri's November 12, 2019, submission, Jefferson County was designated as attainment/unclassifiable for the 2015 Ozone NAAQS. When the EPA designated Jefferson County to nonattainment on May 26, 2021 (86 FR 31438), Missouri requested that the EPA act on the removal of Franklin County from the GVIP plan and postpone action on the removal of Jefferson County from the GVIP plan by letter dated December 6, 2021.[7] As stated in the EPA's comments during Missouri's public notice on their draft rulemaking, Missouri would need to provide further supplemental emission controls for the EPA to be able to propose approving the removal of I/M in Jefferson County as long as the County remains designated nonattainment.[8] The EPA's longstanding position is that the implementing rule revision and supplemental emission controls, for the nonattainment area, are needed for the EPA's approval. This position is consistent with the CAA, our implementing regulations, and our previous approvals of I/M removal across the nation. Additionally, in response to comment from the EPA on the draft rulemaking, Missouri limited the implementing regulation's exemption to Franklin County as opposed to exempting both Franklin and Jefferson Counties.

On March 2, 2022, Missouri submitted a draft SIP revision supplementing the November 12, 2019, submittal, along with a parallel processing request. The March 2, 2022, submittal included both the revised implementing rule, 10 CSR 10–5.381, and supplemental emission controls to offset the increased emissions in the Boles Township portion of Franklin County that is designated as nonattainment for the 2015 Ozone NAAQS. The revision to 10 CSR 10–5.381 adds an exemption for vehicles registered in Franklin County from the program unless the vehicles are primarily operated in the remainder of nonattainment area. The revisions to this rule include amending the rule exemption section for vehicles subject to the rule, removing unnecessary words, amending definitions specific to the rule, and other minor edits. The EPA is approving the portion of the November 12, 2019, March 2, 2022, and May 24, 2022, GVIP Plan relating to Franklin County, St. Charles County, St. Louis County, and St. Louis City, by approving the removal of Franklin County from the I/M Program, and fully approving the revisions to 10 CSR 10–5.381.

In accordance with Missouri's December 6, 2021, letter, the EPA is not taking action on Missouri's November 12, 2019, request to remove Jefferson County from the I/M Program for the St. Louis Area. Missouri states in the 2021 letter that it views the requests in the 2019 SIP revision to remove inspection and maintenance requirements in Franklin and Jefferson Counties as severable. The EPA agrees the removal of inspection and maintenance requirements in Franklin and Jefferson Counties are severable. Missouri also states in the letter that the implementing regulation, 10 CSR 10–5.381, continues to require the inspection and maintenance program to operate in Jefferson County.

As a result of this action, the nonregulatory 1999 Implementation Plan for the Missouri Inspection and Maintenance Program, originally approved into the SIP on May 18, 2000, 65 FR 31480, remains approved into the SIP for Jefferson County. The EPA approves the nonregulatory Inspection and Maintenance Program for the St. Louis Area—2019 Revision, into the SIP, which removes requirements for Franklin County. The EPA also approves the revisions to 10 CSR 10–5.381.

The EPA's analysis of the revisions can be found in the ''What is the EPA's analysis of Missouri's SIP request?'' section of our proposed approval and in the technical support document (TSD), which is included in this docket.[9]

[3] See file titled Herculaneum AQS Report in Docket.

[4] 50 FR 32411, August 12, 1985.

[5] 65 FR 62295, May, 18, 2000.

[6] Missouri recodified the I/M regulations from 10 CSR 10–5.380 to 10 CSR 10–5.381. 80 FR 11323, March 3, 2015.

[7] Missouri's December 6, 2021 letter to EPA is included in the docket for this action.

[8] A summary of the EPA's comments and Missouri's response can be found in the docket for this action in the November 12, 2019 submittal.

[9] 87 FR 30437, May 19, 2022.

V. Have the requirements for approval of a SIP revision been met?

Both the 2019 and 2022 State submissions have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submissions also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the November 12, 2019 SIP revision from July 29, 2019 to August 29, 2019 and on the March 2, 2022 [10] SIP revision from October 15, 2021 to December 9, 2021. The State received ten comments during the 2019 public notice. The State received four comments on the 2021 public notice. The EPA finds Missouri has adequately addressed the comments received in its submissions. Please see the TSD for our proposal for more discussion on Missouri's responses to comments.[11] In addition, as explained in our proposal and in more detail in the TSD which is part of this docket, the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.[12]

VI. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened May 19, 2022, the date of its publication in the **Federal Register** and closed on June 21, 2022. During this period, the EPA received one comment letter from an anonymous commenter.

Comment 1: The commenter states that the state lacks the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

Response 1: The EPA disagrees. The Missouri Department of Natural Resources (MoDNR) has legal authority to implement and enforce the vehicle inspection and maintenance program as stated in 10 CSR 10–5.381, which it submitted on March 2, 2022, and May 24, 2022. The MoDNR relies on the Missouri Department of Revenue (MDOR) for registration denial. MoDNR is identified as the agency responsible for implementing the GVIP along with the MDOR for registration data and enforcement of registration denial. 10 CSR 10–5.381 (2)(S), specifies MDOR as responsible for registration denial.

In Missouri's December 14, 2007, submittal, approved March 3, 2015, Missouri states that MDOR handles registration denial and ''all remaining I/M program enforcement actions are the responsibility of MDNR.'' State law provides that any person who violates a requirement of sections 643.300 to 643.355 or a rule promulgated to enforce sections 643.300 to 643.355 shall be guilty of either an infraction for the first offense, a class C misdemeanor for the second offense, or a class B misdemeanor for any subsequent offenses (subsections 1–6 section 643.355, RSMo). State law also provides that any person who violates any procedural requirement of sections 643.300 to 643.355 shall be subject to a fine of not less than five times the amount of the fee charged pursuant to section 643.350 or one hundred dollars, whichever is greater (subsection 7 of section 643.355, RSMo). The state has the legal authority necessary to implement the I/M program.

Comment 2: The commenter claims the SIP lacks detailed description of the number and types of vehicles to be covered by the program, how many vehicles registered in Franklin County may ultimately be exempt from or subject to the I/M requirements, and a description of and accounting for all classes of exempt vehicles.

Response 2: The EPA disagrees. 10 CSR 10–5.381(1)(A) describes the number and types of vehicles to be covered by the program. 10 CSR 10–5.381 (1)(A) states that all vehicles either registered in the St. Louis Area or primarily operated in the Area unless exempted by 10 CSR 10–5.381 (1)(B) are covered by the rule. 10 CSR 10–5.381 (1)(B) exempts the classes of:

- Heavy duty gasoline and diesel vehicles,
- Light duty gasoline and diesel vehicles manufactured prior to 1996,
- Motorcycles,
- Motorized tricycles,
- 100% electric powered vehicles,
- Plug-in hybrid vehicles,
- 100% hydrogen fueled vehicles,
- Vehicles fueled by something other than:
  - gasoline,
  - E10–E85, or
  - diesel,
- Vehicles registered in the St. Louis Area but receive an out of area exemption (for situations like a person off to college or deployed as a member of the armed forces),
- Registered historic vehicles,
- School buses,
- Tactical military vehicles, and
- Specially constructed vehicles.

10 CSR 10–5.381(B.) also has four exemptions for either low total mileage, low usage, low age, or short-term visit, work, or deployment to a federal installation.

While the types of vehicles covered is important for implementation of rule, the purpose of the EPA requiring the State to provide the numbers and types of vehicles either included or exempted is to facilitate emission calculations either for a program demonstration on establishment [13] or CAA section 110(l) demonstration that EPA's approval of a SIP revision would not interfere with maintenance or attainment of the NAAQS, reasonable further progress, or any other applicable CAA requirement. As discussed in our proposal, Missouri submitted a CAA section 110(l) demonstration to EPA based on MOVES emission modeling.

Missouri in their submittal included the following data on the number of vehicles.[14]

TABLE 1—LIGHT DUTY VEHICLE POPULATION

Year	Franklin County	Jefferson County	St. Charles County	St. Louis County	St. Louis City
2017	109,775	222,144	369,863	966,358	194,677
2020	120,300	241,869	400,161	1,038,921	207,875
2025	141,326	281,277	460,691	1,183,889	234,632
2030	167,655	330,622	536,485	1,365,411	257,972

[10] Final Formal submission on May 24, 2022.

[11] See *www.regulations.gov,* document id: EPA–R07–OAR–2022–0419–0013.

[12] 87 FR 30437, May 19, 2022.

[13] It is possible for an established I/M program to need to do a program demonstration again, most often based on a new designation of Moderate or higher nonattainment.

[14] See the November 12, 2019, Missouri submittal, Attachment 3. Attachment 3 also contains population numbers for other categories of vehicles. The numbers in Table 1 are the sum of passenger car, passenger truck, and light commercial truck. For St. Louis City, Jefferson County, St Charles County, St. Louis County, these are the maximum of the subject vehicle population.

Missouri also provided vehicle age distributions. Missouri made the most conservative assumption that all Franklin County vehicles will be exempted from the GVIP. Specifically, Missouri used the maximum number of vehicles that could be exempted—the entire light duty Franklin County vehicle population. The EPA finds that using this assumption was appropriate. Missouri's modeling demonstration of all light duty vehicles in Franklin County not participating in the I/M program increased emissions, and is consistent with the I/M requirements of 40 CFR 51.356(b). Missouri provided the requisite MOVES modeling demonstration to analyze the projected emissions change associated with exempting these vehicles from the I/M program. The EPA review of Missouri's analysis is in the Technical Support Document (TSD) in the docket to this action. The EPA believes MoDNR's analysis correctly accounts for all potential vehicle emissions that may occur from the removal of Franklin County from the I/M program. The modeling demonstrates that the removal of Franklin County from the I/M program will not interfere with attainment or maintenance of the NAAQS, reasonable further progress or any other CAA requirement consistent with the requirements of CAA section 110(l).

Comment 3: The commenter states the SIP lacks a plan for how Franklin County registered vehicles that are primarily operated in the I/M coverage area are to be identified, who (*i.e.,* registration authorities or individual motorists) will be responsible for determining whether a vehicle registered in Franklin County ''is primarily operated'' in the St. Louis nonattainment area and thus subject to the GVIP, how Missouri, the EPA, or individual citizens can determine which Franklin County vehicles will continue to be subject to the I/M requirements, and how the determinations will be documented. The commenter references a 1992 **Federal Register** document regarding how I/M programs should easily identify vehicles.

Response 3: Vehicle owners have a responsibility to comply with 10 CSR 10–5.381. The Missouri Department of Natural Resources relies on tips to learn about non-compliant individual private owners and has the authority to enforce the rule.

The core of the SIP revision is the removal of Franklin County registered vehicles from the I/M program, and therefore, has the effect of defining Franklin County registered vehicles as ''elsewhere registered'' vehicles. As discussed in more detail in response to Comment 2, Missouri did not rely on any emission reductions from Franklin County registered vehicles for attainment or reasonable further progress purposes in their CAA section 110(l) demonstration. Because Missouri's demonstration shows they will not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or any other CAA requirement without claiming emissions reductions from elsewhere registered vehicles, Missouri's existing steps to identify and document elsewhere registered vehicles that primarily operate in the area are acceptable.

The commenter references a 1992 **Federal Register** document regarding how I/M programs should easily identify vehicles (57 FR 52950, November 5, 1992). In the referenced document, the EPA stated that an alternative to registration denial for vehicles registered in the coverage area needs to ''easily identify the subject vehicles.'' Registration denial is our preferred method for identifying and enforcing I/M on vehicles registered in the I/M coverage area. Registration denial works by having the state registration agency only register a vehicle in the I/M coverage area if that vehicle has passed an I/M check or is exempt. Registration denial continues to be an acceptable enforcement method for vehicles registered in the area. For any I/M program, the vehicles registered outside of the county are not as easy to identify. However, as shown above, exempting all vehicle in Franklin County from I/M requirements will not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or any other CAA requirement.

Comment 4: The commenter asserts the proposed Missouri SIP provision turns on when 51% of annual mileage of a vehicle registered in Franklin County occur in the coverage area.

Response 4: The EPA disagrees. The proposed action does not turn on when 51% of annual mileage of a vehicle registered in Franklin County occurs in Jefferson County, St. Charles County, St. Louis County, and the City of St. Louis. The proposed action is based on the EPA's evaluation under section 110(l) of the CAA, of the removal of Franklin County registered vehicles from the I/M program, with the caveat that if Franklin County registered vehicles are primarily operated in the I/M coverage area, then those vehicles are also required to meet I/M requirements. The elsewhere-registered provisions in 10 CSR 10–5.381 (1)(A)2., 3., and 4 are a previously SIP-approved part of Missouri's GVIP plan and implementing regulation.

The language, in 10 CSR 10–5.381 (1)(B)15., ''exempt unless the vehicle is primarily operated in the area of Jefferson County, St. Charles County, St. Louis County, and the City of St. Louis,'' makes the Franklin County registered vehicle exemption conform to the elsewhere provisions in 10 CSR 10–5.381 (1)(A)2., 3., and 4. The language ''a vehicle is primarily operated in the area if at least fifty-one percent (51%) of the vehicle's annual miles are in the area'' is the same language used to define ''primarily operated'' throughout the rule. Missouri included the phrase ''primarily operated'' to the newly added exemption at 10 CSR 10–5.381 (1)(B)15. to conform with the previously SIP-approved provisions in 10 CSR 10–5.381 (1)(A)2., 3., and 4. Franklin County is no longer part of the I/M coverage area and is now defined as ''elsewhere.'' As stated above, Missouri's 110(l) demonstration shows that the revisions will not interfere with attainment of the NAAQS.

Comment 5: The commenter states Missouri needs to ensure that all Franklin County vehicle owners are aware of the law and their potential responsibilities under it.

Response 5: Missouri has met the public notice provisions required by the CAA. The rules are published on Missouri's Secretary of State website.[15]

Comment 6: The commenter states that the SIP submission appears to be requesting approval of 10 CSR 10–5 as revised generally and thus is arguably being submitted for reapproval of 10 CSR 10–5.381(1)(A)(3). While 10 CSR 10–5.381(1)(A)(3) was previously approved into the SIP and has not been specifically revised in this submission, it presents the same implementation and enforceability issues regarding ''primarily operated'' as noted for above for 10 CSR 10–5.381(1)(B)(15). The commenter states that the EPA should not re-approve 10 CSR 10–5.381(1)(A)(3) into the Missouri SIP.

Response 6: The EPA disagrees. Missouri did not request such an action and therefore the EPA is not reapproving all of 10 CSR 10–5.[16] Further, Missouri did not request, and the EPA is not reapproving, all of 10 CSR 10–5.381. Consistent with Missouri's submittal, the EPA solicited

[15] *https://www.sos.mo.gov/adrules/csr/current/10csr/10csr.*

[16] We do note the commenter may have made a typographical error in stating ''10 CSR 10–5''. Regardless, even if the commenter meant some other specific part of 10 CSR 10–5, such specificity does not change our answer or our approval of the SIP submission.

comment on our proposed approval of the substantive and administrative revisions detailed in the proposal and the TSD.

VII. What action is the EPA taking?

The EPA is taking final action to approve revisions to the Missouri SIP received on November 12, 2019, March 2, 2022, and May 24, 2022. The EPA is approving portions of the November 12, 2019 GVIP Plan, by approving the removal of Franklin County from the I/M program, and fully approving the revisions to 10 CSR 10–5.381 received on March 2 and May 24, 2022. The EPA is not taking action on the remainder of the November 12, 2019 GVIP Plan, at this time.

VIII. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [17] The EPA is providing additional analysis of environmental justice associated with this action for the purpose of providing information to the public and not as a basis of our final action.

The EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within Franklin County, Jefferson County, St. Charles County, St. Louis County, and St. Louis City. The tool outputs reports are contained in the docket for this action. Looking specifically at Franklin County, the EPA's EJSCREEN tool demonstrates that demographic indicators are consistent with national averages, however there are vulnerable populations in Franklin County including low-income populations and persons over 64 years of age. In addition, emissions from Boles Township impact populations in the other portions of the non-attainment area. St. Louis City has demographic indicators significantly above national averages for low-income and minority populations. While the other counties' demographic indicators are consistent with or lower than national averages, there are vulnerable populations in these Counties including low-income populations and persons over 64 years of age.

When the EPA reviews a state's desired change to their SIP for a NAAQS, the CAA requires the EPA to ensure that the change will not cause ''backsliding'' of the air quality or delaying attainment of air quality. SIP revisions address environmental justice concerns by ensuring that the public is properly informed about the Plan and regulations to attain and maintain air quality. As described in our proposal,[18] the EPA finds these supplemental emission controls provided by Missouri are sufficient to address the projected emissions increase from ceasing GVIP in Franklin County.

This action addresses the EPA's determination for the removal of Franklin County registered vehicles from the GVIP, unless they are predominately operated in the rest of the St. Louis Area. This action approves the removal of these Franklin County registered vehicles from the GVIP and finds such removal will not have an adverse impact to air quality or interfere with attainment or maintenance of the NAAQS. For these reasons, this action does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

IX. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri 10 CSR 10–5.381 discussed in Section IV. of this preamble and as set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[19]

X. Statutory and Executive Order Reviews

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

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

[17] *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[18] 87 FR 30437, May 19, 2022.

[19] 62 FR 27968, May 22, 1997.

• This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this determination is contained in Section VIII of this action, ''Environmental Justice Considerations.''

• In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

• Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 6, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320:

■ a. The table in paragraph (c) is amended by revising the entry ''10–5.381''.

■ b. The table in paragraph (e) is amended by revising the entry ''(38)'' and adding the entry ''(84)'' in numerical order.

The revisions and addition read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.381	On-Board Diagnostics Motor Vehicle Emissions Inspection.	5/30/2022	9/13/2022, [insert **Federal Register** citation]	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(38) Implementation plan for the Missouri inspection maintenance program.	Jefferson County	11/12/1999	5/18/2000, 65 FR 31480 ..	[MO 096–1096b; FRL–6701–6]. Approved for Jefferson County only.

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	* *	*	*	* *
(84) Implementation plan for the Missouri inspection maintenance program.	St. Charles County, St. Louis County, and St. Louis City.	11/12/2019 3/2/2022	9/13/2022, [insert **Federal Register** citation].	[EPA–R07–OAR–2022–0419; FRL–9830–02–R7]. Approved for St. Charles County, St. Louis County, and St. Louis City and removal of Franklin County. No action on Jefferson County. Please see item (38) of this paragraph.

[FR Doc. 2022–19621 Filed 9–12–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049]

RTID 0648–XC366

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2022 total allowable catch of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 8, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA is 2,602 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish of the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2022 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,502 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

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

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of directed fishing of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 6, 2022.

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

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

Dated: September 8, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–19756 Filed 9–8–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 176
Tuesday, September 13, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1107; Airspace Docket No. 22–AGL–1]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airway V–156 and V–285 in the Vicinity of Kalamazoo, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–156 and V–285. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Kalamazoo, MI (AZO), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Kalamazoo VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

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

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–1107; Airspace Docket No. 22–AGL–1 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–1107; Airspace Docket No. 22–AGL–1) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1107; Airspace Docket No. 22–AGL–1.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

Background

The FAA is planning to decommission the Kalamazoo, MI, VOR in April 2023. The Kalamazoo VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy

statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Kalamazoo VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The ATS routes affected by the Kalamazoo VOR decommissioning are VOR Federal airways V–156 and V–285. With the planned decommissioning of the Kalamazoo VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the airways. As such, modifications to the airways would result in V–156 and V–285 being shortened. Further, concurrent changes to V–285 have been proposed in a separate NPRM.

To overcome the loss of a portion of V–156 and V–285 by this action, instrument flight rules (IFR) traffic could use portions of adjacent VOR Federal airways V–55, V–274, and V–277 to circumnavigate the affected area, or receive air traffic control (ATC) radar vectors to fly through the affected area. Additionally, IFR pilots equipped with RNAV capabilities could file and navigate point to point using the existing fixes and waypoints that would remain in place, or could use area navigation (RNAV) route T–217 to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent ATS routes or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–156 and V–285 due to the planned decommissioning of the VOR portion of the Kalamazoo, MI (AZO), VOR/DME. The proposed airway actions are described below.

V–156: V–156 currently extends between the Cedar Rapids, IA, VOR/DME and the Kalamazoo, MI, VOR/DME. The FAA proposes to remove the airway segment overlying the Kalamazoo VOR/DME between the Gipper, MI, VOR/Tactical Air Navigation (VORTAC) and the Kalamazoo, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–285: V–285 currently extends between the Brickyard, IN, VORTAC and the Victory, MI, VOR/DME. The FAA proposes to remove the airway segment overlying the Kalamazoo VOR/DME between the Goshen, IN, VORTAC and the Victory, MI, VOR/DME. Concurrent changes to other portions of the airway have been proposed in a separate NPRM. The unaffected portions of the existing route would remain as charted.

The NAVAID radials listed in the VOR Federal airway V–156 description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) 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 ATS routes listed in this document would 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 proposed 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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–156 [Amended]

From Cedar Rapids, IA; Moline, IL; Bradford, IL; Peotone, IL; INT Peotone 098° and Knox, IN, 238° radials; Knox; to Gipper, MI.

* * * * *

V–285 [Amended]

From Brickyard, IN; Kokomo, IN; to Goshen, IN.

* * * * *

Issued in Washington, DC, on September 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19471 Filed 9–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1113 Airspace Docket No. 22–AGL–20]

RIN 2120–AA66

Proposed Amendment of V–6, V–10, V–30, V–100, and V–233 in the Vicinity of Litchfield, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–6, V–10, V–30, V–100, and V–233 in the vicinity of Litchfield, MI. The airway modifications are necessary due to the planned decommissioning of the VOR portion of

the Litchfield, MI, VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Litchfield VOR/DME NAVAID provides navigational guidance for portions of the affected VOR Federal airways listed above and is planned to be decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

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

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–1113; Airspace Docket No. 22–AGL–20 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No.FAA–2022–1113; Airspace Docket No. 22–AGL–20) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No.FAA–2022–1113; Airspace Docket No. 22–AGL–20.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

Background

The FAA is planning decommissioning activities for the VOR portion of the Litchfield, MI, VOR/DME in April 2023. The Litchfield, MI, VOR is a candidate VOR identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Litchfield VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained.

The existing ATS route dependencies to the Litchfield, MI, VOR/DME NAVAID are VOR Federal airways V–6, V–10, V–30, V–100, and V–233. With the planned decommissioning of the VOR portion of the Litchfield VOR/DME, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, proposed modifications to the affected VOR Federal airways would result in expanding the existing gaps in four of the airways (V–6, V–10, V–30, and V–233) and redefining an airway end point in the remaining airway (V–100).

To overcome the loss of the airway segments on all five affected airways, instrument flight rules (IFR) traffic may request air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. Additionally, IFR pilots equipped with area navigation (RNAV) capabilities may also navigate point to point using the existing Fixes that will remain in place as fixes or waypoints to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take

advantage of the ATC services listed previously.

Prior to this NPRM, the FAA published a rule for Docket No. FAA–2021–1043 in the **Federal Register** (87 FR 50563; August 17, 2022), amending VOR Federal airway V–100 by removing the airway segment between the Fort Dodge, IA, VOR/Tactical Air Navigation (VORTAC) and the Waterloo, IA, VOR/DME. That airway amendment, effective November 3, 2022, is included in this NPRM.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–6, V–10, V–30, V–100, and V–233. The planned decommissioning of the VOR portion of the Litchfield, MI, VOR/DME has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–6: V–6 currently extends between the Oakland, CA, VOR/DME and the DuPage, IL, VOR/DME; between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES Fix) and the intersection of the Gipper, MI, VORTAC 092° and Litchfield, MI, VOR/DME 196° radials (MODEM Fix); and between the Philipsburg, PA, VORTAC and the La Guardia, NY, VOR/DME. The FAA proposes to remove the airway segment between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES Fix) and the intersection of the Gipper, MI, VORTAC 092° and Litchfield, MI, VOR/DME 196° radials (MODEM Fix). The unaffected portions of the existing airway would remain as charted.

V–10: V–10 currently extends between the Pueblo, CO, VORTAC and the intersection of the Bradford, IL, VORTAC 058° and Joliet, IL, VOR/DME 287° radials (PLANO Fix); between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES Fix) and the Litchfield, MI, VOR/DME; and between the Youngstown, OH, VORTAC and the Lancaster, PA, VOR/DME. The FAA proposes to remove the airway segment between the Gipper, MI, VORTAC and the Litchfield, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–30: V–30 currently extends between the Badger, WI, VOR/DME and the Litchfield, MI, VOR/DME; and between the Philipsburg, PA, VORTAC and the Solberg, NJ, VOR/DME. The FAA proposes to remove the airway segment between the Pullman, MI, VOR/DME and the Litchfield, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–100: V–100 currently extends between the Medicine Bow, WY, VOR/DME and the O'Neill, NE, VORTAC; between the Waterloo, IA, VOR/DME and the Dubuque, IA, VORTAC; and between the Northbrook, IL, VOR/DME and the Litchfield, MI, VOR/DME. The FAA proposes to remove the airway segment between the Keeler, MI, VOR/DME and the Litchfield, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–233: V–233 currently extends between the Spinner, IL, VORTAC and the Litchfield, MI, VOR/DME; and between the Mount Pleasant, MI, VOR/DME and the Pellston, MI, VORTAC. The FAA proposes to remove the airway segment between the Goshen, IN, VORTAC and the Litchfield, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

All radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document would be published subsequently in the 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 proposed 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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–6 [Amended]

From Oakland, CA; INT Oakland 039° and Sacramento, CA, 212° radials; Sacramento; Squaw Valley, CA; Mustang, NV; Lovelock, NV; Battle Mountain, NV; INT Battle Mountain 062° and Wells, NV, 256° radials; Wells; 5 miles, 40 miles, 98 MSL, 85 MSL, Lucin, UT; 43 miles, 85 MSL, Ogden, UT; 11 miles, 50 miles, 105 MSL, Fort Bridger, WY; Rock Springs, WY; 20 miles, 39 miles, 95 MSL, Cherokee, WY; 39 miles, 27 miles, 95 MSL, Medicine Bow, WY; INT Medicine Bow 106° and Sidney, NE, 291° radials; Sidney; North Platte, NE; Grand Island, NE; Omaha, IA; Des Moines, IA; Iowa City, IA; Davenport, IA; INT Davenport 087° and DuPage, IL, 255° radials; to DuPage. From Philipsburg, PA; Selinsgrove, PA; Allentown, PA; Solberg, NJ; INT Solberg 107° and Yardley, PA, 068° radials; INT Yardley 068° and La Guardia, NY, 213° radials; to La Guardia.

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V–10 [Amended]

From Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; Garden City, KS; Dodge City, KS; Hutchinson, KS; Emporia, KS; INT Emporia 063°and Napoleon, MO, 243° radials; Napoleon; Kirksville, MO; Burlington, IA; Bradford, IL; to INT Bradford 058° and Joliet, IL, 287° radials. From INT Chicago Heights, IL, 358° and Gipper, MI,

271° radials; to Gipper. From Youngstown, OH; INT Youngstown 116° and Revloc, PA, 300° radials; Revloc; INT Revloc 107° and Lancaster, PA, 280° radials; to Lancaster.

* * * * *

V–30 [Amended]

From Badger, WI; INT Badger 102° and Pullman, MI, 303° radials; to Pullman. From Philipsburg, PA; Selinsgrove, PA; East Texas, PA; INT East Texas 095° and Solberg, NJ, 264° radials; to Solberg.

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V–100 [Amended]

From Medicine Bow, WY; Scottsbluff, NE; Alliance, NE; Ainsworth, NE; to O'Neill, NE. From Waterloo, IA; to Dubuque, IA. From Northbrook, IL; INT Northbrook 095° and Keeler, MI, 271° radials; to Keeler.

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V–233 [Amended]

From Spinner, IL; INT Spinner 061° and Roberts, IL, 233° radials; Roberts; Knox, IN; to Goshen, IN. From Mount Pleasant, MI; INT Mount Pleasant 351° and Gaylord, MI, 207° radials; Gaylord; to Pellston, MI.

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Issued in Washington, DC, on September 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19472 Filed 9–12–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 220826–0174]

RIN 0694–AI84

Request for Comments Concerning the Imposition of Section 1758 Technology Export Controls on Instruments for the Automated Chemical Synthesis of Peptides

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Bureau of Industry and Security (BIS), Department of Commerce, maintains controls on the export, reexport and transfer (in-country) of dual-use items and less sensitive military items pursuant to the Export Administration Regulations (EAR), including the Commerce Control List (CCL). Certain instruments for the automated synthesis of peptides (automated peptide synthesizers) have been identified by BIS for evaluation according to the criteria in section 1758 of the Export Control Reform Act of 2018 (ECRA) pertaining to emerging and foundational technologies. BIS is seeking public comments on the potential uses of this technology, particularly with respect to its impact on U.S. national security (*e.g.,* whether such technology could provide the United States, or any of its adversaries, with a qualitative military or intelligence advantage). This advance notice of proposed rulemaking also requests public comments on how to ensure that the scope of any controls that may be imposed on this technology would be effective (in terms of protecting U.S. national security interests) and appropriate (with respect to minimizing their potential impact on legitimate commercial or scientific applications).

DATES: Comments must be received by BIS no later than October 28, 2022.

ADDRESSES: You may submit comments, identified by *regulations.gov* docket number BIS–2022–0023 or by RIN 0694–AI84, through any of the following:

- *Federal eRulemaking Portal: http://www.regulations.gov.* You can find this advance notice of proposed rulemaking by searching for its *regulations.gov* docket number, which is BIS–2022–0023.
- *Email: PublicComments@bis.doc.gov.* Include RIN 0694–AI84 in the subject line of the message.

All filers using the portal or email should include the name of the person or entity submitting the comments in the name of their file(s), in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential submission to be made publicly available.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. Any submissions with file names that do not begin with a ''P'' or ''BC'' will be assumed to be public and will be made publicly available through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on automated peptide synthesizers, contact Dr. Tara Gonzalez, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343, Email: *Tara.Gonzalez@bis.doc.gov.* For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–6057, Email: *RPD2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Identification of Section 1758 Technologies

As part of the National Defense Authorization Act (NDAA) for Fiscal Year 2019, Public Law 115–232, Congress enacted the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. Section 1758 of ECRA (as codified under 50 U.S.C. 4817) authorizes the Bureau of Industry and Security (BIS) to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies essential to the national security of the United States. Due to the absence of specific definitions or other guidance in ECRA differentiating the terms ''emerging technology'' or ''foundational technology,'' and in order to ensure greater efficiency in implementing controls for such items, BIS has chosen to characterize such technologies as ''Section 1758 technologies'' for purposes of section 1758 of ECRA, rather than characterizing a specific technology as either ''emerging'' or ''foundational.''

As described in section 1758(a)(2)(B) of ECRA, the identification of Section 1758 technologies takes into account: (i) the development of these technologies in foreign countries; (ii) the effect export controls imposed pursuant to this section may have on the development of such technologies in the United States; and (iii) the effectiveness of export controls imposed pursuant to this section on limiting the proliferation of the emerging and foundational technologies in foreign countries.

The Secretary of Commerce must establish appropriate controls on the export, reexport or transfer (in-country) of technology identified pursuant to the Section 1758 process. In so doing, the Secretary must consider the potential

end-uses and end-users of Section 1758 technologies, and the countries to which exports from the United States are restricted (*e.g.,* embargoed countries). While the Secretary has discretion to set the level of export controls, at a minimum a license must be required for the export of such technologies to countries subject to a U.S. embargo, including those countries subject to an arms embargo.

In addition, section 1758(a)(2)(C) of ECRA (50 U.S.C. 4817(a)(2)(C)) requires the interagency process for identifying Section 1758 technologies to include a notice and comment period.

November 19 Advance Notice of Proposed Rulemaking

On November 19, 2018, BIS published an advance notice of proposed rulemaking, ''Review of Controls for Certain Emerging Technologies'' (83 FR 58201) (November 19 ANPRM). The November 19 ANPRM identified biotechnology in a representative list of fourteen technology categories concerning which BIS sought public comment to determine whether there are specific emerging technologies that are essential to U.S. national security and for which effective controls can be implemented. The biotechnology-related comments submitted to BIS in response to its November 19 ANPRM are not addressed in this ANPRM, because none of the comments specifically addressed the question of export controls on automated peptide synthesizers.

Evaluation of Automated Peptide Synthesizers Pursuant to Section 1758 of ECRA

Instruments for the automated synthesis of peptides (automated peptide synthesizers) have been identified by BIS for evaluation according to the criteria in section 1758 of ECRA pertaining to emerging and foundational technologies.

Peptides and polypeptides are polymeric chains of amino acids, linked together by peptide bonds. Proteins are three-dimensional (3D) macromolecules composed of one or more folded large chains of polypeptides. Proteins must fold into the correct 3D shape to be functionally active. The first peptide bond was synthesized over 100 years ago. However, in the last few decades, advances in chemical synthesis methods have established automated peptide synthesis as a common laboratory technique.[1] Long-established synthesis methods using fluorenylmethyloxycarbonyl (Fmoc) chemistry can reliably and routinely produce high quality polypeptides around 50 amino acids in length.[2]

Recent advances in peptide synthesis technology and instrumentation have increased both the speed of peptide synthesis and the length of peptide products, including peptides and proteins greater than 100 amino acids in length.[3] Most protein toxins that are controlled under Export Control Classification Number (ECCN) 1C351 on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR) are over 100 amino acids in length and have an average length of 300 amino acids (with the notable exception of conotoxins, which range between 10–100 amino acids in length). Consequently, absent the imposition of additional controls on the export, reexport or transfer (in-country) of certain peptide synthesis technology and instrumentation (*e.g.,* automated peptide synthesizers), there would be an increased risk that such technology and instrumentation could be used to produce controlled toxins for biological weapons purposes.

Request for Comments

Consistent with section 1758(a)(2)(C) of ECRA (50 U.S.C. 4817(a)(2)(C)), BIS welcomes comments on the following questions. If specific automated peptide synthesizer instruments are described by respondents, BIS requests that this should be done, to the extent practicable, within the context of the following questions.

(1) What is the current state of development of automated peptide synthesizers in the United States, including those having primarily academic or commercial applications, and how does this compare with that of other countries (*e.g.,* is the United States at the forefront of such development in the academic and commercial fields)? Where possible, please identify any publicly available studies that support your position.

(2) What is the current availability and predominate application(s) of automated peptide synthesizers in the United States and how does this compare with that of other countries (*e.g.,* how common is the use of these instruments in life sciences laboratories/institutions and other academic or commercial settings)?

(3) To what extent are custom peptide synthesis services available in the United States and other countries, and would the availability of such services (particularly for academic or commercial applications) be likely to impact domestic or foreign demand for automated peptide synthesizers?

(4) To what extent are current or near-term developments in peptide synthesis technology expected to address the challenges of peptide length, sequence fidelity, and protein folding (*e.g.,* are efforts currently underway to integrate protein folding into the automation process)?

(5) To what extent would the establishment of Section 1758 technology export controls on automated peptide synthesizer instruments, and related ''software'' and ''technology,'' impact U.S. technological leadership in this field (*e.g.,* within the academic or commercial spheres) and would this impact be distinctly different if controls were placed primarily on ''software'' as opposed to hardware, or *vice versa*?

(6) To what extent would the imposition of Section 1758 technology export controls on automated peptide synthesizer instruments, and related ''software'' and ''technology,'' likely be effective in terms of limiting the proliferation of these items abroad (including the potential use of such items to produce controlled toxins for biological weapons purposes)?

(7) To what extent has the increased availability of lower cost coupling reagents, together with recent advances in automated peptide synthesizers and related technology, overcome economic or technological factors that previously might have limited the availability and use of this technology, abroad?

(8) To what extent should Section 1758 technology export controls on peptide synthesizer technology be implemented multilaterally (rather than unilaterally), in the interest of increasing their effectiveness and minimizing their impact on U.S. industry?

Several respondents who commented on BIS's November 19 ANPRM indicated their preference for multilateral export controls over unilateral export controls, because the former typically place U.S. industry on a more level playing field with respect to producers/suppliers in other countries. In this regard, note that section 1758(c) of ECRA (as codified under 50 U.S.C. 4817(c)) provides that ''the Secretary of State, in consultation

[1] R.B. Merrifield, *Solid Phase Peptide Synthesis. I. The Synthesis of a Tetrapeptide,* 85 J. Am. Chemistry Soc'y 2149 (1963).

[2] Da'san M.M. Jaradat, *Thirteen Decades of Peptide Synthesis: Key Developments in Solid Phase Peptide Synthesis and Amide Bond Formation Utilized in Peptide Ligation,* 50 Amino Acids 39 (2017).

[3] Sameer S. Kulkarni et al., *Rapid and Efficient Protein Synthesis Through Expansion of the Native Chemical Ligation Concept,* Nature Revs. Chemistry, Mar. 29, 2018, at 1.

with the Secretary [of Commerce] and the Secretary of Defense, and the heads of other Federal agencies, as appropriate, shall propose that any technology identified pursuant to subsection (a) [of ECRA] [which addresses the interagency process for identifying Section 1758 technologies] be added to the list of technologies controlled by the relevant multilateral export control regimes.''

Finally, BIS encourages comments addressing any other automated peptide synthesizer technology topics deemed to be relevant to this inquiry.

Comments should be submitted as described in the **ADDRESSES** section of this ANPRM and must be received no later than October 28, 2022.

This ANPRM has been designated a ''significant regulatory action,'' although not economically significant, under Executive Order 12866. Accordingly, this ANPRM has been reviewed by the Office of Management and Budget (OMB).

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–19430 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2011–N–0179]

Prior Notice of Imported Food Questions and Answers (Edition 4); Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Prior Notice of Imported Food Questions and Answers; Draft Guidance for Industry (Edition 4).'' The draft guidance adds three additional questions. One question relates to any effect systems recognition or equivalency determinations have on prior notice requirements. The other two questions relate to FDA's notice to a submitter of prior notice of an FDA refusal for inadequate prior notice or hold if the food article is from a foreign facility that is not registered, and address the timeframe for making requests for FDA review of such a refusal or hold. FDA is also making other technical and editorial changes.

DATES: Submit either electronic or written comments on the draft guidance by November 14, 2022 to ensure that we consider your comment on this draft guidance before we begin work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2011–N–0179 for ''Prior Notice of Imported Food Questions and Answers; Draft Guidance for Industry (Edition 4).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)). Submit written requests for single copies of the draft guidance to the Division of Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Chris Henderson, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr.,

Rockville, MD 20857 240–402–8186, *Christopher.Henderson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry, entitled ''Prior Notice of Imported Food Questions and Answers; Draft Guidance for Industry (Edition 4).'' This draft revised guidance is being issued for public comment and has not yet been finalized. Until edition 4 is finalized, ''Prior Notice of Imported Food Questions and Answers; Guidance for Industry (Edition 3),'' updated most recently in 2016, remains in effect. We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

FDA continues to believe that it is reasonable to maintain responses to questions concerning prior notice of imported food in a single document that is periodically updated in response to additional questions or regulatory or policy changes. As in the previous editions, the following indicators are used to help users identify revisions: (1) the guidance is identified as a revision of a previously issued document; (2) the revision date appears on the cover of the guidance; (3) the edition number of the guidance is included in its title; and (4) revised or added questions and answers are identified as such in the body of the guidance.

On November 7, 2008, we published a final rule in the **Federal Register** requiring submission to FDA of prior notice of food, including food for animals, that is imported or offered for import into the United States (73 FR 66294). The rule implements section 801(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381(m)), which was added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188) and requires that FDA receive prior notice of food imported or offered for import into the United States.

On December 16, 2003, FDA issued a guidance entitled ''Prior Notice of Imported Food Questions and Answers (Edition 1).'' FDA issued a second and third edition on May 3, 2004, and June 16, 2016, respectively. This draft will be the fourth edition of this document. FDA is issuing this draft guidance entitled ''Prior Notice of Imported Food Questions and Answers (Edition 4)'' as a level 1 guidance.

The draft fourth edition guidance adds three additional questions. One question relates to any effect systems recognition or equivalency determinations have on prior notice requirements. The other two questions relate to FDA's notice of a refusal under 801(m)(1) of the FD&C Act (in accordance with § 1.283 (21 CFR 1.283)) for inadequate prior notice or a hold under 801(*l*) (in accordance with § 1.285 (21 CFR 1.285)) if the food article is from a foreign facility that is not registered, as well as address the timeframe for making requests for FDA review of such a refusal or hold. The draft guidance is intended to help clarify whether food imported from a country with which FDA has a Systems Recognition Arrangement or equivalence determination is exempted from prior notice requirements. The draft guidance also intends to clarify when FDA will provide notice of the refusal or hold to the relevant party, and when the 5-calendar-day clock to request a review of the refusal or hold begins. We are also making other technical amendments to the guidance due to the expanded capabilities of the U.S. Customs and Border Protection's Automate Broker Interface of the Automated Commercial Environment (ABI/ACE) system and FDA's 2017 technical amendments to the prior notice rule (82 FR 15627, March 20, 2017), such as replacing references to the Automated Commercial System (ACS) and successor system with the ABI/ACE system, removing references to requirements that certain prior notice submissions be submitted in FDA's Prior Notice Systems Interface (FDA PNSI), and updating outdated links and FDA contact information.

The draft fourth edition guidance clarifies that the existence of a Systems Recognition Arrangement with or an equivalence determination of a foreign country does not exempt imported foods from that country from FDA's prior notice requirements.

FDA's policy on and practice of communicating prior notice refusals and holds has changed over time. FDA previously stated that we intended to provide notice regarding refusals to carriers. Those carriers could then notify others, such as the entity that hired the carrier to transport the article of food, of a problem with the prior notice (see 73 FR 66294 at 66365). Subsequently, FDA's Guidance for Industry ''Prior Notice of Imported Food Questions and Answers (Edition 3)'' was published with the explanation that FDA will communicate the decision to examine articles of food to CBP.

The draft fourth edition clarifies that notification of these prior notice refusals and holds will be communicated to CBP and provided to the relevant party (*i.e.,* the submitter of prior notice) upon arrival of the article. FDA is clarifying its policy because providing advanced notice of a refusal or hold to a submitter could create incentives for bad actors, who may attempt to reroute their entries for the purpose of evading FDA requirements and importing unsafe food.

The draft fourth edition also clarifies the 5-calendar-day clock to request a review of these refusals and holds. Under §§ 1.283(d) and 1.285(j), certain parties may, for the enumerated reasons, request reviews of the prior notice refusals and holds within 5 calendar days of the hold or refusal. The draft fourth edition clarifies that FDA considers the 5-calendar-day clock to begin when FDA provides notice of the refusal or hold to the submitter.

Additionally, in 2016, CBP issued a notice announcing that ABI/ACE would replace ACS as the sole electronic data interchange system authorized by CBP for the processing of electronic entries of FDA-regulated products (see 81 FR 30320, May 16, 2016). ABI/ACE became the successor system to ACS. In 2017, we amended 21 CFR subpart I to replace references to ACS and successor system with ABI/ACE (see 82 FR 15627). As part of this rulemaking, we eliminated some requirements for submitting prior notice due to the expanded capabilities of ABI/ACE, such as the requirement to submit articles that have been refused under section 801(m)(1) of the FD&C Act or subpart I in FDA PNSI. Further, ABI/ACE can now accommodate entries it previously could not, such as articles of food arriving through international mail. Therefore, to reflect these changes that were implemented in the rulemaking and the expanded capabilities of ABI/ACE, we are replacing references in the guidance to ACS and successor system with ABI/ACE. In addition, we are providing clarification regarding how persons may submit prior notice for articles of food imported or offered for import by international mail.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Prior Notice of Imported Food Questions and Answers (Edition 4).'' It does not establish any rights for any person and is not binding on FDA or the

public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 1.278 to 1.282 have been approved under OMB control number 0910–0520.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/food/importing-food-products-united-states/prior-notice-imported-foods, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: September 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19724 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–125693–19]

RIN 1545–BP72

Resolution of Federal Tax Controversies by the Independent Office of Appeals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing on proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the IRS Independent Office of Appeals' resolution of Federal tax controversies without litigation and relating to requests for referral to that office following the issuance of a notice of deficiency to a taxpayer by the IRS. The proposed regulations reflect amendments to the law made by the Taxpayer First Act of 2019. The proposed regulations apply to all persons that request to have a Federal tax controversy considered by that office. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 14, 2022. Outlines of topics to be discussed at the public hearing scheduled for November 29, 2022, must be received by November 14, 2022. If no outlines of topics are received by November 14, 2022, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–125693–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–125693–19), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Keith L. Brau at (202) 317–5437 (not a toll-free number). Concerning submissions of comments or the public hearing, Regina Johnson, preferably at *publichearings@irs.gov* or (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) to implement section 7803(e) of the Internal Revenue Code (Code). The proposed amendments (proposed regulations) relate to the resolution by the IRS Independent Office of Appeals (Appeals) of Federal tax controversies without litigation, including guidance regarding requests for referral to Appeals following the issuance of a notice of deficiency. (References in this preamble to ''Appeals'' include references to the former Office of Appeals where appropriate.)

Since its establishment by the IRS in 1927, Appeals' mission has been to resolve Federal tax controversies without litigation on a basis that is fair and impartial to both the Government and the taxpayer.[1] In doing so, Appeals has independently considered disputed administrative determinations made by the IRS in administering and enforcing the internal revenue laws arising from the IRS's examination or collection activities with respect to a particular taxpayer, and attempted to resolve those disputes without litigation. See House TFA Report, at 29. Appeals generally considers whether to resolve Federal tax controversies without litigation based on the likelihood of either the taxpayer's or the IRS's position prevailing if the Federal tax controversy was resolved before a court. When Appeals resolves a Federal tax controversy, it does so through an administrative settlement of the matter.

The IRS Restructuring and Reform Act of 1998 (RRA), Public Law 105–206 (112 Stat. 685, 689 (1998)) directed the Commissioner to restructure the IRS by establishing and implementing an organizational structure that ensured an independent appeals function within the IRS. Although the Code did not mandate the existence of an independent office within the IRS, provisions of the Code have required the independent administrative review of certain administrative determinations, such as section 6159 regarding terminating an installment agreement, sections 6320 and 6330 regarding notice and an opportunity for a hearing before a levy or upon the filing of a notice of lien, and section 7122 regarding rejections of an offer in compromise (OIC).

For decades the Internal Revenue Manual (IRM) has contained the mission statement of Appeals (Appeals Mission Statement), which is ''to resolve [Federal] tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.'' See IRM

[1] See H.R. Rep. No. 39 Part 1, 116th Cong., 1st Session (House TFA Report), 28–29, fn. 4 (2019). The House TFA Report states that Appeals was established and has operated under the general authority of the Secretary of the Treasury or her delegate (Secretary) provided by section 7805 of the Code to interpret the Code, and the authority of the Commissioner of Internal Revenue (Commissioner) provided by section 7803 to, among other things, ''administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party,'' and by section 7804 to, among other things, ''employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such person.'' Sections 7803(a)(2)(A) and 7804(a).

8.1.1.1(1) (10–01–2016) (regarding accomplishing the Appeals mission).

On July 1, 2019, the President signed into law the Taxpayer First Act of 2019 (TFA), Public Law 116–25 (133 Stat. 981 (2019)). Among other things, the TFA added new section 7803(e) to the Code. New section 7803(e)(1) establishes the IRS Independent Office of Appeals ''to codify the role of the independent administrative appeals function within the IRS.'' See House TFA Report, at 29. New section 7803(e)(2) provides rules regarding the appointment, duties, qualifications, and compensation of the Chief of Appeals who is to supervise and direct Appeals, including that the Chief of Appeals is appointed by and reports directly to the Commissioner. In connection with expressly setting forth the role of Appeals, the TFA codified in new section 7803(e)(3) the Appeals Mission Statement, with the additional duty of resolving Federal tax controversies on a basis that ''promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws.'' See section 7803(e)(3)(B).

To meet Appeals' mission, new section 7803(e)(6)(A) provides that all IRS employees working within Appeals are to report to the Chief of Appeals. In addition, new section 7803(e)(6)(B) provides the Chief of Appeals with the authority to obtain legal assistance and advice from the staff of the IRS Office of the Chief Counsel (Chief Counsel) with regard to cases pending at Appeals, which, to the extent practicable, is to be provided by Chief Counsel staff who were not involved in advising the IRS employees directly working on the case prior to its referral to Appeals or in preparation of the case for litigation. See House TFA Report, at 30.

The remainder of this Background describes new sections 7803(e)(4) and 7803(e)(5), which are the primary focus of the guidance provided in the proposed regulations.

II. General Availability of the Appeals Resolution Process

Section 7803(e)(4) of the Code, also enacted by the TFA, provides that ''the resolution process [to resolve Federal tax controversies] shall be generally available to all taxpayers.'' For example, a taxpayer who does not resolve the taxpayer's deficiency case with the IRS examiner assigned to the case usually will receive a 30-day letter of a proposed determination of tax liability that provides the position of the IRS regarding the taxpayer's Federal tax controversy. Generally, receipt of the 30-day letter triggers an opportunity for the taxpayer to request that Appeals consider the taxpayer's Federal tax controversy.

As an alternative to having a court decide Federal tax controversies without litigation (or without further litigation if the taxpayer has petitioned the United States Tax Court (Tax Court)) and to facilitate Appeals' function, Appeals uses one or more dispute resolution methods to settle Federal tax controversies. The Appeals dispute resolution methods may include, but are not limited to, a conference, correspondence, and certain Appeals-provided alternative dispute resolution services. These alternative dispute resolution services include fast-track settlement, fast-track mediation, post-Appeals mediation, Rapid Appeals Process, or early referral of issues to Appeals.

The most frequent type of Federal tax controversy involves a taxpayer disputing a liability that is subject to deficiency procedures under section 6212. In many of these cases the taxpayer requests an Appeals conference after the IRS has made a determination of the taxpayer's liability and sent a preliminary (30-day) letter to the taxpayer. In another group of cases, the taxpayer has received a notice of deficiency and filed a petition in the Tax Court, after which the docketed case may be forwarded to Appeals for consideration.

III. Limitation on Access to the Appeals Resolution Process

As discussed in more detail in section I.C. of the Explanation of Provisions, the TFA did not require that the IRS grant all requests for Appeals to consider any dispute regarding a Federal tax controversy. The Secretary of the Treasury or her delegate (Secretary) may provide exceptions that allow the IRS to deny requests for Appeals consideration of a Federal tax controversy. In general, it has been the historic practice of the Treasury Department and the IRS to publish limitations on the access to the Appeals resolution process in IRS guidance such as regulations, revenues procedures, and the IRM.

Although the TFA does not prohibit the IRS from denying requests for Appeals consideration for Federal tax controversies, the TFA did add new section 7803(e)(5) to the Code. After the enactment of the TFA, the IRS must follow the special notification procedures set forth in section 7803(e)(5) if a taxpayer who is in receipt of a notice of deficiency requests to have the Federal tax controversy referred to Appeals and that request is denied. In such a case, the IRS is required to provide the taxpayer a written notice containing a detailed description of the facts involved in the controversy, the basis for the decision to deny the request, a detailed explanation of how the basis for the decision applies to such facts, and the procedures for protesting the decision to deny the request.

Explanation of Provisions

Proposed §§ 301.7803–2 and 301.7803–3 would implement section 7803(e) as explained in sections I and II of this Explanation of Provisions, respectively. Proposed § 301.7803–2 implements section 7803(e)(3) and (4) regarding the resolution of Federal tax controversies by Appeals. Proposed § 301.7803–3 implements the special notice procedures of section 7803(e)(5) to be followed by the IRS upon denying taxpayer requests to have Federal tax controversies referred to Appeals for those taxpayers in receipt of a notice of deficiency.

I. Appeals Resolution of Federal Tax Controversies Without Litigation

A. Proposed § 301.7803–2(a): Functions of Independent Office of Appeals

As previously mentioned in the Background, in addition to establishing the IRS Independent Office of Appeals in section 7803(e)(1) to codify the role of the independent administrative appeals function and providing rules in section 7803(e)(2) regarding the supervision of Appeals by the Chief of Appeals, the TFA codified in section 7803(e)(3) the Appeals Mission Statement to resolve Federal tax controversies with respect to taxpayers without litigation.[2] Section 7803(e)(3) provides that ''[i]t shall be the function of [Appeals] to resolve Federal tax controversies without litigation on a basis which (A) is fair and impartial to both the Government and the taxpayer, (B) promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and (C) enhances public confidence in the integrity and efficiency of the [IRS].'' These functions are consistent with the historical functions of Appeals prior to the enactment of the TFA. As further indication that Congress intended Appeals to generally maintain its functions as they existed at the time the TFA was enacted, the legislative history provides that ''Independent Appeals is intended to perform functions similar to those of the current Appeals.'' See House TFA Report, at 30. Accordingly,

[2] The TFA's codification of the Appeals Mission Statement was generally consistent with Appeals Mission described in the Internal Revenue Manual at the time the TFA was enacted. IRM 8.1.1.1(1) (10–1–2016).

proposed § 301.7803–2(a), consistent with the statutory text of section 7803(e)(3), provides that Appeals resolves Federal tax controversies without litigation on a basis that is fair and impartial to the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS.

B. Proposed § 301.7803–2(b): Consideration of Federal Tax Controversies by Appeals Generally Available to All Taxpayers

Section 7803(e)(4) provides that the Appeals resolution process described in section 7803(e)(3) to resolve Federal tax controversies without litigation ''shall be generally available to all taxpayers.'' Proposed § 301.7803–2(b)(1), consistent with the statutory text of section 7803(e)(4), provides that the Appeals resolution process is generally available to all taxpayers to resolve Federal tax controversies.

The statute does not define the term ''Federal tax controversy.'' Consistent with the excerpts of the House TFA Report described in the Background, proposed § 301.7803–2(b)(2) defines a ''Federal tax controversy'' as a dispute over an administrative determination with respect to a particular taxpayer made by the IRS in administering or enforcing the internal revenue laws, related Federal tax statutes, and tax conventions to which the United States is a party (collectively referred to as internal revenue laws) that arises out of the examination, collection, or execution of other activities concerning the amount or legality of the taxpayer's income, employment, excise, or estate and gift tax liability; a penalty; or an addition to tax under the internal revenue laws. Under these proposed regulations, Appeals generally continues to resolve a Federal tax controversy based on the likelihood the taxpayer's or the IRS's position with respect to the administrative determination made by the IRS would prevail if the Federal tax controversy was resolved by a court, as it did before enactment of the TFA. In doing so, Appeals continues to independently consider disputed administrative determinations made by the IRS in administering or enforcing the internal revenue laws with respect to a particular taxpayer arising from the IRS's examination, collection, or execution of other activities with respect to the particular taxpayer and attempts to resolve the disputes without litigation.

Consistent with the practice of Appeals prior to the enactment of the TFA, the Appeals resolution process is also available to persons who seek review of certain administrative determinations made by the IRS with respect to such persons that do not directly involve their tax liabilities, penalties, or additions to tax. Even though such matters are not within the definition of a Federal tax controversy in proposed § 301.7803–2(b)(2), proposed § 301.7803–2(b)(3) provides that disputes over administrative determinations made by the IRS with respect to a particular person regarding the listed topics are treated as a Federal tax controversy. Appeals consideration of such administrative determinations made by the IRS is consistent with the historical functions of Appeals prior to the enactment of the TFA, which Congress intended to codify in section 7803(e)(3). Specifically, the legislative history states: ''Independent Appeals is intended to perform functions similar to those of the current Appeals.'' See House TFA Report, at 30. For example, Appeals considers determinations involving initial or continuing tax exemption or foundation classification of particular organizations, and initial or continuing qualification of particular employee plans, unless the issue underlying that determination is addressed by Chief Counsel through a technical advice issued by the office of an Associate Chief Counsel (Associate Office). See proposed § 301.7803–2(b)(3)(iv) and (v); sec. 12.01 of Rev. Proc. 2022–2 (2022–1 I.R.B. 120) (relating to use of technical advice); § 601.106(a)(1)(v)(a) of the Statement of Procedural Rules (26 CFR part 601) (same). In addition to the topics listed in proposed § 301.7803–2(b)(3)(i) through (vii), proposed § 301.7803–2(b)(3)(viii) includes any other topic that the IRS determines can be considered by Appeals. This proposed rule, therefore, allows Appeals to consider administrative determinations made by the IRS with respect to a particular person that are not Federal tax controversies within the meaning of proposed § 301.7803–2(b)(2) but that Appeals has historically considered and attempted to resolve without litigation. Based on its limited resources, the only disputes that are not Federal tax controversies as defined in proposed § 301.7803–2(b)(2) that Appeals has historically considered and continues to consider are those categories of disputes with respect to a particular person specified in proposed § 301.7803–2(b)(3)(i) through (vii). This proposed rule also allows the addition of new categories of administrative determinations made by the IRS with respect to a particular person that in the future may become evident as appropriate to fulfill the function of Appeals. See proposed § 301.7803–2(b)(3)(viii).

C. Proposed § 301.7803–2(c): Exceptions to Consideration by Appeals

When the TFA was enacted, the Appeals resolution process was subject to exceptions and requirements that could limit use of that process. Congress recognized these limits, and the statute and legislative history demonstrate that the IRS retains discretion to have appropriate limits following the statutory codification of the role of an independent appeals function within the IRS (that is, Appeals). As mentioned previously, section 7803(e)(4) provides that ''[t]he [Appeals] resolution process . . . shall be *generally* available to all taxpayers.'' Section 7803(e)(4) (emphasis added). In choosing to use the words ''generally available'' in section 7803(e)(4), Congress made clear that the statute does not impose an unqualified requirement that the Appeals resolution process become a forum for any dispute with the IRS.

In addition to the statutory language of section 7803(e)(4), the House TFA Report also reflects the intention of Congress that the Treasury Department and the IRS retain after the enactment of the TFA their historical discretion to determine whether the resolution of particular types of disputes is appropriate for the Appeals resolution process, or the discretion of the IRS to determine whether a particular Federal tax controversy is appropriate for the Appeals resolution process:

> Independent Appeals is intended to perform functions similar to those of the current Appeals. Independent Appeals is to resolve tax controversies and review administrative decisions of the IRS in a fair and impartial manner, for the purposes of enhancing public confidence, promoting voluntary compliance, and ensuring consistent application and interpretation of Federal tax laws. Resolution of tax controversies in this manner is generally available to all taxpayers, *subject to reasonable exceptions that the Secretary may provide.* Thus, cases of a type that are referred to Appeals under present law remain eligible for referral to Independent Appeals.

See House TFA Report, at 30–31 (emphasis added).

The House TFA Report also explains that Congress knew the existing backdrop of Appeals exceptions when it passed the TFA: ''The Committee is aware that the Code does not currently require that all taxpayers be provided an opportunity to contest an administrative

decision in Appeals, although most taxpayers are afforded that opportunity.'' See House TFA Report, at 29. The House TFA Report noted some of the existing exceptions:

> Exceptions occur, and include cases in which inadequate time remains on the limitations period for assessment and collection or those in which the only arguments raised by the taxpayer are frivolous positions. Similarly, if a case has reached a point at which litigation is initiated, the availability of consideration by Appeals may be limited. First, authority to settle cases referred to the Department of Justice for defense or initiation of litigation rests solely with that Department. Therefore, such cases are not eligible for referral to Appeals. The terms under which a case pending in the [United States Tax Court] may be referred to Appeals are described in published guidance that centralizes the decision to withhold a case from Appeals to assure consistent standards are applied.

See House TFA Report, at 29 (footnotes omitted). The footnote to the last quoted sentence cites the guidance in Rev. Proc. 2016–22 and § 601.106 of the Statement of Procedural Rules (26 CFR part 601) that sets out some of these exceptions, stating: ''Exceptions to the general rule in favor of requiring Appeals consideration include cases that are withheld in the interests of sound tax administration, among other reasons.'' See House TFA Report, at 29, fn. 8.

Proposed § 301.7803–2(c) sets forth the exceptions to consideration of a Federal tax controversy by Appeals. These exceptions, which are listed in proposed § 301.7803–2(c)(1) through (24), generally predate the enactment of the TFA. The proposed exceptions to consideration by Appeals involve Federal tax controversies, or issues arising in these controversies, that are excepted from consideration by Appeals and matters or issues that are otherwise ineligible for consideration by Appeals because they are not Federal tax controversies as defined in proposed § 301.7803–2(b)(2) nor treated as Federal tax controversies in proposed § 301.7803–2(b)(3). To the extent that a matter or issue not eligible for consideration by Appeals is present in a case that otherwise is eligible for consideration by Appeals, the ineligible matter or issue will not be considered by Appeals in the resolution of the case.

The Treasury Department and the IRS request comments on the scope and rationale for the exceptions described in proposed § 301.7803–2(c)(1) through (24). To the extent any of the proposed exceptions may differ from prior Appeals practice, comments are requested on the effects of such differences and whether the objectives of such exceptions could be accomplished by alternative means while still allowing Appeals to function in accordance with section 7803(e)(3). Comments are also requested on whether any additional exceptions to Appeals consideration are warranted.

1. Frivolous Positions

Proposed § 301.7803–2(c)(1) provides that Appeals consideration is not available for an administrative determination made by the IRS with respect to a particular taxpayer in which the IRS rejects a frivolous position, which includes any case solely involving the failure or refusal of the taxpayer to comply with the tax laws because of frivolous moral, religious, political, constitutional, conscientious, or similar grounds. A frivolous position includes a position the IRS has identified as frivolous for purposes of section 6702(c) of the Code (regarding listing of frivolous positions). A list of positions that the IRS has determined to be frivolous under section 6702(c) can be found in Notice 2010–33 (2010–17 I.R.B. 609 (April 26, 2010)). Proposed § 301.7803–2(c)(1) codifies the pre-TFA practice of the IRS of denying the request of a taxpayer for Appeals resolution of frivolous arguments, including cases based solely on frivolous moral, religious, political, constitutional, conscientious, or similar grounds.

This approach is also consistent with the restriction in section 7803(e)(5)(D), also added by the TFA, that the notice and protest procedures under section 7803(e)(5) do not apply to an Appeals referral request if the issue is frivolous within the meaning of section 6702(c). Appeals consideration of frivolous positions would facilitate the abuse of the tax system by allocating IRS and Appeals resources to a secondary review of positions that have already been designated as frivolous. Similar existing restrictions precluding the consideration of frivolous positions by Appeals can be found in § 601.106(b) of the Statement of Procedural Rules (26 CFR part 601) (regarding appeal procedures not extending to cases involving solely the failure or refusal to comply with tax laws because of frivolous moral, religious, political, constitutional, conscientious, or similar grounds), IRM 5.14.3.3(1) (10–20–2020) (relating to installment agreement requests made to delay collection action), and IRM 8.22.5.5.3 (11–08–2013) (relating to frivolous issues).

2. Penalties Related to Frivolous Positions and False Information

Similarly, proposed § 301.7803–2(c)(2) provides that Appeals consideration generally is not available regarding a penalty assessed by the IRS with respect to a particular taxpayer for asserting a frivolous position, making a frivolous submission, or for providing false information. Examples of such penalties include sections 6702 relating to frivolous tax submissions and 6682 relating to false information with respect to withholding. See IRM 8.11.8.2(1), (3) (10–28–2013) (relating to a section 6702 penalty for frivolous tax submissions); IRM 8.22.8.10.4(1) (08–26–2020) (relating to a frivolous tax submission penalty under section 6702 and a false Form W–2, ''Wage and Tax Statement,'' penalty under section 6682). These penalties are immediately assessable. The IRS notifies the taxpayer of the penalty assessment and makes a demand for payment. See sections 6703(b), 6671(a), and 6682(c) (relating to penalty assessment). A taxpayer seeking judicial review must first pay the entire penalty and then file a claim for refund with the IRS within two years of the date of payment. These penalties are designed to deter frivolous behavior or improper conduct by a taxpayer. If Appeals does not consider the merits of the taxpayer's frivolous position, it follows that Appeals should not consider the IRS's assessment of the penalty with respect to the taxpayer as well.

Similarly, under proposed § 301.7803–2(c)(2) Appeals consideration is not available regarding the IRS's assessment of a penalty with respect to a particular taxpayer who submits false information. Appeals consideration of an administrative determination made by the IRS to impose a penalty that stems from the particular taxpayer's improper conduct of submitting false information would be inconsistent with the purpose of the penalty, which is designed to disincentivize the taxpayer from engaging in this improper conduct and to encourage voluntary compliance.

Although penalties assessed by the IRS under sections 6702 and 6682 with respect to particular taxpayer generally are excepted from Appeals consideration, proposed § 301.7803–2(c)(2) recognizes that Appeals may obtain verification that the assessment of the penalties with respect to a particular taxpayer complied with sections 6203 (relating to method of assessment) and 6751(b) (relating to approval of assessment) of the Code in a collection due process (CDP) hearing. See section 6330(c)(1), section 6330(c)(4)(B), and IRM 8.22.8.10.4(1) and (11) (relating to Appeals review of certain limited issues in a CDP action). Appeals also may consider a non-

frivolous challenge to an administrative decision made by the IRS in assessing a penalty under section 6702 or section 6682 with respect to a particular taxpayer in a CDP hearing. An example of such a non-frivolous argument that Appeals could consider is the argument that a section 6702 penalty was erroneously assessed by the IRS because the return the taxpayer filed does not fall within section 6702. For instance, if a taxpayer properly reported the taxpayer's income tax liability but included a statement objecting to pay the amount of reported liability that would otherwise go to the military and as a result the taxpayer is assessed a section 6702 penalty, Appeals could consider the taxpayer's non-frivolous argument that the IRS erroneously assessed the penalty because the return filed does not fall within section 6702.

3. Whistleblower Awards

Proposed § 301.7803–2(c)(3) provides that Appeals consideration is not available for any administrative determination made by the IRS under section 7623 relating to awards to whistleblowers. The IRS Whistleblower Office provides awards of up to 30 percent of the amount recovered in tax enforcement actions to individuals who provide credible evidence of tax fraud to the IRS. A whistleblower files a claim providing information of alleged tax fraud involving a taxpayer. The IRS Whistleblower Office notifies the whistleblower that it has received the claim, that it will use the information to determine whether to pursue an investigation, and that it will inform the whistleblower as to whether the information meets the criteria for paying an award. If the IRS Whistleblower Office subsequently evaluates the whistleblower's claim and determines that it does not meet the criteria for an award, Appeals consideration is not available to the particular whistleblower for the administrative determination made by the IRS under section 7623. Proposed § 301.7803–2(b)(2) defines a Federal tax controversy as a dispute over an administrative determination with respect to a particular taxpayer made by the IRS in administering or enforcing the internal revenue laws, related Federal tax statutes, and tax conventions to which the United States is a party (collectively referred to as internal revenue laws). An administrative determination made by the IRS is only with respect to a particular taxpayer and arises out of the examination, collection, or execution of other activities concerning the amount or legality of the taxpayer's income, employment, excise, or estate and gift tax liability; a penalty; or an addition to tax under the internal revenue laws. In a whistleblower case, the whistleblower's Federal tax liability is not at issue and Appeals is not reviewing a determination by the IRS in its examination, collection, or execution of other activities with respect to the whistleblower's Federal tax liability. Consequently, a whistleblower claim does not fall within the definition of a Federal tax controversy, and it is excepted from Appeals consideration consistent with Appeals' pre-TFA procedures. See sec. 4 of Rev. Proc. 2016–22 (2016–15 I.R.B. 577) (relating to practices for the administrative appeals process in Tax Court). It also is not treated as a Federal tax controversy under proposed § 301.7803–2(b)(3), which identifies certain matters with respect to a particular person subject to Appeals review that do not arise from the examination, collection, or execution of other activities concerning a taxpayer's Federal tax liability or directly involve the taxpayer's Federal tax liabilities, penalties, or additions to tax.

4. Administrative Determinations Made by Other Agencies

Proposed § 301.7803–2(c)(4) provides that Appeals consideration is not available for an administrative determination issued by an agency other than the IRS. An example is a determination by the Alcohol and Tobacco Tax and Trade Bureau (TTB) concerning an excise tax administered by and within the jurisdiction of TTB. Such taxes include an excise tax imposed by Chapter 32 (relating to firearms and ammunition); by Subtitle E (relating to alcohol, tobacco, and certain other excise taxes); or by Subchapter D of Chapter 78 (relating to U.S. possessions) of the Code, to the extent it relates to Subtitle E. This exclusion relating to the excise taxes administered by the TTB is currently found in § 601.106(a)(3) of the Statement of Procedural Rules (26 CFR part 601). Proposed § 301.7803–2(c)(4) is consistent with the statute and the definition of a Federal tax controversy in § 301.7803–2(b)(2) because the Appeals resolution process is available only for consideration of administrative determinations made by the IRS with respect to a particular taxpayer. Neither section 7803(e) nor the House TFA Report refers to any agency other than the IRS or contemplates Appeals consideration of a decision by any agency other than the IRS. See House TFA Report, at 31. Similarly, § 301.7803–2(b)(2) defines a Federal tax controversy as a dispute over an administrative determination with respect to a particular taxpayer made by the IRS in administering or enforcing the internal revenue laws, related Federal tax statutes, and tax conventions to which the United States is a party (collectively referred to as internal revenue laws). An administrative determination made by the IRS is only with respect to a particular taxpayer and arises out of the examination, collection, or execution of other activities concerning the amount or legality of the taxpayer's income, employment, excise, or estate and gift tax liability; a penalty; or an addition to tax under the internal revenue laws. Appeals therefore will not consider an administrative determination of a tax that is not administered by or within the jurisdiction of the IRS.

5. Taxpayer Assistance Order

Proposed § 301.7803–2(c)(5) provides that Appeals consideration is not available for a decision made by the IRS not to issue a Taxpayer Assistance Order (TAO) under section 7811 of the Code (relating to TAOs) with respect to a particular taxpayer if the taxpayer submits a request for Taxpayer Advocate Service assistance. This clarification in the proposed rule is consistent with the general definition of a Federal tax controversy in proposed § 301.7803–2(b)(2) because the Office of the Taxpayer Advocate (commonly referred to as the Taxpayer Advocate Service) is an independent part of the IRS, and its decision not to issue a TAO is a process separate and distinct from an administrative determination made by the IRS with respect to a particular taxpayer that arises out of the examination, collection, or execution of other activities concerning the amount or legality of the taxpayer's income, employment, excise, or estate and gift tax liability; a penalty; or an addition to tax under the internal revenue laws.

6. Material To Be Deleted From a Written Determination

Proposed § 301.7803–2(c)(6) provides that Appeals consideration is not available for any decision by the IRS concerning material to be deleted from the text of a written determination with respect to a particular taxpayer pursuant to section 6110 of the Code (relating to public inspection of written determinations) unless the written determination is otherwise being reviewed by Appeals. Appeals did not consider these types of matters before the TFA was enacted, and these proposed regulations continue this exception. See sec. 4 of Rev. Proc. 2016–22. Like whistleblower awards, disputes

under section 6110 do not involve the type of controversy that Appeals has traditionally handled, that is, reviewing an administrative determination made by the IRS with respect to a particular taxpayer that arises out of the examination, collection, or execution of other activities concerning the amount or legality of the taxpayer's income, employment, excise, or estate and gift tax liability; a penalty; or an addition to tax under the internal revenue laws. A section 6110 dispute does not involve the resolution of a Federal tax controversy but rather is a dispute limited to whether particular information in a written determination to be issued by the IRS to the taxpayer is information that must be redacted before the written determination is released to the public as required by section 6110.

Proposed § 301.7803–2(c)(6) permits a disagreement concerning material to be deleted under section 6110 from the text of a written determination to be taken up at an Appeals conference that is otherwise scheduled regarding a taxpayer's determination. If Appeals is already considering the substantive content of the determination, minimal resources and time would be required to also review the redactions. See sec. 13.04 of Rev. Proc. 2022–5 (2022–1 I.R.B. 256) (relating to exempt organization and private foundation status). This review would not require the analysis of an entirely new dispute by Appeals, which would require significant resources.

7. Denials of Access Under the Privacy Act

Similarly, proposed § 301.7803–2(c)(7) provides that Appeals consideration is not available for any dispute regarding a determination of the IRS resulting in denial of access under the Privacy Act (5 U.S.C. 552a(d)(1)) (relating to access to records) to a particular person. Like a dispute involving section 6110, a dispute involving the denial of access under the Privacy Act does not involve the type of controversy that Appeals has traditionally handled. Rather than involving a controversy regarding an administrative determination made by the IRS with respect to a particular taxpayer that arises out of the examination, collection, or execution of other activities concerning the amount or legality of the taxpayer's income, employment, excise, or estate and gift tax liability; a penalty; or an addition to tax under the internal revenue laws, such a dispute involves whether the Privacy Act prevents disclosure of records. In addition, 5 U.S.C. 552a(d)(2) and (3) creates administrative review rights for an agency's refusal to amend a record accessed under the Privacy Act, but there is no similar statutory authority to obtain administrative review, including by Appeals, of a denial of access under the Privacy Act. Rather, 5 U.S.C. 552a(g) provides that a civil action may be brought in certain cases.

8. Issues Settled by a Closing Agreement

Proposed § 301.7803–2(c)(8) provides that Appeals consideration is not available for any issue that the IRS and a particular taxpayer have resolved in an agreement described in section 7121 of the Code regarding closing agreements and for any decision by the IRS to enter into or not enter into such agreement. Proposed § 301.7803–2(c)(8) further provides that Appeals may consider the question of whether an item or items are covered by a closing agreement, and how the item or items are covered. Closing agreements are binding on the IRS and the taxpayer in accordance with section 7121. Under section 7121(b), a closing agreement between the IRS and a taxpayer is final unless fraud, malfeasance, or misrepresentation of a material fact can be shown; the case cannot be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States. Therefore, any issue that is resolved by a closing agreement under section 7121 is statutorily precluded from being considered by Appeals.

9. The IRS Erroneously Returns or Rejects an OIC

According to section 7122(f) of the Code, if an OIC is not rejected within 24 months after submission, it shall be deemed to be accepted. An offer under section 7122 will not be deemed to be accepted if it is rejected or returned as nonprocessable or no longer processable within the 24 months. See sec. 1.07 of Notice 2006–68 (2006–31 I.R.B. 105 (July 31, 2006)) (relating to OICs). Proposed § 301.7803–2(c)(9) provides that Appeals consideration is not available when the IRS erroneously returns or rejects a taxpayer's OIC submitted under section 7122 as nonprocessable or no longer processable and the taxpayer requests Appeals consideration on the basis that the OIC should be deemed to be accepted under section 7122(f). This exception includes, for example, the claim that the IRS's mistaken rejection or return was in bad faith. Because the IRS returned or rejected the offer without making a determination regarding the OIC, there is no administrative determination made by the IRS for Appeals to review.

10. Criminal Prosecution Is Pending Against Taxpayer

Proposed § 301.7803–2(c)(10) provides that Appeals consideration is not available for a Federal tax controversy with respect to a taxpayer while a criminal prosecution or a recommendation for criminal prosecution is pending against the taxpayer for a tax-related offense other than with the concurrence of Chief Counsel and the Department of Justice, as applicable. Appeals consideration therefore may be temporarily unavailable, and it may come later if the other requirements in proposed § 301.7803–2 are met. This proposed exception to Appeals consideration avoids any interference or even the appearance of any interference with a criminal prosecution or an investigation that has been recommended for criminal prosecution. A similar existing exception can be found in § 601.106(a)(2)(vi) of the Statement of Procedural Rules (26 CFR part 601) (relating to the exclusion of review while a recommendation for criminal prosecution is pending).

11. Branded Prescription Drug Fee and Health Insurance Providers Fee

Proposed § 301.7803–2(c)(11) provides that consideration by Appeals is not available for issues relating to the allocation among different fee payers of the branded prescription drug fee found in section 9008 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111–152 (124 Stat. 1029 (2010)), and the health insurance providers fee found in section 9010 of PPACA, as amended by section 10905 of PPACA, and as further amended by section 1406 of HCERA. The Further Consolidated Appropriations Act, 2020, Division N, Subtitle E, section 502, Public Law 116–94 (133 Stat. 2534 (2019)), repealed the section 9010 fee for calendar years beginning after December 31, 2020 (fee years after the 2020 fee year). Thus, Appeals will not consider issues involving the branded prescription drug fee and the section 9010 fee because these disputes do not involve tax issues with respect to a particular taxpayer, but issues concerning how a statutory fee is allocated amongst multiple fee payers.

Each allocated fee in sections 9008 and 9010 (when it was in effect) has a built-in corrections process that allows

fee payers an opportunity to address errors and other problems before the final fee is determined. Allowing the regular Appeals process to be available with respect to one fee payer would be inconsistent with the process of calculating the allocated fees, under which adjusting one fee payer's fee affects the fees payable by all other fee payers. Comparatively, the built-in corrections process allows for each fee payer's liability to be determined in a relatively short time. Appeals consideration therefore is not appropriate given the nature of the allocated fee process and the impracticality of, and lack of time for, Appeals consideration. Furthermore, the regulations provide that all fee determinations by the IRS are final. See 26 CFR 51.7(d) (relating to the finality of the branded prescription drug fee calculation process) and 26 CFR 57.6(c) (relating to the finality of the health insurance providers fee calculation process). Proposed § 301.7803–2(c)(11) promotes efficient and fair tax administration and enforcement of the internal revenue laws, leading to the consistent resolution of issues and conserving IRS and taxpayer resources.

12. IRS's Automated Process of Certifying a Seriously Delinquent Tax Debt

Proposed § 301.7803–2(c)(12) provides that consideration by Appeals is not available for the certification or issuance of a notice of certification of a seriously delinquent Federal tax debt of a particular taxpayer to the Department of State (State Department) under section 7345 of the Code (relating to the revocation or denial of a taxpayer's passport in the case of serious tax delinquencies). The IRS relies on automated systems to identify every electronic taxpayer record on an individual's account with an unpaid assessed tax liability that is not statutorily excepted from the definition of seriously delinquent tax debt or otherwise in a category excluded from certification. Once all eligible unpaid liabilities have been identified, the systems aggregate the amount of unpaid liabilities. If the total is more than the statutory threshold, the taxpayer is identified as having a seriously delinquent tax debt, and the relevant transaction code is posted to the electronic taxpayer records. The Commissioner of the IRS's Small Business/Self-Employed Division then certifies that the identified individuals each have a seriously delinquent tax debt, and the IRS sends a list of all certified individuals to the State Department. The taxpayer receives Notice CP508C, ''Notice of certification of your seriously delinquent Federal tax debt to the State Department,'' informing the taxpayer to contact the IRS at the phone number in that notice to request reversal of the certification if the taxpayer believes the certification is erroneous.

The sole remedy of a taxpayer who believes that a certification is erroneous or that the IRS incorrectly failed to reverse a certification because the tax debt is either fully satisfied or ceases to be a seriously delinquent tax debt is to file a civil action in court under section 7345(e). Although a taxpayer can challenge the certification in a Federal district court or the Tax Court, the taxpayer cannot challenge the underlying liabilities because the amounts of the liabilities that constitute a seriously delinquent tax debt are not at issue in the certification process. See *Ruesch* v. *Commissioner,* 154 T.C. 289 (2020). In a docketed case, Appeals consideration is not appropriate given the automated nature of the IRS's process for identifying and certifying individuals with seriously delinquent tax debts and because the certification of a taxpayer will have been verified by the assigned Counsel attorney in answering the docketed case. Consequently, there are no issues for Appeals to consider. An existing exception similar to this proposed rule can be found in Notice 2018–01 (2018–2 I.R.B. 299 (January 16, 2018)) (relating to revocation, limitation, or denial of a passport in the case of certain tax delinquencies).

13. Issues Barred From Consideration in CDP Cases

Proposed § 301.7803–2(c)(13) provides that consideration by Appeals is not available for any issue that is statutorily prohibited from being considered during a CDP hearing in accordance with section 6320 regarding notice and opportunity for a hearing upon the filing of a notice of lien, section 6330 regarding notice and opportunity for a hearing before levy, the corresponding regulations, or any other administrative guidance related to CDP hearings. For example, in a CDP case a taxpayer is precluded from requesting relief under section 66 relating to community property and section 6015 relating to relief from joint and several liability on a joint return if the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. See §§ 301.6320–1(e)(2), 301.6330–1(e)(2); §§ 301.6320–1(e)(3) Q&A–E4, 301.6330–1(e)(3) Q&A–E4. In this example, a taxpayer may request relief, and receive a second final determination, only if one of the exceptions provided in § 1.6015–5(c) (relating to effect of a final administrative determination) or IRM 25.15.17.7 (03–05–2019) (relating to issuing second preliminary and final determinations for the same relief request) apply. In another example, if a taxpayer received a prior CDP notice under section 6320 or 6330 for the same tax liability and taxable period, the taxpayer has had an opportunity to dispute the existence and amount of that liability and may not challenge it in a subsequent CDP hearing, regardless of whether the taxpayer requested a CDP hearing in response to the prior notice. See §§ 301.6320–1(e)(3) Q&A–E7, 301.6330–1(e)(3) Q&A–E7. The Procedure and Administration Regulations (26 CFR part 301) provide that a taxpayer whose CDP hearing request is untimely is not entitled to a CDP hearing under section 6320 or section 6330 but may receive an ''equivalent hearing.'' See §§ 301.6320–1(i)(1), 301.6330–1(i)(1). Proposed § 301.7803–2(c)(13) also applies to equivalent hearing requests.

14. Authority Over the Matter Rests With Another Office

Proposed § 301.7803–2(c)(14) provides that consideration by Appeals is not available for any case, determination, matter, decision, request, or issue with respect to a particular taxpayer that Appeals lacks the authority to settle. There is no reason for Appeals to expend resources considering a Federal tax controversy that it cannot ultimately resolve.

Proposed § 301.7803–2(c)(14)(i) through (v) provides a non-exclusive list of examples illustrating this rule. Appeals does not have authority to resolve an issue with respect to a particular taxpayer in a docketed case after a referral has been made to the Department of Justice. For instance, Appeals lacks the authority to settle a tax claim in a bankruptcy court where the taxpayer has filed a petition in the bankruptcy court and objected to the Government's proof of claim and requested that the court determine tax liability. Section 7122(a) provides that settlement authority resides with the Department of Justice after a referral is made.

Appeals also lacks authority over decisions that are delegated exclusively to other offices within the IRS. For example, Appeals cannot consider a competent authority case under a United States tax treaty that is within the exclusive authority of the United

States Competent Authority. The term Competent Authority is defined in U.S. tax treaties as the Secretary or her delegate. The Secretary has delegated this authority to the Commissioner, who has redelegated it to the Commissioner of the Large Business and International (LB&I) Division of the IRS, the Deputy Commissioner of LB&I, and specified officials within LB&I with respect to particular matters. See IRM 1.2.2.5.11 (06–09–2021) (Delegation Order 4–12 (Rev. 4)). The United States Competent Authority has exclusive authority over a competent authority issue it accepts for consideration or a competent authority resolution that was previously accepted by the taxpayer. Therefore, Appeals generally does not have authority to review these matters. See sec. 6.04(1) of Rev. Proc. 2015–40 (2015–35 I.R.B. 236) (regarding procedures for requesting competent authority assistance under U.S. tax treaties).

In another example, Appeals lacks authority over the discretionary decision of the Commissioner or the Commissioner's delegate whether to rescind a section 6707A penalty for a non-listed reportable transaction. See section 6707A(d) (relating to the Commissioner's authority to rescind the penalty); § 301.6707A–1(e) (relating to rescission authority); and IRM 8.11.7.6.8(2) (10–29–2013) (relating to rescission requests).

Similarly, Appeals lacks authority over an issue when a requesting spouse seeks relief under section 6015 relating to relief from joint and several liability on a joint return and a nonrequesting spouse is a party to a docketed case in the Tax Court and does not agree to granting full or partial relief under section 6015. See Chief Counsel Notice 2013–011 (June 7, 2013) (relating to litigating cases that involve claims for Innocent Spouse relief under section 6015). As explained in Chief Counsel Notice 2013–011, the IRS, which includes Appeals, is legally prohibited from providing section 6015 relief or settling with the requesting spouse if the non-requesting spouse is a joint petitioner or an intervenor in a Tax Court case and is not a party to the settlement. See *Corson* v. *Commissioner,* 114 T.C. 354 (2000). In that case, authority to resolve the issues rests solely with the Tax Court.

Appeals also lacks authority over a criminal restitution-based assessment under section 6201(a)(4) of the Code relating to certain orders of criminal restitution and restriction on challenge of assessment.

15. Certain Technical Advice Memoranda

Proposed § 301.7803–2(c)(15) provides that Appeals consideration is not available for certain adverse actions related to the initial or continuing recognition of tax-exempt status, an entity's classification as a foundation, the initial or continuing determination of employee plan qualification, or a determination involving an obligation and the issuer of an obligation under section 103. The proposed exception regarding the recognition of tax-exempt status, foundation classification, plan qualification determination, or determination involving an obligation and the issuer of an obligation under section 103 applies only if the adverse action is based upon a technical advice memorandum (TAM) issued by an Associate Office before an appeal is requested. Appeals may request that the Associate Office reconsider the TAM. See sec. of 12.01 Rev. Proc. 2022–2 regarding Appeals submitting a proposed disposition of an issue contrary to a TAM as a request for a new TAM.

A TAM is advice furnished by an Associate Office in a memorandum that responds to any request for assistance on any technical or procedural legal question involving the interpretation and proper application of any legal authority that is submitted in accordance with an applicable revenue procedure. See Rev. Proc. 2022–2 (defining the term ''Associate office'' and explaining when and how an Associate Office provides technical advice, conveyed in technical advice memoranda). Chief Counsel has jurisdiction over legal questions. See section 7803(b)(2). If a TAM is furnished concerning an organization's exempt status or foundation classification, or concerning an employee plan's status or qualification, Chief Counsel's decision with respect to those issues is the final position of the IRS and therefore excepted from Appeals consideration. See § 601.106(a)(1)(v)(a); IRM 8.1.1.2.1(1)(c.) (02–10–2012) (relating to exceptions to Appeals authority). Accordingly, an IRS field office must process the taxpayer's case in accordance with the conclusions in the TAM. See sec. 12.01 of Rev. Proc. 2022–2. Similarly, if a TAM provides conclusions involving an obligation and the issuer of the obligation under section 103, the field office must apply the conclusions to the issuer and any holder of the obligation unless a new TAM is issued on behalf of the holder for the same issue addressed in the initial TAM. See sec. 12.01 of Rev. Proc. 2022–2. As in the guidance referenced in this paragraph, proposed § 301.7803–2(c)(15) provides that when these issues and determinations are the subject of a TAM from an Associate Office, they are excepted from Appeals consideration because Chief Counsel has exclusive authority to resolve these issues.

16. Technical Advice From an Associate Office in a Docketed Case

For the same reasons as explained in section C.15. of this Explanation of Provisions, proposed § 301.7803–2(c)(16) provides that Appeals consideration is not available for any case docketed in the Tax Court if the notice of deficiency, notice of liability, or final adverse determination letter is based upon an Associate Office TAM in that case involving an adverse action described in § 301.7803–2(c)(15). Like the exception in proposed § 301.7803–2(c)(15), the exception in proposed § 301.7803–2(c)(16) relates to the initial or continuing recognition of tax-exempt status, an entity's classification as a foundation, the initial or continuing determination of employee plan qualification, or a determination involving an obligation and the issuer of an obligation under section 103. When these issues and determinations are the subject of a TAM from an Associate Office, they are final and excepted from Appeals consideration. See § 601.106(a)(2)(iii) (relating to an exception if a notice of deficiency, notice of liability, or final adverse determination letter is based upon specified ruling or technical advice); sec. 12.01 of Rev. Proc. 2022–2.

17. Letter Rulings Issued by an Associate Office

Proposed § 301.7803–2(c)(17) provides that Appeals consideration is not available for a decision by an Associate Office whether to issue a letter ruling or the content of a letter ruling. A taxpayer requests a letter ruling by submitting a request that meets the requirements of the revenue procedure that describes the letter ruling process, which is updated annually. The most recent update is Rev. Proc. 2022–1.

As explained in section 2.01 of Rev. Proc. 2022–1, a letter ruling is a written determination issued to a taxpayer by an Associate Office in response to the taxpayer's inquiry, filed prior to the filing of returns or reports that are required by the tax laws, about its status for tax purposes or the tax effects of its acts or transactions. A letter ruling interprets the tax laws and applies them to the taxpayer's specific set of facts. An Associate Office issues a letter ruling

when appropriate and in the interest of sound tax administration. A voluntary request for a letter ruling is not an administrative determination that is part of the IRS's compliance function. The taxpayer is not required to file a return consistent with the letter ruling. The letter ruling program is not designed to present a position of the IRS for Appeals to consider. The program is designed instead to provide taxpayers with information regarding whether the IRS will accept a position to be taken on the taxpayer's return. An exception similar to the exception in proposed § 301.7803–2(c)(17) already exists in section 10.02 of Rev. Proc. 2022–1.

However, proposed § 301.7803–2(c)(17) provides that *the subject of the letter ruling* may be considered by Appeals if all other requirements in proposed § 301.7803–2 are met. For example, assume that a taxpayer submits a letter ruling request pursuant to Rev. Proc. 2022–1 and an Associate Office issues a letter ruling adverse to the taxpayer's request. If the taxpayer files a tax return contrary to the adverse letter ruling and a Federal tax controversy arises that involves the subject of the adverse letter ruling, Appeals could consider the subject of the letter ruling in the dispute if all other requirements in proposed § 301.7803–2 are met.

18. Challenges Alleging That a Statute Is Unconstitutional

Proposed § 301.7803–2(c)(18) provides that Appeals consideration is not available for any issue based on a taxpayer's argument that a statute violates the United States Constitution unless there is an unreviewable decision from a Federal court holding that the cited statute is unconstitutional. An argument that a statute violates the United States Constitution includes an argument that a statute is unconstitutional on its face or as applied to a specific person. For purposes of the proposed regulations, an unreviewable decision is a decision that can no longer be appealed to any Federal court because all appeals in a case have been exhausted or the time to appeal has expired and no appeal was filed, such as a final determination under section 7481 of the Code. Once there is an unreviewable decision, no further action can be taken in the case by any court. In fulfilling its function of considering hazards of litigation based upon the possibility that an administrative determination made by the IRS with respect to a particular taxpayer would be reversed in a court proceeding, Appeals may consider such an unreviewable decision. Proposed § 301.7803–2(c)(18) further provides that this exception does not preclude Appeals from considering a Federal tax controversy based on arguments other than the constitutionality of the statute, such as whether the statute applies to the taxpayer's facts and circumstances, and settling the Federal tax controversy weighing the likelihood a court would agree with the position of the taxpayer or the Government.

Appeals is not an appropriate forum to consider constitutional challenges to Federal tax statutes. Whether the actions taken to enact a Federal tax statute comport with the Constitution is initially determined by Congress and the President. Questions regarding the constitutionality of a duly enacted statute are determinations of general applicability resolved at the highest levels of the Treasury Department and the IRS, in consultation with the Office of Legal Counsel of the Department of Justice. Such a determination is not appropriate for Appeals to consider.

In addition, one of the statutory duties of Appeals is to resolve cases on a basis that ''promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws.'' See section 7803(e)(3)(B). A Federal court's unreviewable decision is a determination by the judicial branch on the merits of the constitutional challenge that may reject the determinations made by Congress, the President, the Treasury Department, or the IRS with regard to the constitutionality of a Federal tax statute, thereby providing a basis for Appeals to consider constitutional challenges to the Federal tax statute that is the subject of the taxpayer's dispute. Unlike a Federal court's unreviewable decision, which is publicly available to all taxpayers, an Appeals resolution relates only to a single Federal tax controversy and, by law, the outcome generally can only be communicated by the IRS to the taxpayer. Any constitutional determination with respect to a Federal tax law should be communicated and applied consistently to all taxpayers. Accordingly, the Treasury Department and the IRS believe that it would be inappropriate for Appeals to consider challenges to the constitutionality of a statute in the absence of an unreviewable decision from a Federal court holding the statute to be unconstitutional.

The Treasury Department and the IRS request comments on this proposed exception.

19. Challenges Alleging That a Treasury Regulation Is Invalid

Proposed § 301.7803–2(c)(19) provides that Appeals consideration is not available for any issue based on a taxpayer's argument that a Treasury regulation is invalid unless there is an unreviewable decision from a Federal court invalidating the regulation as a whole or the provision in the regulation that the taxpayer is challenging. As explained previously, an unreviewable decision is a decision that can no longer be appealed to any Federal court. As with the exception for constitutional challenges, this exception does not preclude Appeals from considering a Federal tax controversy based on other arguments. For example, Appeals may consider whether the Treasury regulation applies to a taxpayer's facts and circumstances and resolve the Federal tax controversy by weighing the likelihood a court would agree with the position of the taxpayer or the Government.

Questions regarding the validity of a Treasury regulation are determinations of general applicability resolved at the highest levels of the Treasury Department and the IRS. Sections 7801 through 7805 of the Code vest with the Secretary, the Commissioner, and other Treasury Department officials the authority to administer the internal revenue laws, including the power to promulgate regulations. Pursuant to these provisions of the Code and 31 U.S.C. 321(b), the delegated authority to prescribe Treasury regulations is held by the Assistant Secretary of the Treasury for Tax Policy (Assistant Secretary for Tax Policy) and the General Counsel for the Department of the Treasury (Treasury Department General Counsel). See Treasury Directive 18–02 (9–4–1986) and Treasury Order 107–03 (01–30–1978). The process of reviewing and approving Treasury regulations before they are published is extensive and involves senior officials in numerous offices within the Treasury Department, the IRS, and sometimes other Federal agencies. See IRM Part 32.1 (Chief Counsel Regulation Handbook) for a description of the process for drafting regulations. Before a regulation is published in the **Federal Register** it must be approved by the Associate Chief Counsel responsible for drafting the regulation; a Deputy Chief Counsel; the Deputy Commissioner for Services and Enforcement; multiple individuals in the Treasury Department's Office of Tax Policy, including the Assistant Secretary for Tax Policy; the Treasury Department's Office of General Counsel;

the Office of the Executive Secretary; and, in some cases, the Secretary of the Treasury.

In light of the extensive review and approval procedures at senior levels in both the Treasury Department and the IRS, we believe that it would be inappropriate for Appeals to consider arguments regarding the validity of Treasury regulations in the absence of an unreviewable Federal judicial decision holding the regulation invalid. In the absence of an unreviewable Federal judicial decision holding a Treasury regulation invalid, Appeals consideration of such arguments would also be inconsistent with the delegation of the Secretary's authority to prescribe regulations to the Assistant Secretary for Tax Policy and to the Treasury Department General Counsel. Furthermore, unlike the authority to apply the tax laws to a specific set of facts, which, for example, is redelegated to the examination function within the IRS to facilitate examination of a particular taxpayer, the authority and function to promulgate regulations rests with the Assistant Secretary for Tax Policy and the Treasury Department General Counsel. Such a determination would not be appropriate for Appeals to consider until there is an unreviewable decision from a Federal court invalidating the regulation as a whole or the provision in the regulation that the taxpayer is challenging.

Treasury regulations are generally submitted for notice and comment under the Administrative Procedure Act and have the force and effect of law once a Treasury decision containing such regulations is published in the **Federal Register**. Consequently, Treasury regulations are binding on the Treasury Department, the IRS and the public, including all Treasury Department and IRS employees. This means that Treasury Department and IRS employees must follow the regulations until they are revised, removed through the notice and comment process, or invalidated by subsequent legislation or an unreviewable decision of a Federal court. As an office within the Treasury Department and the IRS, these requirements apply to Appeals and its employees.

In addition, as with constitutional challenges to a statute, a determination with respect to the validity of a regulation should be communicated and applied consistently to all taxpayers. Unlike a non-public Appeals settlement, an unreviewable decision by a Federal court is available to all taxpayers and the IRS regarding the validity of a Treasury regulation. A settlement before Appeals is specific to a taxpayer and cannot be disclosed by the IRS unless an exception to section 6103 of the Code applies. Furthermore, unlike most Appeals analysis, which weigh litigation hazards in applying the law to specific facts, considering the validity of a regulation does not involve taxpayer specific facts. A Federal court's unreviewable decision is a determination by the judicial branch on the merits of the validity challenge that may reject the determinations made by other levels of the Treasury Department or the IRS with regard to the validity of a Treasury regulation, thereby providing a basis for Appeals to consider a regulation's validity. Accordingly, the Treasury Department and the IRS believe that it would be inappropriate for Appeals to consider challenges to the validity of a Treasury regulation unless a Federal court has rendered an unreviewable decision holding that the regulation is invalid.

The Treasury Department and the IRS request comments on this proposed exception.

20. Challenges Alleging That a Notice or Revenue Procedure Is Invalid

Proposed § 301.7803–2(c)(20) provides that Appeals consideration is not available for any issue based on a taxpayer's argument that an IRS notice or revenue procedure published in the Internal Revenue Bulletin is procedurally invalid unless there is an unreviewable decision from a Federal court invalidating the notice or revenue procedure. An unreviewable decision is a decision that can no longer be appealed to any Federal court, as explained previously. However, this proposed rule would not prevent Appeals from considering the likelihood that a court would agree or disagree with the interpretation of the tax law asserted by the taxpayer, even though it may differ from the interpretation described in a notice or revenue procedure. Additionally, the proposed rule would not prevent Appeals from considering a Federal tax controversy based on arguments other than the validity of a notice or revenue procedure. For example, Appeals may consider whether the notice or the revenue procedure applies to the taxpayer's facts and circumstances and resolve the Federal tax controversy weighing the likelihood a court would agree with the position(s) of the taxpayer or the Government.

Similar to Treasury regulations, the process for drafting and publishing notices and revenue procedures is extensive. See IRM Part 32.2 (Chief Counsel Publication Handbook) for a description of the process for drafting published guidance, including notices and revenue procedures. Notices and revenue procedures are approved within the Treasury Department's Office of Tax Policy, involve numerous policy and implementation determinations, and involve the coordination and agreement of many offices within the Treasury Department, the IRS, and sometimes other Federal agencies. The approval process includes consideration of administrative law requirements applicable to such guidance. Furthermore, unlike the application of the tax law to a specific set of facts and circumstances during, for example, an examination, procedural determinations regarding notices and revenue procedures must be approved at high levels within the Treasury Department and are not specific to the facts of a particular case. Ultimately, whether an IRS notice or revenue procedure is invalid is a determination of general applicability resolved at the highest levels of the Treasury Department and the IRS. Such a determination thus would not be appropriate for Appeals to consider. Furthermore, any determination regarding whether a notice or revenue procedure failed to comply with administrative law requirements, such as notice and comment under 5 U.S.C. 553, should be communicated and applied consistently. As with constitutional and regulation validity challenges, an unreviewable decision of a Federal court is the appropriate means of making information accessible to all taxpayers and the IRS regarding whether a notice or revenue procedure was prescribed in accordance with applicable Federal law. A settlement before Appeals is specific to a taxpayer and cannot be made available to other taxpayers. A Federal court's unreviewable decision is a determination by the judicial branch on the merits of the validity challenge that may reject the determinations made by other levels of the Treasury Department or the IRS with regard to the validity of an IRS notice or revenue procedure, thereby providing a basis for Appeals to consider the validity of an IRS notice or revenue procedure. Accordingly, the Treasury Department and the IRS believe that it would be inappropriate for Appeals to consider challenges alleging that a notice or revenue procedure is procedurally invalid unless a Federal court has rendered an unreviewable decision holding the notice or revenue procedure to be invalid.

The Treasury Department and the IRS request comments on this proposed exception.

21. Case or Issue Designated for Litigation or Withheld From Appeals

Proposed § 301.7803–2(c)(21) provides that Appeals consideration is not available for any case or issue designated for litigation, or withheld from Appeals consideration in a Tax Court case, in accordance with guidance regarding designating or withholding a case or issue. Designation for litigation means that the Federal tax controversy, comprising an issue or issues in a case, will not be resolved without a full concession by the taxpayer or by decision of the court. The ability to designate a case for litigation or withhold a Tax Court case from Appeals existed long before section 7803(e) was added to the Code. See, *e.g.,* sec. 3.03 of Rev. Proc. 2016–22 and IRM 33.3.6 (12–10–2010) (relating to designating a case for litigation). See also NHQ–04–0521–0003 (5–24–2021) (interim guidance on designation of cases for litigation). Chief Counsel will not refer to Appeals any case or issue that has been designated for litigation.

Also, Chief Counsel will withhold from Appeals a Tax Court case or one or more issues in a Tax Court case if Chief Counsel determines referral is not in the interest of sound tax administration. For example, Chief Counsel may decide not to refer a Tax Court case to Appeals when the Tax Court case involves a significant issue common to other cases in litigation for which it is important that the IRS maintains a consistent position or when the Tax Court case is related to a case over which the Department of Justice has jurisdiction after referral to the Department of Justice for prosecution or defense.

While the role of Appeals has been to review the IRS's and the taxpayer's positions and consider issues based on the likelihood that the IRS's or the taxpayer's position would prevail if it were resolved by a court, the processes described earlier allow Chief Counsel to strategically manage its cases, fulfilling Chief Counsel's role of ensuring a consistent application and interpretation of the internal revenue laws and aiding in the development of the tax law. See section 7803(b)(2)(E). These processes are intended to serve the tax administration interests of the IRS and taxpayers by improving taxpayers' understanding of and voluntary compliance with the internal revenue laws, leading to more effective and fair IRS enforcement. Unlike an Appeals resolution, a judicial decision in designated or withheld cases will provide notice to all taxpayers of any development in the law, leading to the early resolution of issues and conserving IRS and taxpayer resources.

22. Appeals Issued the Determination That Is the Basis of the Tax Court's Jurisdiction

Proposed § 301.7803–2(c)(22) provides that except as provided in proposed § 301.7803–2(f)(1) (regarding when the Tax Court remands a CDP case for reconsideration), Appeals consideration is not available for any case docketed in the Tax Court if the notice of deficiency, notice of liability, or other determination was issued by Appeals officials. Examples of the cases subject to proposed § 301.7803–2(c)(22) include a case under sections 6320 or 6330, section 6404 (relating to abatement of interest), section 7428 (relating to declaratory judgment on the classification of specified organizations), section 7476 (relating to declaratory judgment on qualification of certain retirement plans), section 7477 (relating to declaratory judgment on the value of certain gifts), or section 7479 (relating to declaratory judgment on the eligibility of an estate with respect to installment payments under section 6166 (regarding the extension of time for payment of estate tax where the estate consists largely of an interest in a closely held business)). This proposed rule is reflected in Rev. Proc. 2016–22. See secs. 3.01 and 4 of Rev. Proc. 2016–22. Under the proposed rule, Chief Counsel will not refer a docketed case to Appeals if Appeals previously reviewed the case and issued the correspondence stating its determination. A taxpayer whose case has been reviewed by Appeals cannot request a duplicative or second opportunity to have the same case reviewed by Appeals. It would be a redundant exercise and a significant mismanagement of time and resources for the IRS and Appeals to allow a taxpayer to request consideration by Appeals if Appeals already has considered the same matter.

23. Appeals Consideration Is a Prerequisite to the Jurisdiction of Tax Court

Proposed § 301.7803–2(c)(23) provides that subsequent Appeals consideration is not available when timely Appeals consideration itself is a prerequisite to Tax Court jurisdiction over an issue. To meet the statutory jurisdictional requirements in cases in which exhaustion of administrative review is a prerequisite to the Tax Court's jurisdiction, and such administrative review includes consideration by Appeals, Appeals consideration must be requested before a petition is filed in the Tax Court. Such a case is excluded from Appeals at the docketed stage because the taxpayer failed to take advantage of the earlier administrative opportunity to request Appeals review. Failure to request prior Appeals consideration will constitute a failure to exhaust available administrative remedies and the failure cannot be cured while the case is docketed.

Proposed § 301.7803–2(c)(23) lists some examples of such cases. Appeals consideration must be requested before a petition is filed in the Tax Court regarding a declaratory judgment request under section 7428 relating to declaratory judgments on the classification of specified organizations. See section 7428(b)(2) (regarding exhaustion of administrative remedies prior to seeking declaratory judgment pursuant to section 7428); sec. 10.05 of Rev. Proc. 2022–5 (regarding the same). Other examples are cases to which section 7476(b)(3) applies regarding exhausting administrative remedies prior to seeking declaratory judgment pursuant to section 7476 relating to declaratory judgment on qualification of certain retirement plans. See § 601.201(o)(6)(i) of the Statement of Procedural Rules (26 CFR part 601) (regarding the same); section 7477(b)(2) (regarding exhausting administrative remedies prior to seeking declaratory judgment pursuant to section 7477 relating to declaratory judgment on the value of certain gifts); see § 301.7477–1(d)(4)(ii) (regarding the same).

24. An Administrative Determination To Deny or Revoke a CPEO Certification

Proposed § 301.7803–2(c)(24) provides that Appeals consideration of an administrative determination made by the IRS to deny or revoke a Certified Professional Employer Organization (CPEO) certification is not available because the IRS has established another independent review process to review the determination. It is excepted from Appeals consideration because review by Appeals would be duplicative when a non-Appeals office has an established process to independently review the matter. The CPEO certification procedures established the IRS Office of Professional Responsibility (OPR) as the independent reviewer of the IRS's decision to deny or revoke a CPEO certification. The CPEO program under sections 3511 (relating to the rules for CPEOs) and 7705 (relating to the definition of CPEOs) of the Code involves the certification of a

Professional Employer Organization as having met certain tax status, background, experience, business location, financial reporting, bonding, and other requirements described in statutes and regulations. An applicant for certification that received a notice of proposed denial of certification can request review by OPR. Current procedures are in Rev. Proc. 2016–33 (2016–25 I.R.B. 1034). A CPEO that received a notice of suspension and proposed revocation of certification can also request review by OPR. Current procedures are in Rev. Proc. 2017–14 (2017–3 I.R.B. 426).

D. Request for Comments on Other Exclusions

The list of exclusions in proposed § 301.7803–2(c) does not include certain exclusions from Appeals review currently provided in the IRM. The Treasury Department and the IRS are evaluating whether these items, which relate to requests for relief under §§ 301.9100–1 through 301.9100–22 of the Procedure and Administration Regulations (9100 relief) and requests for a change in accounting method, should be included on the list.

1. 9100 Relief

The IRM currently provides that Appeals consideration is not available for a decision issued by an Associate Office regarding 9100 relief relating to a request for an extension of time for making an election or other application for relief where the decision is reviewable by a court under an abuse of discretion standard. See IRM 8.6.3.11(4) (10–06–2016) (relating to procedures if Appeals conclusion is contrary an IRS position) and IRM 8.6.3.11(4) (10–06–2016) (relating to extension of time for making certain elections). Under this rule, Appeals will not settle any case or matter contrary to the Associate Office's decision to deny the extension request, nor will Appeals consider any hazards of litigation based upon the possibility that Chief Counsel's denial of the 9100 relief would be reversed in a court proceeding. The 9100 relief regulations provide that the decision to grant taxpayers an extension to make a regulatory election is left to the Commissioner's discretion. See § 301.9100–1(c) (regarding Commissioner's discretion to grant an extension to make a regulatory election). The Commissioner has delegated this authority to Chief Counsel.

2. Changes of Accounting Method

Section 1.446–1(a)(2) of the Income Tax Regulations provides that no method of accounting is acceptable unless, in the opinion of the Commissioner, it clearly reflects income. See section 446(b). Rev. Proc. 2015–13 (2015–5 I.R.B. 419) provides the automatic and non-automatic procedures to obtain the consent of the Commissioner to change a method of accounting. Section 11.02 of Rev. Proc. 2015–13 states that the Associate Office will deny a request to make a change in method of accounting if the requested change would not clearly reflect income or would otherwise not be in the interest of sound tax administration.

The IRM currently provides that Appeals consideration is not available for a decision issued by an Associate Office regarding a change of accounting method where the decision is reviewable by a court under an abuse of discretion standard. See IRM 8.6.3.3(2) (10–06–2016) (relating to procedures if Appeals conclusion is contrary to Service position) and IRM 8.6.3.10(3) (10–06–2016) (relating to change in accounting practice or method). Thus, Appeals will not settle any case or matter contrary to the Associate Office's decision to deny the method change, nor will Appeals consider any hazards of litigation based upon the possibility that a court would reverse Chief Counsel's denial of the request for a change in accounting method.

When a taxpayer receives a letter ruling approving a change in method of accounting, the IRS and the taxpayer typically enter into a consent agreement regarding the change. The terms of the consent agreement are binding on the IRS and the taxpayer and are not subject to Appeals consideration. See IRM 8.1.1.2.1(1)(d.) (02–10–2012) (relating to some exceptions to Appeals authority).

3. Comments Requested

The Treasury Department and the IRS request comments on whether items relating to requests for changes in methods of accounting and requests for 9100 relief should continue to be excluded from Appeals review. In addition to general comments, comments are specifically requested on the following:

A. whether the binary nature of decisions regarding 9100 relief and changes in method of accounting make these decisions unsuitable for Appeals review,

B. whether a different review standard should apply if Appeals considers 9100 relief or changes of accounting method, and

C. what impact would Appeals review of 9100 relief and changes in accounting method have on later years that are not before Appeals?

E. Originating Office Has Completed Its Review

Proposed § 301.7803–2(d)(1) provides a prerequisite requirement that a taxpayer must meet before Appeals may consider the taxpayer's Federal tax controversy. Appeals consideration of a matter or issue is appropriate only after the originating IRS office has completed its action on the Federal tax controversy and issued a final administrative determination or a proposed administrative determination that is accompanied by an offer for Appeals consideration. This requirement is necessary because a case or issue is not ready for Appeals consideration until the originating IRS office has completed its factfinding and developed a position. If the originating office has not set out its position, there is no administrative determination made by the IRS with respect to the particular taxpayer for Appeals to consider. If the originating office has not set out its position regarding the Federal tax controversy, the request for Appeals consideration is premature and the taxpayer may request Appeals consideration after the originating office has set out its position if the other requirements in proposed § 301.7803–2 are met.

Circumstances in which Appeals consideration is premature arise in many contexts. For example, Appeals consideration is premature if a taxpayer petitions the Tax Court in a deficiency case under section 6213(a) and raises for the first time a claim for relief under section 6015. Because the issue was first raised in litigation, the IRS does yet not have a position regarding the taxpayer's eligibility for relief under section 6015. In another example, a taxpayer files a claim with the IRS for abatement of interest under section 6404 and after 180 days pass without a determination, the taxpayer files a petition with the Tax Court. Appeals consideration would be premature before the IRS has considered the merits. Another example is a relevant new issue raised during Appeals consideration for which the originating office has not set out its position. Similarly, Appeals consideration is premature if during an examination a decision is made to return an OIC that was submitted by the taxpayer. In yet another example, as part of an examination the IRS requests documents that the taxpayer does not provide, and the IRS refers the matter to the Department of Justice to bring a summons enforcement action. An administrative determination regarding the taxpayer's liability has not been made by the IRS. The decision to bring a summons enforcement action is part of

the process that leads to an administrative determination that will be made by the IRS, and Appeals consideration would be premature because the position of the originating office has not been set out.

Proposed § 301.7803–2(d)(2) provides that the requirement that the originating office must have completed its review will be treated as satisfied when the person requests to participate in an Appeals early consideration program and such request is granted. Where administrative guidance permits the originating office to engage Appeals prior to completing its action on the case, Appeals may consider the controversy under the terms of that administrative guidance. For example, Appeals may consider the Federal tax controversy in mediation under a fast track settlement program or early consideration of some issues under an early referral program. These programs existed prior to the TFA. See, *e.g.,* Rev. Proc. 2003–40 (2003–25 I.R.B. 1044) (relating to mediation under the LB&I Division Fast Track Settlement Program), as modified by Rev. Proc. 2015–40 (regarding procedures for requesting competent authority assistance under U.S. tax treaties); Rev. Proc. 99–28 (1999–29 I.R.B. 109) (relating to early consideration of some, but not all, issues in case under Early Referral Program). These programs promote a more efficient disposition of a taxpayer's case by leading to the early resolution of issues or developing or narrowing the issues in dispute.

F. Procedural and Timing Requirements Are Followed

Proposed § 301.7803–2(e) provides the procedural and timing requirements that a taxpayer must meet before Appeals may consider the taxpayer's Federal tax controversy. Specifically, proposed § 301.7803–2(e) provides that a request for Appeals consideration must be submitted in the time and manner prescribed in applicable forms, instructions, or other administrative guidance and that all procedural requirements must be complied with for Appeals to consider a Federal tax controversy. These proposed requirements existed prior to the enactment of the TFA. An example of specific procedural requirements are the special claim procedures for penalties under sections 6694(b), 6700, and 6701. For instance, a CP 15 Notice and Demand letter is sent to a promoter upon assessment of the penalties advising the promoter of the special claim procedures pursuant to section 6703(c). Section 6703(c)(1) allows the promoter to pay at least 15 percent of the amount of the penalty within 30 days and file a claim for refund of the amount paid. If the claim for refund is disallowed and a written request for Appeals consideration is received timely, Appeals may consider the claim for refund in the same manner as any other claim for refund. The special claim procedures, including the requirement to pay at least 15 percent, are part of the required claims process. Appeals review is unavailable to a claimant unless the claimant follows the special claim procedures.

Another example of procedural requirements is the refund procedures under section 6402. Appeals review is unavailable to a claimant that submits a claim for refund under section 6402 unless the claimant follows the required claims procedures in section 7422(a) regarding the requirement to file an administrative claim according to IRS procedures before filing suit and §§ 301.6402–2 and 301.6402–3 regarding general procedures for making a claim for a refund of income tax. To promote compliance and an orderly process, the proposed rule would ensure that the taxpayer complies with statutory and regulatory requirements and Appeals has sufficient information to consider the taxpayer's claim.

In addition, proposed § 301.7803–2(e) provides that there must be sufficient time remaining on the appropriate limitations period for Appeals to consider the matter, as provided in administrative guidance. Consideration of a case by Appeals can take a significant amount of time. Appeals needs to correspond with the taxpayer and in some cases the IRS office that made the administrative determination or proposed administrative determination, understand and evaluate both parties' legal arguments, in some cases negotiate with the taxpayer, and make a determination. This all must be completed with sufficient time for an assessment to be made if a settlement cannot be reached. If there is insufficient time remaining on the assessment limitations period, Appeals will not have time to conduct an independent review before the period expires. This requirement was in place well before the TFA was enacted and is necessary for tax administration. See, *e.g.,* IRM 8.20.5.3.1.3(1) (03–01–2016) (relating to cases not accepted by Appeals); IRM 8.21.2.3(2)b (10–15–2014) (same). Similarly, proposed § 301.7803–2(e) also provides that in a case docketed in Tax Court, if Chief Counsel has recalled the case from Appeals or, if not recalled, Appeals has returned the case to Chief Counsel so that it is received by Chief Counsel prior to the date of the calendar call for the trial session, further consideration by Appeals will not be available if there is insufficient time for such consideration. See sec. 3.07 of Rev. Proc. 2016–22.

G. One Opportunity for Consideration by Appeals

Proposed § 301.7803–2(f)(1) provides that if a Federal tax controversy is eligible for consideration by Appeals and the procedural and timing requirements are followed, a taxpayer generally has one opportunity for Appeals to consider such matter or issue in the same case for the same period or in any type of future case for the same period. According to proposed § 301.7803–2(f)(1), Appeals has considered a Federal tax controversy if the Federal tax controversy was before Appeals for consideration and Appeals issued a determination or made a settlement offer, decided the Federal tax controversy was not susceptible to settlement, or the person who requested consideration failed to respond to Appeals' communications and as a result of that failure Appeals issued or made a determination. Appeals also has considered a Federal tax controversy if the taxpayer notifies Chief Counsel or the IRS that the taxpayer wants to discontinue settlement consideration by Appeals or requests to transfer settlement consideration of a Federal tax controversy that is currently before the Tax Court from Appeals to Chief Counsel. Additionally, a taxpayer with a Federal tax controversy who previously failed to respond to Appeals' communications with respect to that Federal tax controversy is treated as having had a prior opportunity for Appeals consideration. This proposed rule is intended to deter and not reward nonresponsive taxpayers and to avoid wasting Appeals resources.

Appeals therefore generally will consider a Federal tax controversy only once. A taxpayer whose Federal tax controversy has been reviewed by Appeals cannot request a duplicative or second opportunity to have it reviewed by Appeals. Neither section 7803(e) nor its legislative history indicates that Congress intended for a taxpayer whose case already has been considered by Appeals to have multiple opportunities for Appeals consideration. It would be duplicative to allow a taxpayer to request consideration by Appeals if Appeals already has considered the same matter. This one-bite-at-the-apple rule is a practical, longstanding rule that existed prior to the TFA. See secs. 3.01 and 4 of Rev. Proc. 2016–22.

There are several exceptions to this proposed rule. Proposed § 301.7803–

2(f)(1) provides an exception to the proposed general rule where the Tax Court remands a CDP case for reconsideration. This exception to the general rule accounts for the Tax Court's ability to remand CDP cases for further Appeals consideration. Proposed § 301.7803–2(f)(2) provides an exception for a taxpayer that participated in an Appeals early consideration program but did not reach an agreement with Appeals. See, *e.g.,* Rev. Proc. 99–28 (1999–29 I.R.B. 109) (relating to early consideration of some, but not all, issues in case under Early Referral program); Rev. Proc. 2003–40 (2003–25 I.R.B. 1044) (relating to the Large Business and International Division Fast Track Settlement (FTS) program), as modified by Rev. Proc. 2015–40 (2015–35 I.R.B. 236) (regarding procedures for requesting competent authority assistance under U.S. tax treaties); Rev. Proc. 2017–25 (2017–14 I.R.B. 1) (relating to the Small Business/Self-Employed Division FTS program); Rev. Proc. 2016–57 (2016–49 I.R.B. 707) (relating to the FTS program for certain collection cases and issues); and Announcement 2012–34 (2012–36 I.R.B. 334) (relating to the Tax-Exempt and Government Entities Division FTS program). It also provides an exception for a taxpayer that may be able to request post-Appeals mediation under the terms of administrative guidance after a traditional appeal if no agreement was reached between the taxpayer and Appeals. See, *e.g.,* Rev. Proc. 2014–63 (2014–53 I.R.B. 1014) (relating to Appeals mediation).

The exception to the general rule in proposed § 301.7803–2(f)(2) that carves out early consideration programs is a critical part of these programs. As previously mentioned, these fast track and early consideration programs promote a more efficient disposition of a taxpayer's case by leading to the early resolution of issues or developing or narrowing the issues in dispute. If a taxpayer who unsuccessfully participated in one of these programs was unable later to have Appeals consider the taxpayer's case, it is unlikely the taxpayer would take advantage of these programs. Similarly, post-Appeals mediation promotes a more efficient disposition of a taxpayer's case.

Proposed § 301.7803–2(f)(2) also provides an exception to the general rule in proposed § 301.7803–2(f)(1) for taxpayers who provide new information to the IRS and who meet the conditions and requirements for audit reconsideration or for reconsideration of liability issues previously considered by Appeals. Appeals may consider the new information. See IRM 8.7.7.17 (12–17–2019) (relating to audit reconsideration cases); IRM 8.7.7.16 (12–17–2019) (relating to reconsideration of claims for liabilities previously considered by Appeals).

H. Special Rules

The following are proposed special rules.

1. Appeals Reconsideration

Proposed § 301.7803–2(g)(1) provides a special rule that notwithstanding the exception in proposed § 301.7803–2(c)(22), if Appeals issued a notice of deficiency, notice of liability, or other determination, without having fully considered one or more issues because of an impending expiration of the statute of limitations on assessment, Appeals may choose to have Chief Counsel return the case to Appeals for full consideration of the issue or issues once the case is docketed in the Tax Court. This is a longstanding rule that existed prior to the enactment of the TFA and can be found in section 3.02 of Rev. Proc. 2016–22. The proposed rule promotes the efficient disposition of cases by leading to the early resolution of issues and developing or narrowing the issues in dispute.

2. Coordination Between Chief Counsel and Appeals

Proposed § 301.7803–2(g)(2) provides a special rule that Appeals and Chief Counsel may determine how settlement authority in a Federal tax controversy that is before the Tax Court will be transferred between the two offices. For example, to promote a more efficient disposition of a case in the Tax Court, the case may be transferred from Chief Counsel to Appeals or from Appeals to Chief Counsel by agreement between them. This is a longstanding practice that has been used to efficiently manage resources and respond to developments in litigation. Details regarding this practice are most recently described in Rev. Proc. 2016–22. In another example, if Chief Counsel determines that the case is needed for trial preparation, Chief Counsel may request that Appeals return the case (including settlement authority) to Chief Counsel before Appeals has completed its consideration of the case. See sec. 3.08 of Rev. Proc. 2016–22. Ensuring adequate time to prepare for trial is pragmatic and beneficial to taxpayers and Chief Counsel attorneys. Chief Counsel also may delay forwarding a case to Appeals when Chief Counsel anticipates filing a dispositive motion (for example, a motion for summary or partial summary judgment, or a motion to dismiss for lack of jurisdiction), in which case Chief Counsel will retain the case until the Tax Court rules on the motion. See sec. 3.04 of Rev. Proc. 2016–22. Allowing Chief Counsel and Appeals the flexibility to respond to the needs of specific Federal tax controversies promotes the efficient disposition of a taxpayer's case, including developing or narrowing the issues in dispute.

I. Applicability Date

These regulations are proposed to apply to all requests for consideration by Appeals that are received on or after the date 30 days after a Treasury Decision finalizing these rules is published in the **Federal Register**. The Treasury Department and the IRS request comments on the proposed applicability date.

II. Requests for Referral to Appeals Following Issuance of a Notice of Deficiency

A. Notice and Protest

If a taxpayer received a notice of deficiency authorized under section 6212, section 7803(e)(5) requires the Commissioner to explain the basis for denying an Appeals referral request and provide procedures to protest the denial. Proposed § 301.7803–3(a) implements section 7803(e)(5) and provides that if any taxpayer requests Appeals consideration of a matter or issue and the request is denied, the Commissioner or the Commissioner's delegate must provide the taxpayer a written notice that provides a detailed description of the facts involved, the basis for the decision to deny the request, a detailed explanation of how the basis for the decision applies to such facts, and the procedures for protesting the decision to deny the request if the requirements of proposed § 301.7803–3(a) are met. These requirements are listed in proposed § 301.7803–3(a)(1) through (5).

1. Notice of Deficiency

Proposed § 301.7803–3(a)(1) provides that the taxpayer must have received a notice of deficiency authorized under section 6212 for the notice and protest procedures to apply.

2. Frivolous Positions

Proposed § 301.7803–3(a)(2) requires that, for the notice and protest procedures to apply, the taxpayer's issue must not involve a frivolous position. This proposed requirement follows from the restriction on Appeals access in proposed § 301.7803–2(c)(1), which makes Appeals review unavailable for frivolous positions. Also, pursuant to section 7803(e)(5)(D),

the protest procedures under section 7803(e)(5) do not apply to an Appeals referral request if the issue is frivolous. Like the exception in proposed § 301.7803–2(c)(1), this proposed rule prevents taxpayers from continuing to propose frivolous arguments. Allowing a taxpayer to protest the IRS's decision to deny the taxpayer's request for Appeals consideration of frivolous positions would result in wasted IRS time and resources.

3. Multiple Requests for Referral to Appeals

Proposed § 301.7803–3(a)(3) requires that the taxpayer must not have previously requested Appeals consideration for the same matter or issue in a taxable year or period for the notice and protest procedures to apply. Thus, when a taxpayer already has requested Appeals consideration and filed a valid protest under section 7803(e)(5), the notice and protest procedures in proposed § 301.7803–3(a) do not apply if the taxpayer submits another Appeals referral request concerning the same matter or issue in a taxable year or period. It would be redundant to allow the taxpayer to submit multiple referral requests and protests under section 7803(e)(5), including when the taxpayer's prior protest was either rejected or allowed in a final decision by the Commissioner or the Commissioner's delegate.

4. Previous Appeals Consideration

Except as provided in proposed § 301.7803–2(f)(2), proposed § 301.7803–3(a)(4) provides that for the notice and protest procedures to apply, Appeals must not have previously considered the matter or issue in a taxable year or period that is the subject of the request and determined that it could not be settled. This requirement follows from the prerequisite in proposed § 301.7803–2(f), which provides that Appeals will consider a Federal tax controversy only once. Since a taxpayer receives only one opportunity for Appeals review, it would be redundant to allow a taxpayer to submit a protest under section 7803(e)(5) if Appeals already has considered the same matter or issue in a taxable year or period and decided that it could not be settled or a settlement offer was rejected.

5. Notice of Deficiency With More Than One Matter or Issue

Proposed § 301.7803–3(a)(5) requires that if the notice of deficiency for which the taxpayer requests Appeals consideration includes more than one matter or issue in a taxable year or period, the taxpayer must request referral and submit all matters or issues sought for Appeals consideration at the same time. This proposed rule will ensure the efficient use of Appeals' time and resources and help to prevent unnecessary delays and potential abuse. For example, without this proposed rule, a taxpayer in a case with three issues could potentially seek sequential Appeals consideration for each issue separately, thereby wasting Appeals' time and resources, creating unnecessary delay, and abusing the referral process. Such a piecemeal approach, if allowed, also would undermine the one-bite-at-the-apple rule in proposed § 301.7803–2(f)(1).

6. Applicability Date

The regulations in this section are proposed to apply to all relevant requests for consideration by Appeals that are received on or after a Treasury Decision finalizing these rules is published in the **Federal Register**.

Statement of Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *http://www.irs.gov.*

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is hereby certified that these proposed rules will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect any person who would like to have a Federal tax controversy considered by Appeals, including any small entity. Because any small entity could potentially request consideration by Appeals, these proposed regulations are expected to affect a substantial number of small entities. However, the IRS has determined that the economic impact on small entities affected by the proposed rules would not be significant.

The proposed rules provide procedural and timing requirements for consideration by Appeals. The proposed rules also establish the general availability of consideration by Appeals and exceptions to that consideration. The procedural requirements, timing requirements, and the vast majority of the exceptions to consideration by Appeals already exist in previously established guidance regarding Appeals. The proposed regulations also provide rules regarding certain circumstances in which a written explanation will be provided regarding why Appeals consideration was not provided. None of the proposed rules affect entities' substantive tax liability nor do they affect the process that Appeals follows when it considers an eligible Federal tax controversy. Any significant economic impact on small entities will result from the application of the substantive tax provisions and will not be as a result of the proposed regulations. Accordingly, the Secretary hereby certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS invite comment from members of the public about potential impacts on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, particularly circumstances where Appeals consideration is not available. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

The public hearing is being held by teleconference on November 29, 2022, beginning at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by November 14, 2022. If no outlines are received by November 14, 2022, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. EST on November 22, 2022. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by November 22, 2022. Announcement 2020–4, 2020–17 I.R.B. 1, provides that until further notice, public hearings

conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Keith L. Brau of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding entries for §§ 301.7803–2 and 301.7803–3 in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.7803–2 also issued under 26 U.S.C. 7803.

Section 301.7803–3 also issued under 26 U.S.C. 7803.

* * * * *

■ **Par. 2.** Sections 301.7803–2 and 301.7803–3 are added to read as follows:

§ 301.7803–2 Appeals resolution of Federal tax controversies without litigation.

(a) *Function of Independent Office of Appeals.* Appeals resolves Federal tax controversies without litigation on a basis that is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the Internal Revenue Service (IRS).

(b) *Consideration of a Federal tax controversy by the Independent Office of Appeals*—(1) *In general.* The Appeals resolution process is generally available to all taxpayers to resolve Federal tax controversies.

(2) *Definition of Federal tax controversy.* For purposes of this section, a *Federal tax controversy* is defined as a dispute over an administrative determination with respect to a particular taxpayer made by the IRS in administering or enforcing the internal revenue laws, related Federal tax statutes, and tax conventions to which the United States is a party (collectively referred to as internal revenue laws) that arises out of the examination, collection, or execution of other activities concerning the amount or legality of the taxpayer's income, employment, excise, or estate and gift tax liability; a penalty; or an addition to tax under the internal revenue laws.

(3) *Other administrative determinations treated as Federal tax controversies.* Notwithstanding the definition of a Federal tax controversy in paragraph (b)(2) of this section, disputes over administrative determinations made by the IRS with respect to a particular person regarding the following topics are treated as Federal tax controversies for purposes of this section:

(i) Liabilities and penalties administered by the IRS that are outside the Internal Revenue Code (Code), such as a liability or penalty pursuant to section 5321 of title 31 of the United States Code (relating to civil Report of Foreign Bank and Financial Accounts or Bank Secrecy Act penalties);

(ii) A request under the Freedom of Information Act (5 U.S.C. 552);

(iii) Application to become, or the sanction of, an Electronic Return Originator or Authorized IRS e-file Provider;

(iv) The initial or continuing qualification of an organization as exempt from tax under section 501(a) (relating to tax-exempt organizations) or section 521 of the Code (relating to tax-exempt farmers' cooperatives), or as an organization described in section 170(c)(2) of the Code (relating to charitable organizations); the classification or reclassification of an organization's foundation status under section 509(a) of the Code (relating to private foundations); and the classification of an organization as a private operating foundation under section 4942(j)(3) of the Code (relating to an operating foundation);

(v) The qualification of an employee plan;

(vi) An IRS proposed determination to a bond issuer that interest on an obligation the bond issuer previously issued is not tax-exempt under section 103 of the Code (relating to interest on State or local bonds), that an issue of bonds fails to qualify for the tax credits for the bondholders or direct payments to the issuer with respect to the bonds under provisions of the Code applicable to tax-advantaged bonds, or that denies a claim for recovery of an asserted overpayment of arbitrage rebate under section 148 of the Code (relating to arbitrage) with respect to tax-exempt bonds or under section 148 as modified by relevant provisions of the Code with respect to other tax-advantaged bonds;

(vii) Administrative costs under section 7430 of the Code (relating to awarding of costs and certain fees); or

(viii) Any other topic that the IRS has determined can be considered by Appeals.

(c) *Exceptions to consideration by Appeals.* The following are Federal tax controversies that are excepted from consideration by Appeals or matters or issues that are otherwise ineligible for consideration by Appeals because they are neither a Federal tax controversy nor treated as a Federal tax controversy under paragraph (b)(3) of this section. If a matter or issue not eligible for consideration by Appeals is present in a case that otherwise is eligible for consideration by Appeals, the ineligible matter or issue will not be considered by Appeals during resolution of the case. The exceptions are:

(1) An administrative determination made by the IRS rejecting a position of a taxpayer that the IRS has identified as frivolous for purposes of section 6702(c) of the Code (regarding listing of frivolous positions) and any case solely involving the taxpayer's failure or refusal to comply with the tax laws because of frivolous moral, religious, political, constitutional, conscientious, or similar grounds.

(2) Penalties assessed by the IRS under section 6702 (relating to frivolous tax submissions) or section 6682 of the Code (relating to false information with respect to withholding) or any other penalty imposed for a frivolous position or false information. Appeals, however, may obtain verification that the assessment of the penalties complied with sections 6203 (relating to method of assessment) and 6751(b) (relating to approval of assessment) of the Code in a collection due process (CDP) hearing under sections 6320 (relating to a hearing upon filing of a notice of lien) and 6330 (relating to a hearing before levy) of the Code. Appeals also may consider a non-frivolous substantive challenge to a section 6702 or section 6682 penalty in a CDP hearing.

(3) Any administrative determination made by the IRS under section 7623 of the Code (relating to awards to whistleblowers).

(4) An administrative determination issued by an agency other than the IRS, such as a determination by the Alcohol and Tobacco Tax and Trade Bureau (TTB) concerning an excise tax

administered by and within the jurisdiction of TTB.

(5) A decision made by the IRS not to issue a Taxpayer Assistance Order (TAO) under section 7811 of the Code (relating to TAOs).

(6) Any decision made by the IRS concerning material to be deleted from the text of a written determination pursuant to section 6110 of the Code (relating to public inspection of written determinations) unless the written determination is otherwise being considered by Appeals.

(7) Any denial of access under the Privacy Act (5 U.S.C. 552a(d)(1)).

(8) Any issue resolved in an agreement described in section 7121 of the Code (regarding closing agreements) that the taxpayer entered into with the IRS, and any decision made by the IRS to enter into or not enter into such agreement. Appeals may consider the question of whether an item or items are covered, and how the item or items are covered, in a closing agreement.

(9) A case in which the IRS erroneously returns or rejects an offer in compromise (OIC) submitted under section 7122 of the Code (relating to compromises) as nonprocessable or no longer processable and the taxpayer requests Appeals consideration to assert that the OIC should be deemed to be accepted under section 7122(f).

(10) Any case in which a criminal prosecution, or a recommendation for criminal prosecution, is pending against the taxpayer for a tax-related offense, except with the concurrence of the Office of Chief Counsel or the Department of Justice, as applicable.

(11) Issues relating to allocation among different fee payers of the branded prescription drug and health insurance providers fees in section 9008 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010 (HCERA), Public Law 111–152 (124 Stat. 1029 (2010)), and section 9010 of PPACA, as amended by section 10905 of PPACA, and as further amended by section 1406 of HCERA.

(12) A certification or issuance of a notice of certification of a seriously delinquent Federal tax debt to the Department of State under section 7345 of the Code (relating to the revocation or denial of a passport in the case of serious tax delinquencies).

(13) Any issue barred from consideration under section 6320 or section 6330 of the Code, §§ 301.6320–1 and 301.6330–1, or any other administrative guidance related to collection due process hearings or equivalent hearings.

(14) Any case, determination, matter, decision, request, or issue that Appeals lacks the authority to settle. The following is a non-exclusive list of examples:

(i) A case or issue in a case that has been referred to the Department of Justice.

(ii) A competent authority case (including a competent authority resolution previously accepted by the taxpayer) under a United States tax treaty that is within the exclusive authority of the United States Competent Authority.

(iii) A decision of the Commissioner of Internal Revenue or the Commissioner's delegate to not rescind a section 6707A penalty for a non-listed reportable transaction.

(iv) A request for relief under section 6015 of the Code (relating to relief from joint and several liability on a joint return) when the nonrequesting spouse is a party to a docketed case in the United States Tax Court (Tax Court) and does not agree to granting full or partial relief under section 6015 to the requesting spouse.

(v) A criminal restitution-based assessment under section 6201(a)(4) of the Code (relating to certain orders of criminal restitution and restriction on challenge of assessment).

(15) An adverse action related to the initial or continuing recognition of tax-exempt status, an entity's classification as a foundation, the initial or continuing determination of employee plan qualification, or a determination involving an obligation and the issuer of an obligation under section 103. This exception applies only if the tax-exempt recognition, classification, determination of employee plan qualification, or determination involving an obligation and the issuer of an obligation under section 103 is based upon a technical advice memorandum issued by an Office of Associate Chief Counsel before an appeal is requested.

(16) Any case docketed in the Tax Court if the notice of deficiency, notice of liability, or final adverse determination letter is based upon a technical advice memorandum issued by an Office of Associate Chief Counsel in that case involving an adverse action described in paragraph (c)(15) of this section.

(17) A decision by an Office of Associate Chief Counsel regarding whether to issue a letter ruling or the content of a letter ruling. The subject of the letter ruling may be considered by Appeals if all other requirements in this section are met. For example, if an Office of Associate Chief Counsel issues an adverse letter ruling to a taxpayer, the taxpayer cannot immediately appeal the issuance of the adverse letter ruling. If the taxpayer subsequently files a return taking a position that is contrary to the letter ruling and that position is audited by the IRS, Appeals can consider that Federal tax controversy if all other requirements in this section are met.

(18) Any issue based on a taxpayer's argument that a statute violates the United States Constitution unless there is an unreviewable decision from a Federal court holding that the cited statute is unconstitutional. For purposes of this paragraph, an argument that a statute violates the United States Constitution includes any argument that a statute is unconstitutional on its face or as applied to a particular person. This exception does not preclude Appeals from considering a Federal tax controversy based on arguments other than the constitutionality of a statute, such as whether the statute applies to the taxpayer's facts and circumstances. For purposes of this section, the term *unreviewable decision* is a decision of a Federal court that can no longer be appealed to any Federal court because all appeals in a case have been exhausted or the time to appeal has expired and no appeal was filed. Once there is an unreviewable decision no further action can be taken in the case by any Federal court.

(19) Any issue based on a taxpayer's argument that a Treasury regulation is invalid unless there is an unreviewable decision from a Federal court invalidating the regulation as a whole or the provision in the regulation that the taxpayer is challenging. This exception does not preclude Appeals from considering a Federal tax controversy based on arguments other than the validity of a Treasury regulation, such as whether the Treasury regulation applies to the taxpayer's facts and circumstances.

(20) Any issue based on a taxpayer's argument that a notice or revenue procedure published in the Internal Revenue Bulletin is procedurally invalid unless there is an unreviewable decision from a Federal court holding it to be invalid. This exception does not preclude Appeals from considering a Federal tax controversy based on arguments other than the validity of a notice or revenue procedure, such as whether the notice or revenue procedure applies to the taxpayer's facts and circumstances.

(21) Any case or issue designated for litigation, or withheld from Appeals consideration in a Tax Court case, in

accordance with guidance regarding designating or withholding a case or issue. For purposes of this section, *designation for litigation* means that the Federal tax controversy, comprising an issue or issues in a case, will not be resolved without a full concession by the taxpayer or by decision of the court.

(22) Any case docketed in the Tax Court if the notice of deficiency, notice of liability, or other determination was issued by Appeals unless the exception in paragraph (f)(1) of this section (regarding when the Tax Court remands a CDP case for reconsideration) applies.

(23) A case in which timely Appeals consideration must be requested before a petition is filed in the Tax Court because exhaustion of administrative review, including consideration by Appeals, is a prerequisite for the Tax Court to have jurisdiction, and the taxpayer failed to timely request Appeals consideration. For example, Appeals consideration must be requested before a petition is filed in the Tax Court regarding a declaratory judgment request under sections 7428 (relating to declaratory judgment on the classification of specified organizations), 7476 (relating to declaratory judgment on qualification of certain retirement plans), or 7477 (relating to declaratory judgment on the value of certain gifts) of the Code.

(24) An administrative determination made by the IRS to deny or revoke a Certified Professional Employer Organization certification.

(d) *Originating office has completed its review*—(1) *In general.* Appeals consideration of a matter or issue is appropriate only after the originating IRS office has completed its action on the Federal tax controversy and issued an administrative determination or a proposed administrative determination accompanied by an offer for consideration by Appeals. If the originating office has not completed its action regarding the Federal tax controversy, the request for Appeals consideration is premature. Appeals may consider the Federal tax controversy if the taxpayer requests consideration after the originating office's action is complete and if all requirements in this section are met.

(2) *Exception for early consideration programs.* Where administrative guidance permits the originating office to engage Appeals prior to completing its action regarding the Federal tax controversy, Appeals may consider the Federal tax controversy under the terms of that administrative guidance, such as mediation under a fast track settlement program or early consideration of some issues under an early referral program.

(e) *Procedural and timing requirements are followed.* A request for Appeals consideration of a Federal tax controversy must be submitted in the time and manner prescribed in applicable forms, instructions, or other administrative guidance. All procedural requirements must be complied with before Appeals will consider a Federal tax controversy. In addition, there must be sufficient time remaining on the appropriate limitations period for Appeals to consider the Federal tax controversy, as provided in administrative guidance. In a case docketed in the Tax Court, if the Office of Chief Counsel has recalled the case from Appeals or, if not recalled, Appeals has returned the case to the Office of Chief Counsel so that it is received by the Office of Chief Counsel prior to the date of the calendar call for the trial session, further consideration by Appeals will not be available if there is insufficient time for such consideration.

(f) *One opportunity for consideration by Appeals*—(1) *In general.* If a Federal tax controversy is eligible for consideration by Appeals and the procedural and timing requirements are followed, a taxpayer generally has one opportunity for Appeals to consider such matter or issue in the same case for the same period or in any type of future case for the same period, unless the Tax Court remands for reconsideration in a collection due process case. Appeals has considered a Federal tax controversy if the Federal tax controversy was before Appeals for consideration and Appeals issued a determination or made a settlement offer, Appeals decided the Federal tax controversy was not susceptible to settlement, or the person who requested consideration was issued and failed to respond to Appeals' communications and as a result of that failure Appeals issued or made a determination. Appeals also has considered a Federal tax controversy if the taxpayer notified the Office of Chief Counsel or the IRS that the taxpayer wanted to discontinue settlement consideration by Appeals or requested to transfer from Appeals to the Office of Chief Counsel settlement consideration of a Federal tax controversy that is currently before the Tax Court.

(2) *Exceptions.* Notwithstanding paragraph (f)(1) of this section, taxpayers retain the opportunity for a traditional appeal after participating in an early consideration program as described in paragraph (d)(2) of this section if no agreement was reached between the taxpayer and the IRS originating office. Taxpayers may be able to request post-Appeals mediation under the terms of administrative guidance after a traditional appeal if no agreement was reached between the taxpayer and Appeals. Notwithstanding paragraph (f)(1) of this section, taxpayers who provide new information to the IRS and who meet the conditions and requirements for audit reconsideration or for reconsideration of issues previously considered by Appeals may have an opportunity for Appeals consideration.

(g) *Special rules.* The following special rules apply to this section:

(1) *Appeals reconsideration.* Notwithstanding the exception in paragraph (c)(22) of this section, if Appeals issued a notice of deficiency, notice of liability, or other determination without having fully considered one or more issues because of an impending expiration of the statute of limitations on assessment, Appeals may choose to have the Office of Chief Counsel return the case to Appeals for full consideration of the issue or issues once the case is docketed in the Tax Court.

(2) *Coordination between Office of Chief Counsel and Appeals.* Appeals and the Office of Chief Counsel may determine how settlement authority in a Federal tax controversy that is before the Tax Court is transferred between the two offices.

(h) *Applicability date.* This section is applicable to requests for consideration by Appeals made on or after October 13, 2022.

§ 301.7803–3 Requests for referral to Appeals following the issuance of a notice of deficiency.

(a) *Notice and protest.* If any taxpayer requests consideration by Appeals of any matter or issue eligible for consideration by Appeals under section 7803(e)(5) of the Internal Revenue Code (Code) (relating to limitation on designation of cases as not eligible for referral to Appeals) and the request is denied, the Commissioner of Internal Revenue or Commissioner's delegate shall provide the taxpayer a written notice that provides a detailed description of the facts involved, the basis for the decision to deny the request, a detailed explanation of how the basis for the decision applies to such facts, and the procedures for protesting the decision to deny the request if the requirements of paragraphs (a)(1) though (5) of this section are met:

(1) *Notice of deficiency.* The taxpayer received a notice of deficiency authorized under section 6212 of the Code (relating to notice of deficiency).

(2) *Frivolous positions.* The issue involved is not a frivolous position

within the meaning of section 6702(c) of the Code (regarding listing of frivolous positions).

(3) *Multiple requests for referral to Appeals.* The taxpayer has not previously requested consideration by Appeals, pursuant to section 7803(e)(5), of the same matter or issue in a taxable year or period.

(4) *Previous Appeals consideration.* Appeals has not previously considered the matter or issue in a taxable year or period that is the subject of the request and determined that the matter or issue could not be settled or a settlement offer was rejected, except as provided in § 301.7803–2(f)(2) with respect to a taxpayer participating in an early consideration program.

(5) *Notice of deficiency with more than one matter or issue.* If the notice of deficiency for which the taxpayer requests Appeals consideration includes more than one matter or issue in a taxable year or period, the taxpayer must request referral for Appeals consideration and submit all such matters or issues at the same time.

(b) *Applicability date.* This section is applicable to relevant requests for consideration by Appeals made on or after [insert date of Treasury decision finalizing these rules is published in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2022–19662 Filed 9–9–22; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 405

RIN 1245–AA13

Revision of the Form LM–10 Employer Report

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Proposed form revision; request for comments.

SUMMARY: The Office of Labor-Management Standards of the Department of Labor (Department) is proposing revisions to the Form LM–10 Employer Report, required under section 203 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). Employers must file a Form LM–10 Employer Report with the Department to disclose certain payments, expenditures, agreements, and arrangements. The Department proposes to add to the Form LM–10 report a checkbox requiring certain reporting entities to indicate whether such entities were Federal contractors or subcontractors in their prior fiscal year, and two lines for entry of filers' Unique Entity Identifier and Federal contracting agency(ies), if applicable.

DATES: Comments must be received on or before October 13, 2022.

ADDRESSES: You may submit comments, identified by RIN 1245–AA13 only by the following method: internet—Federal eRulemaking Portal. Electronic comments may be submitted through *https://www.regulations.gov.* To locate the proposed form revision, use RIN 1245–AA13 or key words such as ''LM–10,'' ''Labor-Management Standards'' or ''Employer Reports'' to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Karen Torre, Chief of the Division of Interpretations and Regulations, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD), *OLMS-Public@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

The legal authority for this proposed form revision is set forth in sections 203 and 208 of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. 433, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as the Secretary may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. The Secretary has delegated this authority under the LMRDA to the Director of the Office of Labor-Management Standards (OLMS) and permits re-delegation of such authority. *See* Secretary's Order 03–2012—Delegation of Authorities and Assignment of Responsibilities to the Director, Office of Labor-Management Standards, 77 FR 69375 November 16, 2012.

II. Statutory and Regulatory Background

A. History of the LMRDA's Reporting Requirements

The Secretary of Labor administers and enforces the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), Public Law 86–257, 73 Stat. 519–546, codified at 29 U.S.C. 401–531. The LMRDA, in part, establishes labor-management transparency through reporting and disclosure requirements for labor organizations and their officials, employers and their labor relations consultants, and surety companies.

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion, as it relates to this proposed form revision, that in the labor and management fields there had been a number of examples of breach of trust, corruption, and disregard of employee rights. Congress determined that legislation was needed to protect the rights of employees and the public as they relate to employers, labor relations consultants, and others. *See* 29 U.S.C. 401(b).

The LMRDA is the direct outgrowth of an investigation conducted by the Senate Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, which convened in 1958. Enacted in 1959 in response to the report of the McClellan Committee, the LMRDA addresses various ills identified by the Committee through a set of integrated provisions aimed, among other things, at shedding light on labor-management relations, governance, and management. These provisions include financial reporting and disclosure requirements for employers and labor relations consultants. *See* 29 U.S.C. 431–36, 441.

Among the abuses that prompted Congress to enact the LMRDA was questionable conduct by some employers and their labor relations consultants that interfered with the right of employees to organize labor unions and to bargain collectively under the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et. seq. See, e.g.,* S. Rep. NO. 86–187 (''S. Rep. 187'') at 6, 10–12 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (''LMRDA Leg. Hist.''), at 397, 402, 406–408. Congress was concerned that labor consultants, acting on behalf of management, worked directly or indirectly to discourage legitimate employee organizing drives and engage in ''union-busting'' activities. S. Rep. 187 at 10, LMRDA Leg. Hist. at 406.

Congress concluded that such consultant activities ''should be exposed to public view,'' id., S. Rep. at 11, because they are ''disruptive of harmonious labor relations and fall into a gray area,'' id. at 12, even if the consultant's conduct was not unlawful or did not otherwise constitute an unfair labor practice under the NLRA.

As a result, Congress imposed reporting requirements on employers and their consultants under LMRDA section 203. 29 U.S.C. 433. Under LMRDA section 208, the Secretary of Labor is authorized to issue, amend, and rescind rules and regulations prescribing the form and publication of required reports, as well as ''such other reasonable rules and regulations . . . as he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. The Secretary is also authorized to bring civil actions to enforce the LMRDA's reporting requirements. 29 U.S.C. 440. Willful violations of the reporting requirements, knowing false statements made in a report, and knowing failures to disclose a material fact in a report are subject to criminal penalties. 29 U.S.C. 439.

B. Statutory and Regulatory Requirements for Employer Reporting

Section 203(a) of the LMRDA, 29 U.S.C. 433(a), requires employers to file a report, subject to certain exemptions, covering the following payments and arrangements made in a fiscal year: certain payments to, or other financial arrangements with, a labor organization or its officers, agents, or employees; payments to employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights; payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights or for obtaining information on employee or labor organization activities in connection with labor disputes involving their company; and arrangements (including related payments) with a labor relations consultant for the purpose of persuading employees with respect to their bargaining and representation rights, or for obtaining information concerning employee activities in connection with a labor dispute involving their company. 29 U.S.C. 433.

If an employer has engaged in reportable activity, the employer must file a report, signed by its president and treasurer showing in detail the date and amount of each payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. *See* 29 U.S.C. 433. The Department of Labor's implementing regulations require employers to file a Form LM–10 Employer Report (''Form LM–10'') that contains this information. *See* 29 CFR part 405.

C. Overview and History of the Form LM–10

The Form LM–10 Employer Report must be filed by any employer who has engaged in certain financial transactions or arrangements, of the type described in LMRDA section 203(a), with any labor organization, union official, employee, or labor relations consultant, or who has made expenditures for certain objects relating to activities of employees or a union. Employers are required to file only one Form LM–10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

In its current iteration, the Form LM–10 is divided into two parts: Part A and Part B. Part A consists of pages 1 and 2 of the Form LM–10. In Part A, Items 1–7 request basic identifying information about the employer, namely file number, fiscal year, address of the employer, address of the president or corresponding officer, any other address where records needed to verify the report can be made available for examination, a checklist of each location where records needed to verify the report can be made available for examination, and what type of legal entity is filing the report (''Corporation, Partnership, Individual, Other (specify)''). Item 13 and Item 14 are also featured on page 1 of Part A and are the signature boxes for the president and treasurer of the employer, respectively. Page 2 consists entirely of Part A, Item 8, which contains six ''Yes or No'' questions pertaining to reportable employer activities. If the employer-filer can answer ''No'' to every question in Item 8, then no LM–10 Report needs to be filed. With each question answered ''Yes,'' the filer must complete a separate Part B for every person or organization with whom a reportable agreement was made or to whom a reportable payment was made as to that ''Yes'' answer. The form also asks for the total number of Part Bs filed for each question in Item 8.

Part B comprises page 3, and requires the name of the reporting employer and the file number again to ensure it is matched with Part A. Similarly, the next field is a checkbox indicating the questions in Item 8 (labeled a through f) to which this Part B applies. Items 9–12 require various details regarding the agreement or payments the employer-filer made.

Item 9 consists of four parts, 9.a.–9.d. Item 9.a. asks whether this Part B concerns itself with an ''Agreement,'' a ''Payment,'' or ''Both.'' Item 9.b. requires the name and address of the person with whom or through whom a separate agreement was made or to whom payments were made. Item 9.c. requires the position of any persons mentioned in 9.b. Item 9.d. requires the name and address of the labor organization or firm any person mentioned in 9.b. is a part of.

Item 10 consists of two parts, 10.a. and 10.b. Item 10.a. requires the date of the promise, agreement, or arrangement pursuant to which payments or expenditures were agreed to or made. Item 10.b. consists of three checkboxes and filers are required to mark whether the promise, agreement, or arrangement was ''Oral,'' ''Written,'' or ''Both.'' If the agreement is written and entered into during the fiscal year, it must be attached to the report.

Item 11 consists of three parts, 11.a.–11.c. Item 11.a. requires the date of each payment or expenditure referred to in Item 9. Item 11.b. requires the amount of each of those payments. Item 11.c. requires the filer to indicate the kind of each payment or expenditure, specifying whether it was a payment or a loan and whether it was made in cash or property.

Item 12 requires a narrative response from the filers with a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. The explanation must contain a detailed account of services rendered or promised in exchange for promises or payments the filer has either already made or agreed to make. The explanation must also fully outline the conditions and terms of any oral agreement or understanding pursuant to which they were made. Lastly, the filer must indicate whether the payments or promises reported specifically benefited the person or persons listed in Item 9.b., or the firm, group, or labor organization named in Item 9.d. If the employer-filer made payments, promises, or agreements through a person or persons not shown above, they must provide the full name and address of such person or persons. The explanation must clearly indicate why the filer must report the payment, promise, or agreement. Any incomplete

responses or unclear explanations render a report deficient.

III. Proposed Revisions to the Form LM–10

In this document, the Department proposes a revision to the Form LM–10 Employer Report to supplement the identifying information that OLMS already collects from employers required to file, such as the employer's name, address, and status as a corporation, partnership, or individual. The proposed revision would not change which employers are required to file Form LM–10; it would require filers to provide an additional item of identifying information—whether the employer is a Federal contractor or subcontractor—and, if so, a short entry indicating the Federal contracting agency(ies) and the contractor's Unique Entity Identifier (UEI), if the contractor has one. If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency. All Federal prime contractors, and, in some cases, subcontractors performing on Federal prime contracts, must have a UEI in order to do business with the Federal Government or to meet reporting requirements per the Federal Acquisition Regulation (FAR). For example, FAR regulations at 48 CFR 52.204–6 requires prime contractors to obtain a UEI in order to register to obtain contracts with the Federal Government (as of April 2022, the Unique Entity Identifier replaced the Data Universal Numbering System (DUNS) number).[1]

In order to collect this information quickly and efficiently, the Department proposes adding one ''Yes,'' ''No,'' or ''N/A'' checkbox at the end of the form regarding Federal contractor status. Not all filers will be required to complete Item 12.b. Filers who answer ''Yes'' to Item 8.a., but ''No'' to Items 8.b.–8.f., would not be required to complete Item 12.b., and the electronic form would automatically check the ''N/A'' box and grey out the remaining portions of Item 12.b. for those filers so that no entry can be made.[2] Additionally, the Department proposes to add two lines where filers who are Federal contractors would enter their Unique Entity Identifier and the Federal contracting agency(ies) involved.

The instructions would also make explicit that filers would enter information that the Form LM–10 already requires—the unit or division of employees that is the subject of the report. *See* Item 12 (''Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make.''). This necessarily includes identifying certain payments, expenditures, agreements, and arrangements regarding employees. Filers must therefore currently identify the employees that are the subject of the report in Item 12. The Department proposes to renumber Item 12 as Item 12.a., and to add Item 12.b. thereafter with the ''Yes,'' ''No,'' or ''N/A'' checkbox and the two lines.

The new Item 12.a. would consist of a narrative section that mirrors the existing Item 12. In both the existing Item 12 and the revised Item 12.a., filers must explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made. As the instructions indicate for Item 12 and would indicate for Item 12.a., filers must provide ''a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report.'' The instructions would also make explicit that a ''full explanation'' requires that filers must identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work).

Filers who checked ''Yes'' for any item in Items 8.b.–8.f. would be required to complete Item 12.b. regarding their status as a Federal contractor or subcontractor. Regarding such status, the Department proposes to adopt the following definitions from the regulations implementing Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws: (a) ''contract,'' (b) ''contracting agency,'' (c) ''contractor,'' (d) ''government contract,'' (e) ''modification of a contract,'' (f) ''prime contractor,'' (g) ''subcontract,'' and (h) ''subcontractor.'' 29 CFR 471.1. Therefore, filers would be required to answer Item 12.b. in accordance with those eight definitions.[3] *Id.*

The Department expects that Federal contractors and subcontractors are already familiar with these definitions because they are, with minimal changes, the same definitions that already govern Federal contractors and subcontractors under Executive Order 11246, Equal Employment Opportunity, and its implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of Federal contractors and subcontractors). Federal contractors and subcontractors are also currently required to comply with Executive Order 13496. Executive Order 13496 applies to Federal contractors and subcontractors subject to the National Labor Relations Act (NLRA). The Department expects that most filers are subject to the NLRA, as the National Labor Relations Board (NLRB) has conducted over 1,000 representation elections per year over the past decade, while the National Mediation Board (NMB) has handled significantly fewer, with less than 50 representation election cases per year over the same period.[4] Pursuant to Executive Order 13496, employers covered by the NLRA are already required to know whether they are Federal contractors or subcontractors under the definitions proposed here and, if they are, to post the notice required by Executive Order 13496 ''in conspicuous places'' including ''areas in which the contractor posts notices to employees about the employees' terms and conditions of employment'' and ''where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract.'' 29 CFR 471.2(d).

The Department notes that employers covered by the Railway Labor Act (RLA) are not covered by Executive Order 13496, however, both NLRA and RLA employers are subject to the reporting requirements of the LMRDA. Thus, RLA employers may need more time to identify which employees who are the

[1] ''As of April 4, 2022, the federal government stopped using the DUNS Number to uniquely identify entities. Now, entities doing business with the federal government use the Unique Entity ID created in *SAM.gov*. They no longer go to a third-party website to obtain their identifier. This transition allows the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government.'' *Unique Entity Identifier Update,* U.S. General Services Administration, available at *https://www.gsa.gov/about-us/organization/federal-acquisition-service/office-of-systems-management/integrated-award-environment-iae/iae-systems-information-kit/unique-entity-identifier-update* (last visited May 4, 2022).

[2] *See https://www.dol.gov/agencies/olms/reports/electronic-filing.*

[3] The Form LM–10 instructions would list the definitions adopted from the implementing regulations of Executive Order 13496 (Notification of Employee Rights Under Federal Labor Laws) at 29 CFR 471.1 for *Contract, Contracting agency, Contractor, Government contract, Modification of a contract, Prime Contractor, Subcontract, and Subcontractor. See 29 CFR 471.1.*

[4] See: *https://www.nlrb.gov/reports/nlrb-case-activity-reports/representation-cases/election/election-statistics* and *https://nmb.gov/NMB_Application/wp-content/uploads/2021/12/FY-2021-NMB-Performance-and-Accountability-Report-PAR.pdf.*

subject of the LM–10 report have duties relating to the performance of the Federal contract or subcontract. As explained above, the Department expects that only a small number of filers will be Federal contractors or subcontractors subject to the RLA. Therefore, the Department expects that all filers who are Federal contractors and subcontractors will already know their status as such under Executive Order 11246 and its implementing regulations, *see* 41 CFR 60–1.3, and that most filers will be able to easily identify the information required for Item 12.b.

For those required to complete Item 12.b., it would consist of two parts. First, filers would be required to complete the ''Yes,'' ''No,'' or ''N/A'' checkbox in response to the following question: ''If your Part B applies to Items 8.b.–8.f., did the expenditures, payments, arrangements or agreements concern employees performing work pursuant to a Federal contract or subcontract?'' Second, if the filer answers ''Yes,'' they would be required to enter, on the two lines provided, their Unique Entity Identifier and the Federal contracting agency(ies) involved. If a subcontractor does not have a Unique Entity Identifier, then the subcontractor should so state in Item 12.b If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency. When filers answer ''Yes,'' in the checkbox portion of Item 12.b., failure to complete the entry on the two lines provided, or an unclear explanation in that entry, would render the report deficient.

IV. Purpose and Justification for Proposed Changes

Both the public and the employees whose rights are at issue have an interest in understanding the full scope of activities undertaken by employers to surveil employees, to commit unfair labor practices, or to persuade employees not to exercise their rights to organize or bargain collectively. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07.

The Form LM–10 reporting requirement is based on Congress's dissatisfaction with the ''large sums of money [that] are spent in organized campaigns on behalf of some employers'' on persuader activities that ''may or may not be technically permissible'' and Congress's determination that the appropriate response to such persuader campaigns is to disclose them in the public interest and for the preservation of ''the rights of employees.'' *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406–07.

As set forth in Section I, Statutory Authority, above, LMRDA Section 208 authorizes the Secretary to ''issue . . . regulations prescribing the form and publication of reports required to be filed under this title.'' 29 U.S.C. 438. The statutory provision authorizing the issuance of the Form LM–10 describes the data and information to be reported in the Secretary's form. 29 U.S.C. 433.

The statutory intent to require employers to provide a ''full explanation'' of payments was reflected in the Form LM–10 the Secretary established. Employers are told: ''Explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made.''

The proposal here clarifies that one of the circumstances that must be explained is whether the payments concerned employees performing work pursuant to a Federal contract or subcontract and, if so, the filer would provide its Unique Entity Identifier, if it has one, and the relevant Federal contracting agency(ies). If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency. Disclosing contractor status is consistent with Congress's intent in enacting the LMRDA: ''[I]t continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection.'' 29 U.S.C. 401(a).

The Department proposes this change in response to the increased prevalence of, and public interest in, persuader activities in recent years. The media, academics, and non-governmental organizations (NGOs) have taken note of persuader activity in a number of industries, including multiple high-profile instances of companies investing substantial resources in persuader activity. Over the decades, employer efforts to defeat unions have become more prevalent, with more employers turning to union avoidance consultants.[5] Further, members of Congress have noted recently that Federal contractors have engaged in such agreements and activities.[6] As the Agency responsible for promoting transparency around management attempts to influence employees' collective bargaining rights, OLMS closely monitors developments in the ways management interacts with union organizing efforts. The noted prevalence of persuader activity accordingly increases the interest of Government in obtaining information on persuader efforts which Congress found to be ''disruptive of harmonious labor relations'' even if lawful. S. Rep. 187 at 12, LMRDA Leg. Hist. at 406. This Government interest is especially acute when the Federal Government itself is paying for goods and services from those who would disrupt the harmonious labor relations that the Federal government is bound to protect. *See* 29 U.S.C. 401(a).

In other words, greater transparency is even more important when persuader activities are undertaken by employers that receive Federal funds through contracting relationships. *See* Executive Order (E.O.) 13494 (reiterating ''the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors.''). Such Federal contractors are not permitted to receive reimbursement for the costs of engaging in those activities under the contract. E.O. 13494, 74 FR 6101; 48 CFR 31.205–21.[7] But these Federal

[5] Celine McNicholas, et al., *Unlawful: U.S. Employers Charged with Violating Federal Labor Law in 41.5% of all Union Elections,* Economic Policy Institute, (Dec. 11, 2019) available at *https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/* (''The data show that U.S. employers are willing to use a wide range of legal and illegal tactics to frustrate the rights of workers to form unions and collectively bargain. . . . [E]mployers spend roughly $340 million annually on 'union avoidance' consultants to help stave off union elections. . . . Over the past few decades, employers' attempts to thwart organizing have become more prevalent, with more employers turning to the scorched-earth tactics of 'union avoidance' consultants.''); Heidi Shierholz et al., *Latest Data Release on Unionization,* Economic Policy Institute, (Jan. 20, 2022) available at *https://www.epi.org/publication/latest-data-release-on-unionization-is-a-wake-up-call-to-lawmakers/* (describing how ''it is now standard, when workers seek to organize, for employers to hire union avoidance consultants''); John Logan, *The New Union Avoidance Internationalism,* 13 Work Org., Lab. & Globalisation 2 (2019) available at *https://www.scienceopen.com/hosted-document?doi=10.13169/workorgalaboglob.13.2.0057.*

[6] *Should Taxpayer Dollars Go to Companies that Violate Labor Laws?,* Comm. on the Budget, 117th Congress (May 5, 2022), available at *https://www.budget.senate.gov/hearings/should-taxpayer-dollars-go-to-companies-that-violate-labor-laws* (discussing the propriety of government contracting with Federal contractors that engage in legal and illegal tactics, including ''union busters,'' to dissuade workers from exercising their organizing and collective bargaining rights).

[7] Section 2 of E.O. 13494 provides that the policy of the Executive branch in procuring goods and services is to to ensure the economical and efficient administration of Government contracts, contracting departments and agencies, when they enter into, receive proposals for, or make disbursements pursuant to a contract as to which certain costs are treated as unallowable, shall treat as unallowable the costs of any activities undertaken to persuade employees—whether

Continued

contractors still engage in those activities; they simply do not seek or obtain reimbursement from the government for the costs of the activities.

The proposed revision to Form LM–10 would increase transparency regarding which Federal contractors and subcontractors are engaging in persuader activities. Confirming a filer's status as a Federal contractor, as well as its Unique Entity Identifier, as part of a full explanation of persuader activities will provide a method for the public, procurement agencies and employees to quickly identify which persuaders are Federal contractors.

This increased transparency benefits the employees subject to the employer's persuader activity by giving them relevant information about the source of communications that seek to influence their rights—as intended by Congress in enacting the LMRDA. Generally, the transparency created by the persuader reporting requirements is designed to better inform workers in making determinations regarding the exercise of their rights to organize and bargain collectively. For example, with the knowledge that the source of the information received is an anti-union campaign managed by an outsider, workers will be better able to assess the merits of the arguments directed at them and make an informed choice about how to exercise their rights. Here, employees have a particular interest in knowing whether their employers are Federal contractors because, as taxpayers themselves, those employees should know whether they are indirectly financing persuasion campaigns regarding their own rights to organize and bargain collectively. Persuader campaigns are not themselves reimbursable under the Federal contract or subcontract. Nevertheless Federal contractors receive Federal dollars—often in significant amounts—for goods and services. Such funds support directly or indirectly contractors' businesses and additional activities, which may include the decision to hire the outsider to persuade the employees.

Additionally, by learning of the previously unknown Federal contractor status their employer enjoys, those employees would have the information that would allow them to meaningfully exercise their right to choose whether to contact their representatives in Congress to inquire about the amount of Federal appropriations underlying the contracts with their employers, or the contractors' activities undertaken directly or indirectly pursuant to such contracts, or allow the employees to work more effectively with advocacy groups or the media to disseminate their views as employees to a wider audience. This is consistent with Congress' expectations when enacting the LMRDA—that in the public interest, and consistent with First Amendment rights to speak out on these issues, citizens would have the benefit of public reports regarding employer conduct that falls in a ''gray area.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407 (persuader activities ''should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure the free exercise'' of those rights).

The requirement that an employer provide its Unique Entity Identifier, if it has one, will prevent confusion. Two or more employers may have a similar name. Individual employers often use multiple names, including trade, business, assumed or fictitious names, such as a DBA (''doing business as'') designation. All Federal contractors have their own individual identifier to seek and secure Federal contracts.[8] By requiring employers to provide this identifier, members of the public and employees will be able to confirm the true identity of the employer. As stated, if a subcontractor does not have a Unique Entity Identifier, then it should so state in Item 12.b. If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency.

Given the potential for disruption, the public, like employees, has an interest in knowing whether the government is indirectly funding persuader activity by engaging in business with these companies, even if these activities are not unlawful. The required disclosure of such information is consistent with and fully authorized by sections 203 and 208 of the LMRDA and their broad grant of authority to prescribe the form of the required reports. 29 U.S.C. 433, 438.

Knowledge of such information would also enable members of the public to understand which Federal agencies are contracting with employers who are engaging in persuader activity. The public and employees would benefit from knowing whether a specific Federal agency is choosing to do business with an employer that is attempting to influence the exercise of workers' rights to choose whether to organize and bargain collectively. This public exposure would allow for an open public discussion and debate about the prevalence of persuader activity and the extent to which specific Federal agencies might be indirectly supporting such activities by doing business with employers that engage in persuader activities.

V. Regulatory Procedures

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

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* OMB has determined that this proposed form revision is a significant regulatory action under section 3(f)(4) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory

employees of the recipient of the Federal disbursements or of any other entity—to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing. And that such unallowable costs shall be excluded from any billing, claim, proposal, or disbursement applicable to any such Federal Government contract. 74 FR 6101. The E.O. further directs the Federal Acquisition Regulatory Council (FAR Council) to adopt rules to implement the order, and each contracting department or agency to cooperate with the FAR Council and provide whatever information or help it may need to perform its functions under the E.O. *Id.* at 6101–02. Subsequently, the General Services Administration, Department of Defense, and the National Aeronautics and Space Administration issued a final rule amending the FAR to implement E.O. 13494. 76 FR 68040 (Nov. 2, 2011). The new provision, at 48 CFR 31.205–21, distinguishes the costs related to ''persuader activities'' made unallowable under the E.O. from the costs ''incurred in maintaining satisfactory relations between the contractor and its employees'' that remain allowable.

[8] See: *https://www.acquisition.gov/far/part-4#FAR_Subpart_4_11.*

objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

A. Costs of the Updated Form LM–10 for Affected Employers

The Form LM–10 is filed by private business entities that engage in certain financial transactions or arrangements, and these employer entities only have reporting obligations during fiscal years in which the entity makes such transactions or enters in such arrangements. As such, the Form LM–10 is not an annually mandatory form, so not all employers must file the Form LM–10 in a given year. Further, as has been discussed, the modification to the Form LM–10 discussed in this NPRM does not add a new form or remove any forms, nor does it expand or contract the circumstances under which it is necessary for an employer to file an LM–10. This modification only slightly changes the structure of Item 12 by adding two items for certain filers. However, the Department will account for the potentially minimal costs of the slight changes to the structure of Item 12.

Based upon estimates for the existing Form LM–10 and other LM forms, the Department estimates that the new Item 12.b. will take a minimum of approximately 5 minutes to complete, thus adding approximately 5 minutes of reporting burden to the existing Form LM–10 (which the current existing instructions estimate to take approximately 35 minutes to complete, including the current Item 12). This 5 minutes is an average that takes into account that not all filers will be Federal contractors or subcontractors and not all Federal contractors or subcontractors that file will be required to complete the two lines in Item 12.b. While the Department does not expect that employers required to complete Item 12.b. will have difficulty in determining which employees work on which Federal contract, the Department also acknowledges uncertainty in this area. Thus, the Department also seeks comment on whether it should raise the burden increase estimate from 5 minutes to 15 minutes or some other number.

The Department does not estimate any additional recordkeeping burden for the following reasons. Some filers will spend zero minutes on Item 12.b. because, after only checking ''Yes'' to Item 8.a., the form will automatically check ''N/A'' and grey out the rest of Item 12.b. as no answer will be required. Many filers will need less than the 5–15 minutes to address Item 12.b. because they will only need to check ''No,'' that they are not a Federal contractor or subcontractor.

The large majority of Federal contractors and subcontractors will need no more than 5–15 minutes to complete Item 12.b. Checking ''Yes'' regarding their status as a Federal contractor or subcontractor will only take a few minutes because all Federal contractors and subcontractors are already required to be familiar with the definitions proposed here regarding that status, which are based on Executive Orders 11246 and 13496 and their implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of Federal contractors and subcontractors); 29 CFR part 471 and note 3, *supra* (including eight definitions OLMS proposes to adopt).

Similarly, most Federal contractors and subcontractors should be able to easily enter their Unique Entity Identifier. *See* note 1, *supra.* If a filer does not have a Unique Entity Identifier, the filer should so state in Item 12.b. Along with their Unique Entity Identifier, Federal contractors and subcontractors would enter the name of the Federal contracting agency(ies) on the two lines in Item 12.b. If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency.

While some RLA-covered employers may need more than 5–15 minutes because they may not be immediately familiar with which employees who are the subject of the Form LM–10 report have duties relating to the performance of the Federal contract or subcontract (and thus which agencies to enter into Item 12.b.), the Department does not expect RLA-covered filers to be as numerous as NLRA-covered filers, although the Department is aware that there are RLA-covered Federal contractors and subcontractors. The Department presumes that the large majority of employers that constitute Federal contractors or subcontractors would need no more than 5–15 minutes for Item 12.b., because they will be covered by the NLRA and therefore they will already be required to retain information relevant to Item 12.b., including which units of employees perform work under such contracts, pursuant to Executive Order 13496 (Notification of Employee Rights Under Federal Labor Law).

While a few filers may have a slightly higher time burden, and some will have a time burden that is lower than 5–15 minutes, the Department has accounted for this in determining the average time burden of 5–15 minutes. The Department asks for comment on this point.

The Department estimates that the 5–15-minute estimate, just as the existing 35-minute total estimate, represents an average of affected filers. Indeed, not all Form LM–10 filers will need to complete the new Item 12.b.[9] More specifically, filers need not fill out Item 12.b if they have only checked ''Yes'' to Item 8.a. Rather, only if a filer answers ''Yes'' to any of Items 8.b.–8.f. would they need to answer Item 12.b. Additionally, filers who check ''No'' on item 12.b. will not have to enter any further information in Item 12.b., further decreasing the average time burden. Further, because the Form LM–10 represents a situationally occurring reporting requirement rather than an annual reporting requirement, it would be imprudent to try to estimate differing burden levels associated with first-year exposure and subsequent exposures to the new questions.

To determine the cost increase per Form LM–10 filer associated with the new Item 12, the Department utilized an approach consistent with the information collection request (ICR) filed with the Office of Management and Budget pursuant to the Paperwork Reduction Act (PRA). In the existing ICR, the Department assumed that employers will hire a lawyer to complete the form, and it derived the average hourly salary for lawyers ($71.17) from the Occupational Employment and Wages Survey, May 2021 survey (released in March 2022), Table 1, from the Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES) Program. See: *https://www.bls.gov/oes/current/oes231011.htm.* Further, the Department determined the total compensation (salary plus fringe benefits) by increasing the hourly wage rate by approximately 45.0%, which is the percentage total of the average hourly benefits compensation figure ($12.52 in December 2021) over the average hourly wage figure ($27.83 in December 2021). See Employer Costs for Employee

[9] In fiscal year (FY) 21, based upon an electronic review of reports submitted, OLMS received approximately 200 Form LM–10 reports covering persuader-related transactions and agreements, among the 403 total Form LM–10 reports received during that year. See: *https://www.dol.gov/agencies/olms/data.*

Compensation Summary, September 2021 (released in December 2021), from the BLS at *http://www.bls.gov/news.release/ecec.nr0.htm.* Thus, the Department increased the totally hourly compensation for lawyers to $103.20 ($71.17 × 1.450).

As such, the average individual employer filing the LM–10 as modified under this proposal can expect to incur an increased cost per year of, approximately, between $8.60 ($103.20 × 5/60 = $8.60) and $25.80 ($103.20 × 15/60 + $25.80).

Although not all Form LM–10 filers will need to complete Item 12.b., the Department nevertheless estimates that each of the approximately 647 annual Form LM–10 filers (based upon a 5-year average of submitted reports) will incur the additional 5–15 minutes of annual reporting burden. See: *https://www.dol.gov/agencies/olms/data.* As such, the overall cost of this proposed modification for all entities filing a Form LM–10 per year is between $5,564.20 ($8.60 × 647 reporting entities = $5,564.20) and $16,692.60 ($25.80 × 647 reporting entities = $16,692.60). The Department asks comment on this approach and where within this range the estimate should fall.

B. Summary of Costs

In sum, this proposed amendment to the Form LM–10 has an approximated 10-year cost of between $55,642.00 and $166,926.00 spread across 647 separate yearly Form LM–10 filers. OLMS does not believe that the cost of this proposed amendment to the Form LM–10 will cause a significant burden on reporting entities.

C. Benefits

The proposed amendment to the Form LM–10 will benefit employers in the filing of complete and accurate forms. By updating the form and instructions to clearly and accurately describe the information employers must disclose, the proposed form revision will facilitate filers' understanding and compliance, thereby reducing incidents of noncompliance and associated costs incurred when noncompliant.

The proposed amendment will also benefit filers' employees and the public. As has been discussed in Section IV above, the Department believes that its proposed amendment to the Form LM–10 will also bridge important information gaps that have appeared in Form LM–10 reporting. Primarily, the reporting requirements associated with the Form LM–10 already call for the reporting of an employer's contact and identifying information, as well as a ''a detailed account of services rendered or promised . . .,'' which the Department interprets as including the particular division or unit of employees subject to the persuader-related activity in question. The Department is acting because a purpose of the LMRDA, which the Department administers, is to satisfy ''in the public interest, . . . the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection.'' 29 U.S.C. 401(a). Congress found that to accomplish this objective, ''it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.'' *Id.* Congress simultaneously found that public reporting by employers was one way to accomplish this, given that the substance of employer persuader activities was often ''unethical.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407.

The proposed revision to Form LM–10 would increase transparency regarding which Federal contractors and subcontractors are engaging in persuader activities. Confirming a filer's status as a Federal contractor, as well as its Unique Entity Identifier, as part of a full explanation of persuader activities will provide a method for the public, enforcement agencies and employees to quickly identify which Federal contractors are reporting persuader activities in a given year.

This increased transparency benefits the employees subject to the employer's persuader activity by giving them relevant information about the source of communications that seek to influence their rights—as intended by Congress in enacting the LMRDA. For example, employees have a particular interest in knowing whether their employers are Federal contractors because, as taxpayers themselves, those employees may not wish to be indirectly financing persuasion campaigns regarding their own rights to organize and bargain collectively. Although the persuader campaigns are not themselves reimbursable under the Federal contract or subcontract, the government is paying Federal dollars for goods and services, sometimes in large amounts, which supports such contractors' businesses. Additionally, by learning of the previously unknown Federal contractor status their employer enjoys, those employees would have the information that would allow them to meaningfully exercise their right to choose whether to contact their representatives in Congress about Federal appropriations underlying the contracts with their employers or work with advocacy groups or the media to disseminate their views as employees to a wider audience. This is consistent with Congress' expectations when enacting the LMRDA—that in the public interest, and consistent with First Amendment rights to speak out on these issues, citizens would have the benefit of public reports regarding employer conduct that falls in a ''gray area.'' S. Rep. NO. 86–187 at 11 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 407 (persuader activities ''should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concommitant obligation to insure the free exercise'' of those rights).

The requirement that an employer provide its Unique Entity Identifier, if it has one, will prevent confusion. Two or more employers may have a similar name. Individual employers often use multiple names, including trade, business, assumed or fictitious names, such as a DBA (''doing business as'') designation. All Federal contractors have their own individual identifiers to seek and secure Federal contracts.[10] By requiring employers to provide this identifier, members of the public and employees will be able to confirm the true identity of the employer.

Increased transparency also allows procurement agencies to ensure that the employer is not charging the Government for, and receiving reimbursement for, these costs. This, in turn, informs the public of how Federal monies are spent and the safeguards in place to prevent taxpayer dollars from funding disruptions to harmonious labor relations, even if these activities are not unlawful. *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406. Given the potential for disruption, the public, like employees, has an interest in knowing whether the government is indirectly funding persuader activity by engaging in business with these companies. The required disclosure of such information is consistent with and fully authorized by sections 203 and 208 of the LMRDA and their broad grant of authority to prescribe the form of the required reports. 29 U.S.C. 433, 438.

Knowledge of such information would also enable members of the public to understand which Federal agencies are contracting with employers

[10] See: *https://www.acquisition.gov/far/part-4#FAR_Subpart_4_11.*

who are engaging in persuader activity. The public and employees would benefit from knowing whether a specific Federal agency is choosing to do business with an employer that is attempting to influence the exercise of workers' rights to choose whether to organize and bargain collectively. This public exposure would allow for an open public discussion and debate about the prevalence of persuader activity and the extent to which specific Federal agencies might be indirectly supporting such activities by doing business with employers that engage in persuader activities.

Both the public and employees would benefit from knowing whether the government is choosing to do business with an employer that is frustrating, or influencing the exercise of, workers' rights to choose whether to organize and bargain collectively. It would help the public and employees to have access to full and transparent reports of such persuader expenses and activities.

D. Alternatives

There are three significant possible alternatives to the one checkbox and two lines that the Department is considering in drafting this proposed Form LM–10 modification: (1) no modification of Item 12, (2) only utilizing the checkbox modification, and (3) only utilizing the two lines. The first alternative, no modification to Item 12 at all, leaves the same reporting gaps described above and the Department believes that the public and employees are clearly served by the increased reporting. Moreover, the cost of the proposed modification is so small, especially as compared to the benefit of bridging the previously discussed information gaps, that the Department did not propose leaving the Form LM–10 as it was before the modification. The second alternative, only creating a new checkbox, would provide the public with some knowledge of which Federal contractors hired a persuader but without an easy method to identify the contractor through its Unique Entity Identifier and without a full explanation of the Federal contracting agency(ies) involved. Finally, the third alternative of adding the two lines—for entry of the Unique Entity Identifier and the Federal contracting agency(ies) involved—but not adding the checkbox would remove the clear benefit to the public and employees of ease of access involving the checkbox—as was discussed in Subsection C above, part of the benefit of the proposed modification is the ease of access to information about contractor status for the public. Without the proposed checkbox, there would be no easy way for the viewing public to search and identify relevant Form LM–10 filings. As such, the Department proposes that the full modification of Item 12 as outlined in this proposed form revision is necessary to fulfil the purpose of the Form LM–10.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Department has determined that this proposed form revision will not have a significant economic impact on a substantial number of small entities. The Department has estimated an increased cost per reporting entity of only $8.60 per employer. A five-year average of the number of employer filers for the LM–10 is 647. The Small Business Administration (SBA) standard average yearly receipts for a small business total $7.5 million.[11] Assuming all 647 entities are small entities of less than $7.5 million in revenue, the total cost of $8.60 for all 647 entities would be $5,564.20 for the resulting changes from the proposed modification of Item 12 of the Form LM–10. Further using that figure of $7.5 million, the estimated increased cost per reporting entity—a minimum of $8.60 and a maximum of $25.80, as mentioned above—represents only between 1.15 ten thousandth and 3.4 ten thousandth of a percent of the $7.5 million in yearly receipts for the average small business. Even if each were a particularly small entity of only $100,000 in revenue size and each experienced the maximum cost of $25.80, that would constitute .0258% of entity revenue, which falls far below 3%, the significant impact threshold used in other OLMS rulemakings.[12] Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501.

[11] *https://www.sba.gov/offices/headquarters/ogc_and_bd/resources/4562.*

[12] Form T–1 Rule, 85 FR 13438 (March 6, 2020). ''For this analysis, based on previous standards utilized in other regulatory analyses, the threshold for significance is 3% of annual receipts.'' *Id.*

Summary and Overview of the Proposed Form Revision

The following is a summary of the need for and objectives of the proposed form revision. A more complete discussion of various aspects of the proposal is found in the preamble.

The Department proposes to add to the Form LM–10 report a checkbox requiring certain reporting entities to indicate whether they are Federal contractors or subcontractors, as well as related information.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Specifically, employers are required to file to disclose the following in Form LM–10 filings, pursuant to LMRDA section 203 and subject to certain exemptions: payments and loans made to any union or union official; payments to any of their employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights, unless the other employees are told about these payments before or at the same time they are made; payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company, except information obtained solely for use in a judicial, administrative or arbitral proceeding; and arrangements (and payments made under these arrangements) with a labor relations consultant or other person for the purpose of persuading employees with respect to their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company, except information obtained solely for use in a judicial, administrative, or arbitral proceeding.

The Department, pursuant to the LMRDA, seeks to fill in clear and present information gaps occurring in Form LM–10 reporting, regarding filers' Federal contractor status. As has been stated above, the Department is acting because it has a clear interest in understanding the full scope of activities undertaken by employers that enter into agreements to persuade employees not to exercise these rights, including whether they benefit from Federal contracts. In addition,

separately reporting the contractor information will allow filers to quickly fill out the form with a higher level of specificity, which will allow for increased transparency, allowing the public and employees to understand whether employers engaging in the activities that require Form LM–10 reporting are party to a contract with the Federal Government.

Methodology of the Burden Estimate

For purposes of the PRA, the cost burden of the modification to the Form LM–10 proposed in this document has been calculated above and is as follows. Based upon the existing LM form estimates, the Department proposes that the modification to Item 12 will take no longer than 5 minutes to complete on average for approximately 647 filers in any given year, thus adding approximately 5 minutes of reporting burden to the existing Form LM–10 (which the current existing instructions estimate to take approximately 35 minutes to complete, including the current Item 12). The Form LM–10 is not an annually mandatory form for employers; rather, it is only necessary in fiscal years during which the employer engages in certain transactions or agreements. Further, the modification to Item 12 does not impact all Form LM–10 filers, just those that engage in persuader-related transactions—and only a subset of those filers would need to complete all of Item 12.b. In addition, only one Form LM–10 report must be filed per filing entity per necessary fiscal year. Thus, the proposed form revision does not impact the total number of Form LM–10 reports that the Department expects to receive, nor does it affect the recordkeeping burden, as the Department estimates that most employers that file and are Federal contractors or subcontractors must already retain records relevant to that status pursuant to Executive Order 13496 (Notification of Employee Rights Under Federal Labor Law). See 29 CFR part 471, in particular § 471.2(d), which states that employers must post the notice where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract. Instead, the proposed form revision would result only in an increase in reporting burden of 5 minutes per Form LM–10 and an overall increase of 3,235 burden minutes, or 53.9 burden hours, for Form LM–10 filers. However, as explained in the E.O. 12866 regulatory impact section, the Department seeks comment on whether the contractor status determination would require further review time, such as an additional 10 minutes to check with those on the employer's staff who conducted the E.O. 13496 review. If the form took an additional 15 minutes to complete the new Item 12, rather than the 5-minute estimate, then Form LM–10 filers would see an overall increase of 9,705 burden minutes, or 161.75 hours.

The proposed form revision will have no impact on the other 11 information collections approved under ICR #1245–0003. The summary of the burden below accounts for the burden for all ICs (reports) in ICR 1245–0003.

Conclusion

As this proposed form revision requires a revision to an existing information collection, the Department is submitting, contemporaneous with the publication of this document, an ICR to amend the burden estimates under OMB Control Number 1245–0003 and revise the PRA clearance to address the clearance term. A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at: *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1245-0003* (this link will be updated following publication of this proposal) or from the Department by contacting OLMS at 202–693–0123 (this is not a toll-free number)/email: *OLMSPublic@dol.gov*.

Agency: Department of Labor, Office of Labor-Management Standards.

Type of Review: Revision of a currently approved collection.

OMB Number: 1245–0003.

Title of Collection: Labor Organization and Auxiliary Reports.

Forms: LM–1—Labor Organization Information Report, LM–2, LM–3, LM–4—Labor Organization Annual Report, LM–10, Employer Report, LM–15—Trusteeship Report, LM–15A—Report on Selection of Delegates and Officers, LM–16—Terminal Trusteeship Report, LM–20—Agreement and Activities Report, LM–21—Receipts and Disbursements Report, LM–30—Labor Organization Officer and Employee Report, S–1—Surety Company Annual Report.

Affected Public: Private Sector—Business or other for-profits and not-for-profit institutions.

Estimated Number of Annual Respondents: 32,791.

Estimated Number of Responses: 35,067.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 4,644,785.

Estimated Total Annual Other Burden Cost: $0.

The Department invites comments on all aspects of the PRA analysis. The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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, and the agency's estimates evaluate associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Comments submitted in response to this document will be considered, summarized and/or included in the ICR the Department will submit to OMB for approval; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (*e.g.,* confidential business information or personally identifiable information such as a social security number).

D. Unfunded Mandates Reform

This proposed form revision will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

E. Small Business Regulatory Enforcement Act of 1996

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

based companies in domestic and export markets.

List of Subjects in 29 CFR Part 405

Employers, Reporting and recordkeeping requirements.

Signed in Washington, DC, this 31 day of August, 2022.

Jeffrey R. Freund,

Director, OLMS.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Form LM–10

BILLING CODE 4510–86–P

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget
No. 1245-003
Expires XX-XX-XXXX

FORM LM-10
EMPLOYER REPORT

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

For Official Use Only

E

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT

Part A

1. File Number E-

2. Fiscal Year Covered — From: Month/Day/Year (mm/dd/yyyy) — Through: Month/Day/Year (mm/dd/yyyy)

3. Name and address of Reporting Employer (inc. trade name, if any).
Employer
Trade Name
Attention To
Title
Mailing Address
P.O. Box, Bldg., Room No., if any
Street
City
State
Zip Code + 4

4. Name and address of President or corresponding principal officer, if different from address in Item 3.
P.O. Box, Building and Room Number, if any
Street
City
State
ZIP Code +4

5. Any other address where records necessary to verify this report will beavailable for examination.
Name
Title
Organization
P.O. Box, Building and Room Number, if any
Street
City
State
ZIP Code + 4

6. Indicate by checking the appropriate box or boxes where records necessary to verify this report will be available for examination.
Address in Item 3
Address in Item 4
Address in Item 5

7. Type of organization.
Corporation Partnership Individual Other (specify)

Signatures

Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VIII on penalties in the instructions.)*

13. Signed
Title President
President (if other title, see instructions)
On / / Date
Telephone Number

14. Signed
Title Treasurer
Treasurer (if other title, see instructions)
On / / Date
Telephone Number

Part A, Continued

Name of Reporting Employer:	File Number E-

8. Type of Reportable Activity Engaged In By Employer

Read the following questions and the accompanying instructions carefully, taking into consideration the exclusions listed in the instructions for these items, and check either "Yes" or "No" for each item. For each item that is answered "Yes", you must attach a Part B which appears on Page 3. Complete a separate Part B for each "Yes" answer to any of Items 8.a. through 8.f. Also, if the answer is "Yes" for more than one person or organization, complete a separate Part B for each person or organization. If you answer "Yes", enter the number of Part Bs that are submitted for that item in the line indicated.

DURING THE FISCAL YEAR COVERED BY THIS REPORT:

	YES	NO	If "Yes", number of Part Bs attached
8.a. **Did** you make or promise or agree to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization?	☐	☐	
8.b. **Did** you make, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing without previously or at the same time disclosing such payment to all such other employees?	☐	☐	
8.c. **Did** you make any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing?	☐	☐	
8.d. **Did** you make any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connectionwith a labor dispute in which you were involved?	☐	☐	
8.e. **Did** you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to persuade employees to exercise or notto exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or did you make any payment (including reimbursed expenses) pursuant to such an agreement or arrangement?	☐	☐	
8.f. **Did** you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to furnish you with information concerningactivities of employees or of a labor organization in connection with a labor dispute in which you were involved; or did you make any payment pursuant to such agreement or arrangement?	☐	☐	

TOTAL NUMBER OF PART Bs FOR THIS REPORT IS

Part B

Name of Reporting Employer:	File Number E-

Check Item Number (from Page 2) to which this Part B applies	ITEM 8.a	ITEM 8.b	ITEM 8.c	ITEM 8.d	ITEM 8.e	ITEM 8.f

9.a. Agreement Payment Both

9.c. Position in labor organization or with employer (if an independent labor consultant, so state).

9.b. Name and address of person with whom or through whom a separate agreement was made or to whom payments were made.

Name

P.O. Box, Building and Room Number, if any

Street

City

State ZIP Code + 4

9.d. Name and address of firm or labor organization with whom employed or affiliated.

Organization

P.O. Box, Building and Room Number, if any

Street

City

State ZIP Code + 4

10.a. Date of the promise, agreement, or arrangement pursuant to which payments or expenditures were agreed to or made.

10.b. The promise, agreement, or arrangement was:

Oral Written* Both

(*Written agreements entered into during the fiscal year must be attached.)

11.a. Date of each payment or expenditure (mm/dd/yyyy).	11.b. Amount of each payment or expenditure	11.c. Kind of each payment or expenditure (Specify whether payment or loan, and whether in cash or property)

12.a. Explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made.

12.b. If your Part B applies to Items 8.b. – 8.f., did the payments or agreements concern employees performing work pursuant to a Federal contract or subcontract?

Yes No N/A If yes, enter your Unique Entity Identifier, if you have one. Enter the Federal contracting agency(ies) that are a party to the Federal contract.

Paperwork Reduction Act Statement

Public reporting burden for this collection of information is estimated to average 40-50 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

DO NOT SEND YOUR COMPLETED FORM LM-10 TO THE ABOVE ADDRESS.

INSTRUCTIONS FOR FORM LM-10 EMPLOYER REPORT

GENERAL INSTRUCTIONS

I. WHY FILE

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of specific financial transactions or arrangements made between an employer **and** one or more of the following: a labor organization, union official, employee, or labor relations consultant. Pursuant to Section 203(a) of the LMRDA, every employer who has engaged in any such transaction or arrangement during the fiscal year must file a detailed report with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Employer Report, Form LM-10, for employers to satisfy this reporting requirement.

These reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specified payments. The reporting requirements do not address whether specific payments, transactions, or arrangements are lawful or unlawful. The fact that a particular payment, transaction, or arrangement is or is not required to be reported does not indicate whether it is or is not subject to any legal prohibition.

II. WHO MUST FILE

Any employer, as defined by the LMRDA, who has engaged in certain financial transactions or arrangements, of the type described in Section 203(a) of the Act, with any labor organization, union official, employee or labor relations consultant, **or** who has made expenditures for certain objects relating to activities of employees or a union, must file a Form LM-10. An employer required to file must complete only one Form LM-10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

NOTE: *Selected definitions from the LMRDA follow these instructions.*

III. WHAT MUST BE REPORTED

The types of financial transactions, arrangements, or expenditures which must be reported are set forth in Form LM-10. The LMRDA states that every employer involved in any such transaction or arrangement during the fiscal year must file a detailed report with the Secretary of Labor indicating the following: (1) the date of each arrangement and the date and amount of each transaction; (2) the name, address, and position of the person with whom the agreement or transaction was made; and (3) a full explanation of the circumstances of all payments made, including the terms of any agreement or understanding pursuant to which they were made.

Form LM-10 is divided into two parts, Part A and Part B. Item 8 of Part A contains six questions pertaining to reportable employer activities. Before completing any portion of the report, review these questions thoroughly and answer them, taking into account the exclusions listed in the instructions for Item 8. If the answer to each of these questions is **NO**, do not file this report. However, if the answer to any of these questions is **YES**, taking into account the applicable exclusions, complete Part A and complete a separate Part B for each **YES** answer. Also, if any of the **YES** answers applies to more than oneperson or organization, complete a separate Part B for each person or organization.

Special Reports. In addition to this report, the Secretary may require employers subject to the LMRDA to submit special reports on relevant information, including but not necessarily confined to reports involving specifically

identified personnel on particular matters referred to in the second paragraph of the instructions for Item 8.a.

While Section 203 of the LMRDA does not amend, or modify, the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, you must report activities of the type set forth in Item 8, since the LMRDA requires such reports, regardless of whether the activities are protected by Section 8(c) of the NLRA. Note, however, that the information you are required to report in response to Item 8.c does not include expenditures relating exclusively to matters protected by Section 8(c) of the NLRA, because the definition in Section 203(g) ofthe LMRDA of the term "interfere with, restrain, or coerce," which is used in Item 8.c, does not cover suchmatters.

NOTE: The text of NLRA Section 8(c) is set forth following these instructions.

IV. WHO MUST SIGN THE REPORT

The complete Form LM-10 must be signed by both the president and the treasurer, or the corresponding principal officers, of the reporting employer must sign the completed Form LM-10. A report from a sole proprietor need only bear one signature.

V. WHEN TO FILE

Each employer, as defined in the LMRDA, who has engaged in any of the transactions or arrangements described in the form and instructions must electronically file Form LM-10 *within 90 days* after the end of the employer's fiscal year.

VI. HOW TO FILE

The Form LM-10 must be completed and submitted electronically, via the Office of Labor-Management Standards (OLMS) Electronic Forms System (EFS), available on the OLMS website at www.dol.gov/olms. If you must file an amended report, follow the prompts within EFS. Filers will be able to submit a report in paper format only if they assert a temporary hardship exemption.

NOTE: Upon registering with OLMS, the signatories and preparers must enter email addresses they use to conduct business, in order to file the form via the OLMS Electronic Forms System. While the email addresses will not appear on the report, OLMS may use the email address of the signatories and any preparers to contact the employer concerning LMRDA compliance.

If you have difficulty navigating the software, or have questions about its functions and features, call the OLMS Help Desk at: (866) 401-1109. For questions concerning the reporting requirements, please send an e-mail to OLMS-Public@dol.gov or call (202) 693-0123.

TEMPORARY HARDSHIP EXEMPTION:

If an employer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may assert a temporary hardship exemption to prepareand submit Form LM-10 in paper format by the requireddue date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date.

Unanticipated technical difficulties that may result in additional delays should be brought to the attention of OLMS by email at OLMS-Public@dol.gov, or by phone at (202) 693-0123.

NOTE: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. PUBLIC DISCLOSURE

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. Reports may be viewed and downloaded from the website at www.unionreports.gov. For assistance, please email OLMS-Public@dol.gov or call (202) 693-0123.

VIII. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer or corresponding principal officers of the reporting employer required to sign Form LM-10, are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting employer and officers required to sign Form LM-10 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA provides that, "whenever it shall appear that any person has violated or is about to violate any of theprovisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. RECORDKEEPING

The individuals required to file Form LM-10 are responsible for maintaining records which will provide insufficient detail the information and data necessary to verify the accuracy and completeness of the report. You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the reportincluding, but not limited to, vouchers, worksheets, and applicable resolutions.

X. COMPLETING FORM LM-10

Read the instructions carefully before completing Form LM-10.

Entering Dollars. In all Items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the employer has nothing to report.

PART A (ITEMS 1 – 8)

1. FILE NUMBER—The software will enter the five-digit file number assigned by OLMS for the reporting individual or organization here and at the top of each page of Form LM-10. If the number is incorrect or you do not have the number on file and cannot obtain it from past reports, the number can be obtained at www.unionreports.gov, emailing OLMS at OLMS-Public@dol.gov, or calling OLMS at (202) 693-0123.

NOTE: If you have previously filed a Form LM-10 and seek to search for past report to obtain your employer file number, please visit the OLMS Online Public Disclosure Room and select "View Other Reports". You have the option to select your employer's name or organization from the drop-down menu. This menu contains all the individuals and organizations from whom OLMS has received employer reports.

2. FISCAL YEAR—Enter the beginning and ending dates of the fiscal year covered in this report. The report must not cover more than a 12-month period. For example, if the reporting employer's 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry.

3. NAME AND MAILING ADDRESS—Enter the full legal name of the reporting employer, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number.

4. NAME AND ADDRESS OF PRINCIPAL OFFICER—Enter the name and business address of the presidentor corresponding principal officer if it is different from the address in Item 3.

5. ANY OTHER ADDRESS WHERE RECORDS ARE AVAILABLE—If you maintain any of the records necessary to verify this report at an address different from the addresses listed in Items 3 or 4, enter the appropriate name and address in Item 5.

6. RECORDS ARE AVAILABLE—Select the appropriate box(es) where the records necessary to verify this report are available for examination.

7. TYPE OF ORGANIZATION—Select the appropriate box which describes the reporting employer. If none of the choices apply, specify thetype of reporting employer filing this report.

8. TYPE OF REPORTABLE ACTIVITY ENGAGED IN BY EMPLOYER—Read each question carefully, then read the exclusions listed below for each question. Select the appropriate **YES** or **NO** box next to each question; do not leave both boxes blank. If the answer to any of these questions is YES, indicate the number of Part Bs necessary for completing that question. With each question, complete a separate Part B for every person or organization with whom a reportable agreement was made as indicated by a **YES** answer. For example, if you answer Item 8.e **YES**, and you had agreements with two different labor relations consultants during the fiscal year, then you would complete two Part Bs for that question.

8.a. In answering Item 8.a, exclude the following:

(1) Payments of the kind referred to in Section 302(c) of the Labor Management Relations Act, 1947, as amended (LMRA); **and** (2) Payments or loans made in the regular course of business as a national or state bank, credit union, insurance company, savings and loan association, or other credit institution. (The text of Section 302(c) of the LMRA is set forth below.)

None of the following require a **YES** answer:

(a) payments made in the regular course of business to a class of persons determined without regard to whether they are, or are identified with, labor organizations and whose relationship to labor organizations is not ordinarily known to or readily ascertainable by the payer, for example, interest on bonds and dividends on stock issued by the reporting employer; (b) loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization; (c) payments made to any regular employee as wages or other compensation for service as a regular employee of the employer, or by reason ofhis service as an employee

of such employer, for periods during regular working hours in which such employee engages in activities other than productive work, if the payments for such periods of time are:

(1) required by law or a bona fide collective bargaining agreement, or (2) made pursuant to a custom or practice under such a collective agreement, or (3) made pursuant to a policy, custom, or practice with respect to employment in the establishment whichthe employer has adopted without regard to any holding by such employee of a position with a labor organization; (d) initiation fees and assessments paid to labor organizations and deducted from the wages of employees pursuant to individual assignments meeting the terms specified in paragraph (4) of Section302(c) of the LMRA; (e) sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization; for example, traditional Christmas gifts.

8.b. In answering Item *8.b,* ***exclude*** expenditures made to any regular officer, supervisor, or employee as compensation for services as a regular officer, supervisor, or employee.

8.c. In answering Item *8.c,* ***exclude*** expenditures relating exclusively to matters protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA).

NOTE: The definition set forth in Section 203(g) of the LMRDA for the term "interfere with, restrain, or coerce" excludes matters protected by Section 8(c) of the NLRA. Therefore, expenditures related exclusively to such matters protected by Section 8(c) are not required to be reported in this question. (The text of Section 8(c) of the NLRA is set forth below.)

8.d. In answering Item *8.d,* ***exclude*** the following:

(1) Information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; **and** (2) Expenditures made to any regular officer, supervisor, or employee as compensation for service as a regular officer, supervisor, or employee.

8.e. In answering Item *8.e,* ***exclude*** agreements or arrangements covering services related exclusively to the following: (1) giving you advice; **or** (2) agreeing to represent you before anycourt proceeding, administrative agency, or tribunal of arbitration; **or** (3) engaging in collective bargaining on your behalf with respect to wages, hours, or other terms or conditions of employment or negotiating an agreement or any question arising thereunder.

If an agreement or arrangement covering the listed services also covers other activities referred to in the initial question, the exclusion does not apply and the information required for the entire agreement must be reported.

8.f. In answering Item *8.f,* ***exclude*** agreements or arrangements for obtaining information solely for use in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

PART B (ITEMS 9 – 12)

You must complete a separate Part B for each **YES** answer in Item 8 and for each separate reportable transaction as described in Section III of these instructions. At the top of Part B, check the appropriate Item number box to which this Part B applies.

9. AGREEMENT OR PAYMENT

9.a. Check the appropriate box describing whether this Part B covers an agreement, apayment, or both.

9.b Enter the name and complete mailing address of the individual with whom you made a reportable agreement or to whom payments were made. Enter the name and address of thefirm or organization in Item 9.d.

9.c. Give the position (or title) of each personlisted in Item 9.b. as follows:

- If the answer to Item 8.a. in Part A is **YES**, indicate the position in the labor organization of each person listed in Item 9.b.
- If the answer to Item 8.b. in Part A is **YES,** identify the position in the reporting firm of each person listed inItem 9b.
- If the answer to Item 8.c. **or** Item 8.d. in Part A is **YES**, indicate the position in the firm or labor organization of each person listed in Item 9.b.
- If the answer to Item 8.e. **or** Item 8.f. in Part A is **YES**, indicate the position of each person in a firm or the occupation of each person listed in Item 9.b.

9.d. Enter the full name and address of the firm, group, or labor organization to whom payments were made, with whom the agreement or arrangement was made, or with whom the person listed in Item 9.b. was employed or affiliated.

10. DATE AND NATURE OF PROMISE, AGREEMENT, OR ARRANGEMENT

10.a. If you agreed or promised to make paymentsor if you actually made payments during the fiscal year pursuant to a promise, agreement, or arrangement, indicate the date on which either the promise was made or the agreement or arrangement was entered into. If the payments listed in Item 11 are unrelated to an agreement or arrangement, enter **NONE** in this section.

10.b Indicate whether the promise, agreement, or

arrangement was oral, written, or both. Attach or upload a copy of any written agreement entered into during the fiscal year covered in this report.

11. PAYMENT OR EXPENDITURE

11.a. Enter the date of each payment referred to in Item 9.

11.b. If the form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at thetime of the transfer.

11.c. Indicate whether the payment was either a remuneration, gift, or loan. Specify the method of payment (for example, cash, check, or securities, or other property).

12. CIRCUMSTANCES OF ALL PAYMENTS

12.a. Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises **or** payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements, including fully identifying the subject group of employees (i.e., the particular unit or division in which those employees work).

In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons listed in Item 9.b, or the firm, group, or labor organization named in Item 9.d. If you made payments, promises, or agreements through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment, promise, or agreement. Any incomplete responses or unclear explanations will render this report deficient.

12. b. If you are completing Part B because you checked **YES** to any item in Items 8.b. through 8.f., did the payments or agreements concern employees performing work pursuant to a Federal contract or subcontract? Select the appropriate **YES** or **NO** box below the question; if you checked **YES** to just Item 8.a., then the **N/A** box will automatically be checked. Do not leave all three boxes blank. If the answer to the question is **YES**, you must indicate your Unique Entity Identifier. If you do not have a Unique Entity Identifier, state on the form that you do not have one. Enter the Federal contracting agency or agencies that are a party to the Federal contract(s). If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency. For a definition of Federal "contract," "contracting agency," "contractor," "government contract," "modification of a contract," "prime contractor," "subcontract," and "subcontractor," please see the Executive Order 13496 (Notification of Employee Rights Under Federal Labor Laws) implementing regulations at 29 CFR § 471.1 (excerpts below). Any incomplete responses or unclear explanations will render this report deficient.

SIGNATURES

13-14. SIGNATURES—The completed Form LM-10 which is filed with OLMS must be electronically signed by both the president and treasurer, or corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear **one** signature which you should enter in Item 13. Otherwise, this report must bear **two (2)** signatures.

If the report is signed by an officer other than the president and/or treasurer, so indicate in Items 13 and/or 14 by so indicate by entering the correct title in the title field next to the signature. Then you must Save and revalidate the form. Once the form has passed validation, then you must click to sign the report.

NOTE: Upon registering with OLMS, the signatories and preparers must enter email addresses they use to conduct business, in order to file the form via the OLMS Electronic Forms System. While the email addresses will not appear on the report, OLMS may use the email address of the signatories and any preparers to contact the employer concerning LMRDA compliance.

Enter the telephone number used by the signatories to conduct official business. You do not have to report a private, unlisted telephone number.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. For the purposes of titles I, II, III, IV, V except section 505), and VI of this Act-

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any Stateand any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity,business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended. (29 U.S.C. 402 (c)).

(d) "Person" includes one or more individuals, labor

organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trusteesin cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any groupor association of employers engaged in an industry affecting commerce

(1) which is, with respect to employees engaged inan industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or

(2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditionsof work, and includes any person acting directlyor indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or becauseof exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless ofwhether the disputants stand in the proximate relation of employer and employee.

(h) Not applicable.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce andincludes any organization of any kind, any agency, or employee representation committee,group, association, or plan so engaged in whichemployees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body. (29 U.S.C. 402(i))

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it –

1. Is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or
2. although not certified, is a national or international labor organization or a local labor organization recognized or acting asthe representative of employees or an employer or employers engaged in an industry affecting commerce; or
3. has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2) ; or
4. has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
5. is a conference, general committee, joint or system board, or joint council, subordinateto a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) Not applicable.

(l) Not applicable.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, orother executive functions of a labor organization,and any member of its executive board or similargoverning body.

(o) Not applicable.

(p) Not applicable.

(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service

personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument,or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Employers

Sec. 203.

(a) Every employer who in any fiscal year made-

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward,or other representative of a labor organization, or employee of any labor organization, except

(a) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and

(b) payments of the kind referred to in section 302 (c) of the Labor Management Relations Act, 1947, as amended;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or asthe manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees, or a labor organization in connection with a labor dispute involving such employer, except for usesolely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4);

shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showingin detail the date and amount of each such payment,loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or notto exercise, or persuade employees as tothe manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a reportwith the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of

its disbursementsof any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

(d) Nothing contained in this section shall be require any employer or other person to file areport covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(e) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to filea report in connection with services rendered to such employer nor shall any employer be required to file a report covering expendituresmade to any regular officer, supervisor, or employee of an employer as compensation forservice as a regular officer, supervisor, or employee of such employer.

(f) Nothing contained in this section shall be construedas an amendment to, or modification of the rights protected by, section 8 (c) of the National Labor Relations Act, as amended

(g) The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would,under section 8(a) of such Act, constitute an unfair labor practice.

SECTION 302(c) OF THE LABOR MANAGEMENTRELATIONS ACT, 1947, AS AMENDED

"(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, ordispute in the absence of fraud or duress; (3) with respect tothe sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement,which-ever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their familiesand dependents, for medical or hospital care, pensions onretirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailedbasis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such dead- lock, such agreement provides that the two groups shall agree on animpartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results ofwhich shall be available for inspection by interested persons at the principal office of the trust fund and at suchother places as may be designated in such written agreement; and (C) such payments as are intended to beused for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided,

That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of thepurposes set forth in section 5(b) of the Labor ManagementCooperation Act of 1978."

OLMS has adopted the following definitions from Executive Order 13496 Implementing Regulations at 29 CFR § 471.1

Contract means, unless otherwise indicated, any Government contract or subcontract.

Contracting agency means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, that enters into contracts.

Contractor means, unless otherwise indicated, a prime contractor or subcontractor.

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term "personal property," as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "non-personal services" as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federal financial assistance, as defined in 29 CFR 31.2.

Modification of a Contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

Prime Contractor means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of [29 C.F.R. part 471], includes any person who has held a contract subject to the Executive Order and [29 C.F.R. part 471].

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or non-personal services that, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of [29 C.F.R. part 471], any person who has held a subcontract subject to the Executive Order and [29 C.F.R. part 471].

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if youhave any questions concerning LMRDA and CSRA reporting requirements.

Atlanta-Nashville
Boston-Buffalo
Chicago
Cincinnati-Cleveland
Dallas-New Orleans
Denver-St. Louis
Detroit-Milwaukee
Los Angeles
Philadelphia-Pittsburgh
New York
San Francisco-Seattle
Washington, D.C.

Copies of labor organization annual financial reports,

employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website.

Code of Federal Regulations (CFR) documents are also available on the Internet at: http://www.dol.gov/olms.

Additionally, you can call the OLMS national office at (202) 693-0123 or email OLMS-Public@dol.gov.

OMB Control Number 1245-0003
Expiration Date: XX-XX-XXXX
Revised XX 2022

[FR Doc. 2022–19229 Filed 9–12–22; 8:45 am]
BILLING CODE 4510–86–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0731]

RIN 1625–AA00

Safety Zone; Mission Bay Closure, San Diego, CA

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of Mission Bay. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the California Department of Fish and Wildlife (CDFW) Oil Spill Prevention and Response (OSPR) Sensitive Site Strategy Evaluation Program (SSSEP) boom deployment exercise. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector San Diego. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 13, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0731 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LTJG Shera Kim, Waterways Management, U.S. Coast guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On November 15, 2022, the Coast Guard will be working in conjunction with the California Department of Fish and Wildlife and local Oil Spill Response Organization to conduct boom deployment exercises from 9 a.m. to 12 p.m. Contractors will bring up to 12000-feet of floating oil boom aboard a workboat and deploy Area Contingency Plan (ACP)–6 Geographic Response Strategies (GRS). The Captain of the Port San Diego (COTP) has determined that potential hazards associated with the boom deployment exercise would be a safety concern for anyone within a 100-yard radius of the boom. The COTP is proposing to establish a safety zone from 9 a.m. to noon on November 15, 2022.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 100-yard radius of the boom before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9 a.m. until noon on November 15, 2022. The safety zone would cover all navigable waters within 100 yards of a boom in Mission Bay located across the entrance channel from the shoreline north of Mariners Cove inlet to a point south of Mission Bay Drive bridge on the Quivira Basin shoreline. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 a.m. until noon boom deployment exercise. 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 we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

Office of Management and Budget (OMB).

This regulatory action determination is based on safety zone being of a limited three hour duration, limited to a relatively small geographic area, and the presence of safety hazards in the area encompassing the Mission Bay Entrance.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 3 hours that would prohibit entry within 100 yards of the boom. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0731 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–0731 to read as follows:

§ 165.T11–0731 Safety Zone; Mission Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone: Mission Bay located across the entrance channel from the shoreline north of Mariners Cove inlet to a point south of Mission Bay Drive bridge on the Quivira Basin shoreline.

(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 San Diego (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9 a.m. until noon on November 15, 2022.

Dated: September 7, 2022.

J.W. Spitler,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2022–19777 Filed 9–12–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0443; FRL–10193–01–R1]

Air Plan Approval; Rhode Island; Prevention of Significant Deterioration Infrastructure State Implementation Plan Elements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving three elements of a State Implementation Plan (SIP) revision, which was submitted by the State of Rhode Island on December 6, 2017. This revision addressed the infrastructure requirements of the Clean Air Act (CAA or the Act) for the 2012 annual fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). On May 31, 2022, EPA approved much of the submission, but did not act on three elements related to the infrastructure requirement to have a comprehensive Prevention of Significant Deterioration (PSD) program. In today's action, EPA is approving the three remaining elements of the state's December 2017 infrastructure SIP submittal based on a previous EPA approval of Rhode Island's Air Pollution Control Regulation (APCR) No. 9. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before October 13, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0443 at *https://www.regulations.gov,* or via email to *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this issue of the **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this issue of the **Federal Register**.

Dated: September 7, 2022.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–19694 Filed 9–12–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 5b

RIN 0970–AC92

Privacy Act; Implementation

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS or the Department).

ACTION: Notice of proposed rulemaking.

SUMMARY: HHS proposes to exempt certain records in an existing system of records maintained by OCSE within ACF from the accounting, access, and amendment requirements of the Privacy Act. The affected system of records is *OCSE Federal Case Registry of Child Support Orders, HHS/ACF/OCSE,* System No. 09–80–0385. Only case files marked with the Family Violence Indicator (FVI) are proposed to be exempted, to align with a restriction in the Social Security Act which prohibits disclosure of case files marked with the FVI to anyone other than a court or agent of a court, to avoid harm to the custodial parent or the child of such parent. Elsewhere in this issue of the **Federal Register**, HHS/ACF has published an updated system of records notice (SORN) for system 09–80–0385 for public notice and comment.

DATES: Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before November 14, 2022.

ADDRESSES: You may submit comments, identified by [docket number ACF–2022–0003 and/or Regulatory Information Number (RIN) number 0970–AC92], by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, *Attention:* Division of Policy and Training, 330 C Street SW, Washington, DC 2020, Attention: Tricia John.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: General questions about the proposed exemptions may be submitted to Yvette Riddick, Director, Division of Policy and Training, Office of Child Support Enforcement, *Yvette.Riddick@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a (hereafter abbreviated ''Privacy Act'' or ''Act''), governs how the U.S. Government collects, maintains, uses, and disseminates records about individuals that are maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

Under the Privacy Act, individuals have access and amendment rights with respect to records about them in a federal agency system of records, and the right to seek an accounting of certain disclosures made of the records about them, but the Act permits certain types of systems of records (identified in subsections (j) and (k) of the Act) to be exempted from those, and other, requirements of the Act. Subsection (k)(2) permits the head of an agency to promulgate rules to exempt investigatory material compiled for law enforcement purposes from requirements including those listed in 5 U.S.C. 552a(c)(3) and (d)(1) through (4)—subject to a limitation stated in 5 U.S.C. 552a(k)(2). The limitation is that if, as a result of the agency's maintenance of the material, the subject individual is denied any right, privilege, or benefit that the individual would otherwise be entitled by federal law or for which the individual would otherwise be eligible, the exemptions will apply only to confidential source identifying material (*i.e.,* material that would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence).

The system proposed for exemption, *OCSE Federal Case Registry of Child Support Orders,* HHS/ACF/OCSE, System No. 09–80–0385 (hereafter abbreviated ''FCR''), is a Privacy Act system containing investigatory material compiled for law enforcement purposes. The system of records was established August 24, 1998 (see 63 FR 45080) and was last modified in full on April 2, 2015 (see 80 FR 17912) and partially updated on February 14, 2018 (see 83 FR 6591). FCR records are compiled to assist states in administering programs under 42 U.S.C. 651 to 669b (title IV–D of the Social Security Act) to improve states' abilities to locate parents and collect child support. OCSE is required to compare records transmitted to or maintained within the FCR to records maintained within HHS/ACF's National Directory of New Hires and other federal agencies' databases and to disclose information about the individuals within the records to state child support agencies or other authorized persons. The information in the FCR assists state child support agencies or other authorized persons to locate individuals who are involved in child support cases and their employment and asset information. The FCR also conducts FCR-to-FCR comparisons to locate information about individuals who are involved in child support cases in more than one state and provides the information to those states. Additional purposes of the FCR are specified in sections 453 and 463 of the Social Security Act (42 U.S.C. 653, 663) and include assisting states in administering programs under 42 U.S.C. 601 to 619 (title IV–A of the Social Security Act); assisting states in carrying out their responsibilities under child and family services programs operated under 42 U.S.C. 621 through 629m (title IV–B of the Social Security Act); assisting Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (title IV–E of the Social Security Act); providing individuals' states of residence sought pursuant to the Convention on the Civil Aspects of International Child Abduction to authorized persons in a Central Authority; assisting the Attorney General of the United States in locating any parent or child for the purpose of enforcing state or federal law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination; and assisting the Secretary of the Treasury in administering the sections of the Internal Revenue Code that grant tax benefits based on support or residence of children. FCR records, without personal identifiers, are also available for research purposes likely to contribute to achieving the purposes of the Temporary Assistance for Needy Families (TANF) or the federal/state child support program.

A disclosure prohibition in section 453(b)(2) of the Social Security Act

(42 U.S.C. 653(b)(2)) applies to FCR case files marked with the FVI; it prohibits the disclosure of information from the FCR if a state has notified OCSE that the state has reasonable evidence of domestic violence or child abuse and that disclosure of such information could be harmful to the custodial parent or child. *See also* 45 CFR 303.21(e) (describing safeguarding requirements for files marked with the FVI). The proposed exemptions from the Privacy Act's accounting, access, and amendment requirements will apply only to FCR case files marked with the FVI. The exemptions will apply to the entire contents of such files. The FVI indicates there is reasonable evidence of domestic violence or child abuse.

II. Exemption Rationales

The proposed exemptions are necessary to align with the disclosure restriction in section 453(b)(2) of the Social Security Act prohibiting disclosure of case files marked with the FVI to anyone other than a court or agent of a court, to avoid harm to custodial parents and children of such parents. The specific rationales that support the exemptions, as to each affected Privacy Act provision, are as follows:

• *Subsection (c)(3).* Exempting files marked FVI from the requirement to provide an accounting of disclosures to record subjects is necessary to avoid revealing to a subject individual the identity of persons receiving disclosures from the file, to protect them from unwanted contacts by subject individuals. A subject individual might seek to contact and harass disclosure recipients identified in an accounting in an attempt to get them to reveal protected information in the file about the custodial parent and child of the custodial parent (such as their address information) and about sources who provided family violence-related information in the file and the nature of the information they provided, which if revealed to the subject individual would enable the subject individual or others acting in concert with the subject individual to harm, threaten, harass, or retaliate against the custodial parent, child, and sources; intimidate them from testifying or from applying for child support enforcement services; or improperly influence their testimony and interfere with court proceedings. In instances in which sources were expressly promised confidentiality by the Government in exchange for information they provided, revealing their identities would also violate those express promises of confidentiality.

• *Subsection (d)(1).* Exempting files marked FVI from access by record subjects is necessary to prevent a subject individual from learning, directly from the file, protected information in the file about the custodial parent and child of the custodial parent (such as their address information) and about sources who provided family violence-related information in the file and the nature of the information they provided, resulting in the same harms described above.

• *Subsection (d)(2) through (4).* Exempting files marked FVI from the Privacy Act's amendment provisions is necessary because any discussion of the contents of a record sought to be amended in such a file, as required to process the amendment request, would reveal protected information in the file in violation of 42 U.S.C. 653(b)(2).

Accordingly, pursuant to 5 U.S.C. 552a(k)(2), the Department proposes to exempt files marked FVI in system of records 09–80–0385 *OCSE Federal Case Registry of Child Support Orders, HHS/ACF/OCSE,* from the access, amendment, and accounting of disclosures provisions of the Privacy Act (5 U.S.C. 552a(c)(3) and (d)(1) through (4)), to the extent of, and based on, the specific rationales stated above. Notwithstanding the exemptions, ACF/OCSE will consider any requests for access, amendment, or accountings of disclosures that are addressed to the System Manager as provided in the SORN for system of records 09–80–0385.

This proposed rule would amend 45 CFR 5b.11(b)(3)(ii) of the Department's Privacy Act regulations to read ''Pursuant to subsection (k)(2) of the Privacy Act'' instead of ''[Reserved]'' and to list this system of records at a newly added (b)(3)(ii)(A), followed by a newly added (b)(3)(ii)(B) stating ''[Reserved].'' We request public comment on these proposed exemptions.

III. Paperwork Reduction Act

No new information collection requirements are imposed by this regulation.

IV. Analysis of Impacts

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant, during a time when public assistance funds are critically needed.

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this NPRM is significant and was accordingly reviewed by OMB.

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $164 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will result in an annual expenditure of $164 million or more.

V. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on states or families. This regulation will not have an adverse impact on family well-being as defined in the legislation.

VI. Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law,

unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order 13132.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on June 6, 2022.

List of Subjects in 45 CFR Part 5b

Privacy.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 5b as set forth below:

PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Amend § 5b.11 by adding paragraph (b)(3)(ii) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(3) * * *

(ii) Pursuant to subsection (k)(2) of the Privacy Act:

(A) OCSE Federal Case Registry of Child Support Orders (FCR), HHS/ACF/OCSE, 09–80–0385; only records marked with the Family Violence Indicator are exempt, based on the requirements of 42 U.S.C. 653(b)(2).

(B) [Reserved]

* * * * *

[FR Doc. 2022–19854 Filed 9–12–22; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220830–0178]

RIN 0648–BL41

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Whiting Utilization in the At-Sea Sectors

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulatory amendments that would apply to the Pacific Coast Groundfish Trawl Rationalization Program participants that operate in the non-tribal Pacific whiting fishery. This rulemaking proposes to adjust the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery from May 15 to May 1, remove from regulation the mothership catcher vessel (MSCV) processor obligation deadline of November 30, remove from regulation the Mothership (MS) processor cap of 45 percent, and provide the ability to operate as a Catcher/Processor (CP) and an MS in the same year. This action is necessary to provide MS sector participants with greater operational flexibility by modifying specific regulations that have been identified as potentially contributing to lower attainment of the Pacific whiting allocation compared to the CP and shoreside Pacific whiting sectors. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Coast Groundfish Fishery Management Plan, and other applicable laws.

DATES: Comments must be received by October 13, 2022.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2022–0058 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–2022–0058 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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 *https://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).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS and to *https://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.

Electronic Access

This rulemaking is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov/.* Background information and analytical documents (Analysis) are available at the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/species/west-coast-groundfish.html* and at the Pacific Fishery Management Council's website at *https://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Abbie Moyer, phone: 206–305–9601, or email: *abbie.moyer@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS and the Pacific Fisheries Management Council (Council) manage the groundfish fisheries in the exclusive economic zone seaward of California, Oregon, and Washington under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 660.

Background

This proposed rule would revise regulations that may be unnecessarily constraining, in order to provide increased operational flexibility in the Pacific whiting fishery and increase the Mothership (MS) sector's ability to utilize its Pacific whiting allocation, while maintaining fair and equitable access to Pacific whiting by all sectors of the program. Specifically, this rule proposes to adjust the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery from May 15 to May 1, remove from regulation the catcher vessel (MSCV) processor obligation deadline of November 30, remove from regulation the MS processor cap of 45 percent, and provide the ability for vessels to operate as a Catcher/Processor (CP) and an MS in the same year. The following sections of this preamble provide (1) a description of the non-tribal Pacific whiting fishery; (2) the need for action; and (3) the proposed regulations.

A Description of the Non-Tribal Pacific Whiting Fishery

Pacific Whiting Fishery

In January 2011, NMFS implemented a trawl rationalization program, a catch share system, for the Pacific coast groundfish fishery's trawl fleet. The program was adopted through Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) (75 FR 78344; December 15, 2010) and is a type of limited access privilege program under the MSA. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. The program consists of cooperatives for the at-sea MS and CP fleets that target and process Pacific whiting (or the at-sea trawl fleet), and an individual fishing quota (IFQ) program for the shorebased trawl fleet that targets both Pacific whiting and a wide range of other groundfish species (or the Shorebased IFQ Program).

The at-sea trawl fleet consists of fishery participants harvesting and processing Pacific whiting and is further divided as follows: (1) The Pacific whiting CP sector, which has been operating under the Pacific Whiting Conservation Cooperative (PWCC) since 1997 and was formalized for management with the implementation of Amendment 20 (the CP Co-op Program); and (2) the Pacific whiting MS sector (MS Co-op Program). The MS sector is made up of mothership catcher vessels (MSCVs), which harvest fish, and motherships, which process the fish at-sea. The MS sector program may include multiple co-ops where vessels pool their harvest together to form fishing cooperatives, as well as vessels not associated with a co-op (*i.e.,* the ''non-co-op'' segment of the MS fishery). In March of 2011, the owners of all 37 MSCV permits formed a co-op called the ''Whiting Mothership Cooperative (WMC)''. Every year since then, all participants in the sector have operated in the co-op. One of the primary purposes of the WMC is to minimize the bycatch of constraining rockfish species and Chinook salmon.

The shoreside Pacific whiting sector was grouped into the Shorebased IFQ Program during the development of Amendment 20. Vessels in this fishery target Pacific whiting with midwater trawl gear. Fishery participants must have quota pounds to harvest Pacific whiting catch and associated bycatch. About half of the shoreside Pacific whiting vessels also cross-participate in the MS fishery (*i.e.,* MSCV). Within the shoreside Pacific whiting fishery, there is the Shoreside Whiting Cooperative, which is voluntarily made up of participating vessels, and is not formally recognized in the groundfish regulations. Historically, approximately two-thirds of shoreside Pacific whiting vessels have participated in the coop between 2012–2018.

Catch allocations for these subsectors are based on formulas set in Amendment 21 to the FMP, or are determined during the biennial management process. The total allowable catch (TAC) for Pacific whiting is set annually outside of the Council's harvest specifications process. The TAC is set through a bilateral process with Canada, consistent with the Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003 (commonly known as the Pacific Hake/Whiting Treaty) where 73.88 percent of the TAC is allocated to U.S. fisheries, of which 17.5 percent is allocated to the Tribal sector. In the fall of each fishing year, an unused portion of the Tribal allocation may be reapportioned to the non-Tribal sectors. This often results in an initial allocation to the non-tribal sectors and then a post-reapportionment allocation. Species in the Groundfish FMP are managed differently between the at-sea sectors and the shoreside fishery. For the shoreside Pacific whiting fishery, participants must have quota pounds (QPs) to cover all catch of any IFQ species and some non-IFQ species are managed with trip limits. For the at-sea fisheries, set asides are established for select groundfish species within the biennial harvest specifications process. Set asides are managed on an annual basis unless there is a risk of exceeding a harvest specification, an unforeseen impact on other fisheries, or a conservation concern.

Current Management Programs Affected by the Proposed Action

In order to encourage more informed public comment, this proposed rule includes a general description of the program requirements that are proposed to change under this action.

Season Start Date

The primary Pacific whiting season for all three non-tribal Pacific whiting sectors North of 40°30′ N lat. begins on May 15th but historically has varied since the conversion of the fishery from foreign to domestic, when the start date was set at January 1. In 1992, the start date was moved to April 15 to align with when aggregations of Pacific whiting were available to harvest. To minimize bycatch of Chinook salmon, which was unusually high in 1995, the season was moved back to May 15 in 1996 for some areas. The season start dates are, in part, meant to limit targeting on Pacific whiting fishing when listed Chinook salmon are most likely to be taken incidentally. The dates have fluctuated between April and June in the shorebased fishery to accommodate participation in the shoreside, at-sea, and Alaska pollock fisheries. The June 15 start date for shoreside Pacific whiting (North of 40°30′ N lat.) was moved to be consistent with the May 15 start date in the at-sea sectors in 2016. Fishing south of 40°30′ N lat. can start April 15 (80 FR 19034, April 9, 2015). The primary season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the primary season for that sector is closed by NMFS (section 2.0 of the Analysis) (see **ADDRESSES**).

Mothership Obligation

Each year by November 30th, a MSCV must declare to NMFS whether they will be participating in the co-op or non-co-op fishery and to which processor they are obligating their catch history assignment (CHA). CHAs cannot be divided or separated from the initial permit it was issued under during Amendment 20. A MSCV can be released from a processor obligation through a mutual agreement exception (MAE) and commit to a new MS permit.

This management measure was intended to provide for some short-term certainty for MS companies in business planning for the upcoming fishing season. It also avoided some of the penalty components associated with the linkage provision (*i.e.,* having to go into the non-co-op fishery for a year before committing to a new processor) (section 3.0.1 of the Analysis).

Mothership Processing Cap

Under Amendment 20, accumulation limits were imposed to prevent excessive concentration of catch allocations within sectors (there is no cumulative cap across sectors). The MS sector is the only sector with a processing limit. The Council set the processing cap for the MS sector at 45 percent (described at 50 CFR 660.150(f)(3)(i)), which was intended to inhibit consolidation by ensuring that at least three MS companies would participate in the fishery. There are also two additional accumulation limits in the MS fishery as MSCVs are held to a

20 percent accumulation limit of the Pacific whiting CHA and a catch limit of 30 percent of the allocation (section 3.1.1 of the Analysis). A processing limit was considered for the CP sector as a part of the follow-on catch share actions; however, it was rejected in favor of an ownership limit (84 FR 68799; December 17, 2019). For the Shorebased IFQ Program, first receivers are not restricted on the amount of IFQ fish they can process, although they are subject to the same quota share (QS) ownership restrictions as other IFQ participants (10 percent for Pacific whiting). Shoreside vessels are also restricted to annual vessel limits, which is 15 percent for Pacific whiting.

MS Processor & CP Permit Transfer

Regulations prohibit processing vessels in the at-sea Pacific whiting fishery from operating as both a MS and CP during the same calendar year (50 CFR 660.112(d)(3) and (e)(3)). The origin of this prohibition dates to the implementation of the Pacific whiting sector allocations in 1997. At that time, specific limitations were placed on CP vessels to prevent these higher capacity vessels from harvesting other sector's allocations. During the development of Amendment 20, there was extensive consideration of permitting a processor to operate as a CP and an MS in the same fishing year. The Council ultimately decided to maintain the original prohibition within Amendment 20. To help ensure market stability in the separate sectors, the regulations do not allow processing platforms to switch between the MS and CP sectors in a single calendar year. Restricting CPs from also engaging in MS activity also was intended to protect existing MS processors in the sector and help ensure that they benefit from rationalization in addition to MSCVs (section 3.2.1 of the Analysis).

Additionally, as described in 50 CFR 660.25, CP or MS endorsed permits are only allowed two transfers within their respective sectors in a calendar year, and the second transfer can only be back to the original vessel. Under Amendment 20, the Council considered having zero or only one transfer allowed (Appendix B to the Amendment 20 Final Environmental Impact Statement (FEIS)). The Council ultimately chose a two-transfer allowance to provide flexibility if a MS were unable to process catch (*e.g.,* due to fire or a breakdown) or if unexpected opportunities arose in other fisheries (such as pollock) and another MS would be able to fill that role. For the CP sector, a limit of two transfers was also recommended as part of the Council's final action in November 2008, which was a change from the single transfer recommended by the Council in June 2008 (section 3.2.1 of the Analysis).

In April of 2020, NMFS implemented an emergency rule suspending the prohibition on an at-sea Pacific whiting processing vessel from operating as a MS and CP in the same calendar year after one company that owned a MS permit was not able to process as a MS in the 2020 season due to unforeseen health, economic, and safety risks and instead was operating only as a CP (85 FR 37027, June 19, 2020). This left three MSCVs who had previously committed to this MS without a platform to deliver their catch (section 3.2.1 of the Analysis). Under this emergency rule, a processor could be simultaneously registered to a MS and a CP-endorsed permit within the calendar year and would declare into one of the fisheries prior to leaving port. A second emergency rule was implemented in May 2021 which again suspended the prohibition on dual registration (86 FR 26439, May 14, 2021).

Need for Action

The MS sector has experienced lower than average attainment than the other non-tribal commercial Pacific whiting sectors since the start of the trawl catch share program, particularly since 2017. Causes of under-attainment have been attributed to the limited availability of motherships for delivery of catch due to seasonal overlap with the Alaskan Eastern Bering Sea walleye pollock fishery. In addition, existing regulations have been identified as hindering some catcher vessels' opportunity to harvest or deliver fish to MS processors, by limiting the ability for available processors to accept fish from catcher vessels. These obstacles to harvesting and processing in the MS sector have led to reduced economic opportunity for participants.

Section 2.2.1 of the Analysis found that from 2017–2019, the shoreside sector averaged attainment of 92 percent of the initial Pacific whiting allocations while the MS sector averaged 71 percent and the CP sector 100 percent (83, 64, and 90 percent of the post-tribal reapportionment allocation, respectively). Additionally, from 2017–2019, the MS sector is estimated to have not achieved potential economic opportunity of $14.5–$27.3 million in production value from unharvested Pacific whiting from the initial allocations and $21.5 to $31.8 million compared to the post-reapportionment allocations (section 5.4.1.0 of the Analysis).

This issue was first brought to the Council's attention in 2016 during public meetings to discuss the Council's 5-year Review of the Trawl Rationalization Program. The Council later received a public comment letter in September 2018 from a member of industry proposing to increase the processing cap of 45 percent within the follow-on actions package. The letter suggested that increasing the processing cap would be a positive step towards increasing efficiency and achieving optimum yield by allowing platforms with capacity in a given year to take additional deliveries and get more quota out of the water.

During the March 2019 meeting, the Council heard from the industry regarding MS sector utilization proposals and discussed the supplemental reports from the Council's advisory bodies. The Council prioritized the MS utilization issues and, in November 2019, directed industry to develop the scope of action and draft purpose and need statement for the MS sector utilization action.

In an informational report submitted by the Council's Groundfish Advisory Subpanel (GAP), the GAP reported during the previous five seasons, more than 350 million pounds of Pacific whiting worth more than $28 million in ex-vessel revenue had been left unharvested in the MS sector. Some catcher vessels had been unable to harvest and deliver their full MS sector allocations and, in certain cases, catcher vessels had been stranded without a MS processor to deliver to in a season or year. The GAP also reported that many MS sector participants, including all six MS processor vessels and several MS catcher vessels, participate in the Alaska pollock fishery where record high catch limits in recent years had limited the availability of processor vessels and some catcher vessels to participate in the Pacific whiting fishery during the primary Pacific whiting season, between May 15 and December 31.

In September 2020, based on the GAP's informational report, Council and NMFS staff submitted a scoping paper in the advanced briefing book outlining some questions for consideration. The Council's Groundfish Management Team (GMT) provided a preliminary look at the data, thoughts on potential causes of under-attainment, and regulatory issues. After considering the information provided, the Council adopted a purpose and need statement for public review and continued to scope the following issues: (1) Primary whiting season start date (which could apply to other Pacific whiting sectors); (2) Processor obligation deadline; (3) MS

processor cap; and (4) MS/CP permit transfers.

The Council considered a request to allow processing south of 42° N lat. in the at-sea sectors as a part of this action; however, due to potential interactions with salmon, the Council decided to consider the action at a later time and encouraged the industry to test the idea through future exempted fishing permit experiments.

Finally, at the March 2022 meeting, the Council adopted the following as the final preferred alternatives: (1) Move the season start date for the primary Pacific whiting season start date north of 40 degrees 30 minutes north latitude from May 15th to May 1st, and move all administrative deadlines associated with the season start date to 45 days prior to May 1; (2) Remove the mothership processor obligation deadline from regulation; (3) Remove the mothership processor cap from regulation; and (4) Allow a vessel to be registered to a mothership and catcher-processor endorsed permit in the same year, with unlimited transfers.

Proposed Action

The proposed action would revise existing regulations that apply to the Pacific Coast Groundfish Trawl Rationalization Program participants while operating in the non-tribal Pacific whiting fishery in order to provide increased operational flexibility and harvesting capabilities in the Pacific whiting fishery and increase the MS sector's ability to utilize its Pacific whiting allocation. The proposed revisions include: (1) adjusting the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery North of 40°30′ N. lat. from May 15 to May 1, and adjusting administrative dates associated with the start of the season; (2) removing from regulation the MSCV processor obligation deadline of November 30; (3) removing from regulation the MS processor cap of 45 percent; and (4) removing restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or CP in the same calendar year.

The Council recommended and NMFS proposes these changes based on information in the Analysis indicating that these measures would: (1) increase utilization of available MS quota that has previously been unrealized (2) increase opportunities in the MS sector by providing participants with an additional 15 days to participate in the Pacific whiting fishery, providing up to a month of Pacific whiting harvest opportunities between the Alaska pollock seasons; (3) increase overall attainment leading to economic benefits for all sectors.

Season Start Date

This proposed action would amend regulations at 50 CFR 660.131(b)(2)(iii) to allow all sectors of the Pacific whiting fishery North of 40°30′ N lat. to begin operating May 1. Currently, there are reporting requirements due 45 days prior to the current season start date of May 15. This proposed action would align all of these administrative dates to 45 days prior to the new season start date of May 1, which would be March 17. Specifically, these proposed date changes would apply to the annual MS co-op and CP co-op reports (50 CFR 660.113(c)(3) and (d)(3), respectively), the deadline for proposed salmon mitigation plans (SMPs) (50 CFR 660.113(e)(3)), the submission deadline for post season SMP reports (50 CFR 660.113(e)(6)(i)), the deadline for declaring into the MS co-op or non-co-op fishery (50 CFR 660.150(g)(2)(i)), and the MS co-op and CP co-op permit annual registration deadlines (50 CFR 660.150(d)(1)(ii) and 660.160(d)(1)(ii), respectively). Additionally, this proposed action would move up an Electronic Monitoring (EM) application due date (50 CFR 660.604(e)) and an EM renewal date (50 CFR 660.604(i)) from February 15 to February 1 to align with the new season start date of May 1.

The Council recommended and NMFS proposes this earlier season start date to provide vessels with an additional 15 days to participate in the Pacific whiting fishery and provide even more opportunity to harvest the Pacific whiting quota. The proposed season start date would apply to all non-tribal sectors participating in the Pacific whiting fishery. As noted in section 2.2.1 of the Analysis, many vessels that fish in the Pacific whiting fishery earn the majority of their revenue in the Alaska fisheries and are likely incentivized to prioritize higher price of pollock above Pacific whiting. Therefore, this proposed action would provide vessels with an additional 15 days to participate in the Pacific whiting fishery providing up to a month of Pacific whiting harvest opportunities between the Alaskan Eastern Bering Sea walleye pollock seasons.

This proposed action is expected to considerably increase attainment for the MS sector, leading to economic benefits for all participants. According to section 2.2.1 of the Analysis, the potential additional catch that could have occurred in the additional two weeks of fishing in the 2016–2020 period could have been associated with $8.4 to $20.3 million in production revenue for the MS sector (assuming market conditions, weather, and other factors). The additional catch would have resulted in an estimated $10.5–$22.8 million in income impacts and 159 to 345 associated jobs.

There would be no additional biological impacts to Pacific whiting under the proposed action, because participants in the fishery will continue to be limited to allocations set as part of the annual whiting harvest specifications process. Allocation amounts would have been or will be analyzed as part of annual whiting management actions. Additionally, impacts to non-whiting groundfish species are expected to be within those analyzed during the biennial harvest specification process where mechanisms to control catch (*e.g.,* IFQs, co-ops, set asides) would still be in effect, preventing exceedances of allocations and ACLs. Section 2.2.2 of the Analysis shows that bycatch of non-whiting groundfish species is typically higher in the fall; therefore, overall bycatch would likely decrease if vessels were able to shift effort into May 1–14, as explained in the Analysis, and exhibit the same lower bycatch patterns as May 15–31.

Appendices A–C of the Analysis present a comprehensive analysis of potential effects of moving the season start date on overall salmon take and evolutionarily significant unit (ESU) level impact. The Analysis shows that even if the bycatch from May 1–14 were additive to the bycatch for the entire Pacific whiting fishery (tribal and non-tribal) during the May 15-end of season time period, the overall estimates of total bycatch are conservative and are still within the estimates analyzed in the 2017 Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion (F/WCR–2017–7552) regarding the effects of the Council's Groundfish FMP on listed salmonids (2017 Biological Opinion). Additionally, the Analysis shows that impacts likely would not be additive as effort may shift to earlier in the season where bycatch rates are lower.

MS Obligation Deadline

This proposed action would remove regulations at 50 CFR 660.150(c)(7) that require MSCVs to obligate their CHA to a MS permit by November 30 during the limited entry permit (LEP) renewal process (50 CFR 660.25(b)(4)(i)(A)). Under this proposed rule, there would also no longer be a requirement for MSCV-endorsed permit owners to notify NMFS of a mutual agreement exception (MAE) nor require NMFS to track the obligations (50 CFR 660.150(c)(7)(iv)).

Additionally, the requirement for notification of a MS permit withdrawal at 50 CFR 660.150(c)(7)(v) would no longer be required. MSCVs would still be required to renew their limited entry permits each year, which includes the co-op declaration for the following year (50 CFR 660.150(g)(2)(i)); and co-op(s) would also still be required to submit their annual application per 50 CFR 660.150(d)(1)(iii).

The Council recommended and NMFS proposes the removal of the MS obligation requirement from regulations to provide MSCVs additional flexibility to change processors inseason without regulatory delay. Removal of the obligation deadline would provide a more flexible management regime whereby participants could continue to balance individual needs of each entity to optimally harvest fish through private contracts and still provide consistent revenue. This proposed action is expected to reduce administrative costs due to MSCVs not needing to notify NMFS of MAEs inseason and is expected to remove a regulatory and administrative burden to NMFS and members of the MS sector. Current enforcement costs, the capability to monitor fishing activity (*i.e.,* area closures, gear requirements, safety standards) and monitoring of the fishery through electronic monitoring or observers, including catch and discard accounting, would not change.

MS Processor Cap

This proposed action would remove the MS usage limit (*i.e.* processor cap) of 45 percent from regulation (§ 660.150(f)(3)(i)) and there would be no restrictions on the amount of the MS sector allocation that an entity could process. MS permit holders would no longer be required to submit to NMFS a trawl identification of ownership interest (OI) form in order to verify compliance of the MS processor cap, as per § 660.150(f)(3)(iv). MSCVs would still be held to a 20 percent accumulation limit of the Pacific whiting CHA (50 CFR 660.150(g)(3)(i)) and a catch limit of 30 percent of the allocation (50 CFR 660.150(g)(3)(ii)).

The Council recommended and NMFS proposes the removal of the MS processor cap to provide MS permit holders additional flexibility and to prevent occurrences of MSCVs not being able to deliver to a MS processor that had exceeded or was close to exceeding the 45 percent processing cap. Removal of the MS processor cap would provide positive benefits to the MS sector through increased harvesting capabilities and increased flexibility in management of the MS sector. This in turn would provide an increase in revenue for the fishery as a whole and for fishing communities.

Additionally, this proposed action would eliminate the need for the industry or NMFS to monitor compliance with the accumulation limit and would provide the industry with the ability to harvest more fish when fish are present on the grounds and optimize the efficiencies built into the fishery (*i.e.,* available crew, scheduled landings to motherships and processing capacity).

As mentioned above, the Council set the processing cap for the MS sector at 45 percent (described at 50 CFR 660.150(f)(3)(i)) to inhibit consolidation. Section 3.1.4 of The Analysis, however, shows it is likely that more than one MS would continue to participate in the fishery under the proposed action. Several factors, including Alaska pollock fishery opportunities and actual capacity of a single MS vessel, suggest that it would be unlikely and probably not feasible for one vessel to process the entire allocation. In addition, the Analysis shows even if an entity was able to process the entirety of the MS allocation under the proposed action, there would still be competition from other owners across the other whiting sectors and other fisheries that produce whitefish.

MS Processor & CP Permit Transfer

This proposed action would remove restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or CP in the same calendar year (50 CFR 660.112(d)(3) and (e)(3)). This action would allow a processing vessel to operate as both an MS and CP in the same calendar year, but not on the same trip. Owners of processing vessels that intend to operate as both an MS and a CP during the Pacific whiting season would be required to register the processing vessel under valid MS and CP permits per regulations at 50 CFR 660.25(b). The vessel may be registered under both an MS permit and a CP endorsed permit simultaneously. Additionally, this proposed rule includes some administrative changes to allow additional transfers of limited entry MS permits and limited entry permits with a CP endorsement so that these permits may be transferred more than twice within a calendar year.

Current requirements for operating as a MS or CP would continue to apply. To operate in the MS fishery (*i.e.,* receive deliveries of catch from MS catcher vessel and process MS sector allocations at-sea) the vessel must be included in the MS co-op agreement. To operate in the CP fishery (*i.e.,* catch and process CP sector allocations at-sea) the vessel must be included in the CP co-op agreement. Including a new vessel in either the MS or CP co-op agreement constitutes a material change to the co-op agreement. Within 7 calendar days of the new processing vessel operating for the first time in either the MS co-op fishery or the CP co-op fishery, the respective co-op manager must notify NMFS in writing of such change to the co-op agreement as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(*4*) and 660.160(d)(1)(iii)(B)(*4*).

Consistent with current regulations at 50 CFR 660.150(d)(1)(iii)(B)(*4*) and 660.160(d)(1)(iii)(B)(*4*), within 30 days of a new vessel participating in a co-op fishery, the MS or CP co-op manager must submit a revised co-op agreement to NMFS that lists all vessels and/or processing vessels operating in the respective co-op and include the new processing vessel, along with a letter describing the change to the co-op agreement.

For each trip, the vessel would still be required to update its vessel monitoring system (VMS) declaration to reflect its activity for that trip prior to departure as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A).

A separate economic data collection (EDC) form is required for the owner, lessee, charterer of a mothership vessel registered to an MS permit as well as owner, lessee, charterer of a catcher processor vessel registered to a CP-endorsed limited entry permit. If a vessel holds both types of permit in one calendar year, two EDC forms must be submitted as specified at 50 CFR 660.114. Additionally, separate cost recovery requirements apply to each sector, as described at 50 CFR 660.115.

The Council recommended and NMFS proposes lifting the restriction on MS and CP permit transfers to increase the likelihood that MSCVs have markets to which to deliver catch throughout the fishing season. The operational flexibility provided in this action would provide significant additional economic opportunity to at-sea Pacific whiting fishery participants and fishing communities. These measures would allow catcher vessels to harvest MS sector allocations and provide catch revenue to the respective vessel crews. In the event that additional processing vessels cannot commit to taking deliveries from catcher vessels (due to changes in business plans, for example) this action would provide additional harvesting and processing opportunities for at-sea Pacific whiting fishery participants.

Summary of Anticipated Effects of This Proposed Rule

Overall, this proposed action is expected to increase attainment across all three non-tribal Pacific whiting sectors, with the largest change expected in the MS sector. While the movement of the primary season start date would likely provide the most benefit in terms of harvest opportunities when both MS and MSCVs can be on the fishing grounds, the increased flexibility to have more processors (via the unlimited permit transfer) or have processors accept and potentially process higher amounts of catch (removal of the processor cap) would, in combination, provide the most opportunity to increase attainment and economic benefits for all sectors. Increased attainment of the Pacific whiting allocation, through additional fishing opportunity, processing capacity, and flexibility, would result in positive benefits to the fleet and the communities in which participants reside. There are expected to be no biological impacts outside of those previously disclosed in harvest specifications processes for both groundfish and Pacific whiting or those in the 2017 Biological Opinion for salmonids.

Other Actions Included in This Proposed Rule

NMFS is also proposing additional administrative changes in this rule. This proposed action would adjust cost recovery regulation language to state that the value of ''Pacific whiting'' instead of ''all groundfish'' will be used in the annual cost recovery fee calculations for the at-sea sectors to reflect the current practice of using Pacific whiting only in the cost recovery fee calculations. While the cost recovery regulations state that all groundfish harvested should be used to calculate ex-vessel value, it is current practice to use Pacific whiting only when calculating the ex-vessel value of the MS and CP sectors. Only Pacific whiting is used because there is insufficient data available on the value of non-whiting species encountered by the MS and CP sectors. This would reflect the original intention of the Council in their 2011 cost recovery recommendations. The Council recommended this change to NMFS at the April 2021 meeting.

This proposed action would make some technical, non-substantive changes to improve comprehensibility of the regulations by removing outdated regulations.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined this rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. After accounting for cross participation, multiple Quota Share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by this action, 89 of which are considered ''small'' businesses.

NMFS considers two criteria in determining the significance of adverse regulatory effects, namely, disproportionality and profitability. Disproportionality compares the effect of the regulatory action between small and large entities. This action is expected to increase utilization and flexibility for all entities participating in the Pacific whiting fishery, and is not expected to place any of the small entities at a significant competitive disadvantage to large entities. Moving the primary season start date two weeks earlier (May 1) would provide additional opportunities and incentives to increase the harvest of the MS sector's allocation and provide a substantial increase in revenue for the fishery as a whole and for fishing communities. Removal of the obligation deadline provides a more flexible management regime whereby participants can continue to balance individual needs of each entity to optimally harvest fish through private contracts and still provide consistent revenue. Removal of the MS processor cap would provide positive benefits to the MS sector through increased harvesting capabilities and increased flexibility in management of the MS sector. And, allowing processing vessels to operate as an MS and CP in the same year without any permit transfer limits would provide additional processing capacity to harvest Pacific whiting in the at-sea sectors. Therefore, we do not expect significant or disproportionate adverse economic effects from this action.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection OMB Control Number 0648–0620 by removing the requirement for the owner of the MSCV-endorsed permit to submit a copy of a MAE to NMFS that includes the MS permit owner's acknowledgement of termination of the catcher vessel's obligation to the permitted MS vessel. If a MS permit withdraws from the fishery before Pacific whiting has been allocated to the MS sector, this rule removes the requirement of the MS permit owner withdrawing from the fishery to provide written notification to NMFS and all owners of MSCV-endorsed permits with CHA obligated to the MS permit withdrawing. Additionally, this rule removes the requirement for a MS to submit an ownership interest (OI) form. This rule would remove three hours and 18 burden minutes per year for the fishery. Public reporting burden for removing the requirements of submitting a MAE, a MS permit withdrawal and removing the requirement of a MS submitting an OI form is estimated to result in a reduced average cost of $5.34 per year for participants of the fishery.

The existing collection of information requirements would continue to apply under the following OMB Control Number 0648–0573: Expanded Vessel Monitoring System (VMS) Requirements for the Pacific Groundfish Fishery.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at *https://www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provisions of the law, no person is required to respond or, nor shall any person by subject to a penalty for failure to comply

with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: August 31, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Amend § 660.25 as follows:
■ a. Revise paragraphs (b)(4)(i)(E), (b)(4)(v)(A), and (b)(4)(vii)(C);
■ b. Add paragraph (b)(4)(vii)(D); and
■ c. Revise paragraph (b)(4)(viii)(C).

The revisions read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(E) Limited entry permits with an MS/catcher vessel (CV) endorsement will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.150(g).

* * * * *

(v) * * *

(A) *General.* Change in permit owner and/or vessel owner applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(viii) and (ix) of this section. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit owner has been registered with and approved by NMFS. NMFS will not approve a change in permit owner for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(B) of this section. NMFS will not approve a change in permit owner for a limited entry permit with an MS/CV endorsement that does not meet the ownership requirements for such permit described at § 660.150(g)(3). NMFS considers the following as a change in permit owner that would require registering with and approval by NMFS, including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the permit; or removing an individual or entity from the legal name on the permit. A change in vessel owner includes any changes to the name(s) of any or all vessel owners, as registered with U.S. Coast Guard (USCG) or a state. The new owner(s) of a vessel registered to a limited entry permit must report any change in vessel ownership to NMFS within 30 calendar days after such change has been registered with the USCG or a state licensing agency.

* * * * *

(vii) * * *

(C) *Limited entry permits with an MS/CV endorsement.* Limited entry permits with an MS/CV endorsement may be registered to another vessel up to two times during the calendar year as long as the second change in vessel registration is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first change in vessel registration would be to another vessel, but any second change in vessel registration must be back to the original vessel. On the second change in vessel registration back to the original vessel, that vessel must be used to fish exclusively in the MS Co-op Program described at § 660.150 for the remainder of the calendar year, and declare into the limited entry mid water trawl, Pacific whiting mothership sector as specified at § 660.13(d)(4)(iv).

(D) *Limited entry MS permits and limited entry permits with a catcher/processor (C/P) endorsement.* Vessels registered to both a MS permit and a C/P endorsed permit may operate in both the at-sea MS sector and C/P sector during the same calendar year, but not on the same trip. Prior to leaving port, a vessel registered under both a MS permit and a C/P endorsed permit must declare through VMS the sector in which it will participate for the duration of the trip, as specified at § 660.13(d)(4)(iv)(A).

(viii) * * *

(C) For a request to change a vessel registration and/or change a permit owner or vessel owner for a MS/CV-endorsed limited entry permit, an Identification of Ownership Interest Form must be completed and included with the application form.

* * * * *

■ 3. Amend § 660.111 as follows:
■ a. Under the definition ''Accumulation limits'', remove paragraph (2)(i) and redesignate paragraphs (2)(ii) and (iii) as paragraphs (2)(i) and (ii);
■ b. Under the definition ''Ex-vessel value'', revise paragraphs (2) and (3); and
■ c. Remove the definitions of ''Mutual agreement exception'' and ''Processor obligation''.

The revisions read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Ex-vessel value * * *

(2) For the MS Co-op Program, the value of Pacific whiting delivered by a catcher vessel to an MS-permitted vessel.

(3) For the C/P Co-op Program, the value as determined by the aggregate pounds of Pacific whiting retained on board by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Co-op Program average price per pound as announced pursuant to § 660.115(b)(2).

* * * * *

§ 660.112 [Amended]

■ 4. Amend § 660.112 as follows:
■ a. Remove paragraph (d)(3);
■ b. Redesignate paragraphs (d)(4) through (6) as paragraphs (d)(3) through (5);
■ c. Remove paragraph (d)(7);
■ d. Redesignate paragraphs (d)(8) through (16) as paragraphs (d)(6) through (14);
■ e. Remove paragraph (e)(3); and
■ f. Redesignate paragraphs (e)(4) through (10) as paragraphs (e)(3) through (9).
■ 5. Amend § 660.113 by revising paragraphs (c)(3) introductory text, (c)(5)(ii)(A) introductory text, (c)(5)(ii)(A)(*3*), (*5*), (*6*), and (*9*), (d)(3) introductory text, (d)(5)(ii)(A) introductory text, (d)(5)(ii)(A)(*2*), (*4*), (*5*), and (*6*), (e)(3), and (e)(6)(i) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(c) * * *

(3) *Annual co-op report.* The designated co-op manager for the mothership co-op must submit an annual report to NMFS and the Council by March 17 each year, before a co-op permit is issued for that year. The annual co-op report will contain information about the previous year's fishery, including:

* * * * *

(5) * * *

(ii) * * *

(A) For all deliveries of Pacific whiting that the fish buyer buys from each fish seller:

* * * * *

(*3*) The weight of Pacific whiting delivered;

* * * * *

(*5*) The ex-vessel value of Pacific whiting;

(*6*) The net ex-vessel value of Pacific whiting;

* * * * *

(*9*) The total fee amount collected as a result of all Pacific whiting.

* * * * *

(d) * * *

(3) *Annual co-op report.* The designated co-op manager for the C/P co-op must submit an annual report to NMFS and the Council by March 17 each year, before a co-op permit is issued for that year. The annual co-op report will contain information about the previous year's fishery, including:

* * * * *

(5) * * *

(ii) * * *

(A) For all Pacific whiting:

* * * * *

(*2*) The weight of Pacific whiting retained on board;

* * * * *

(*4*) The ex-vessel value of Pacific whiting retained on board;

(*5*) The net ex-vessel value of Pacific whiting retained on board; and

(*6*) The total fee amount collected as a result of all Pacific whiting.

* * * * *

(e) * * *

(3) *Deadline for proposed SMP.* A proposed SMP must be submitted between February 1 and March 17 of the year in which it intends to be in effect to NMFS at: NMFS, West Coast Region, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115.

* * * * *

(6) * * *

(i) *Submission deadline.* The SMP postseason report must be received by NMFS and the Council no later than March 17 of the year following that in which the SMP was approved.

* * * * *

■ 6. Amend § 660.131 by revising paragraphs (b)(2)(ii), (b)(2)(iii)(A) and (B), and (b)(2)(iii)(C)(*1*) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(2) * * *

(ii) *Criteria.* The start of a Pacific whiting primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) * * *

(A) Catcher/processor sector—May 1.

(B) Mothership sector—May 1.

(C) * * *

(1) North of 40°30′ N lat.—May 1; and

* * * * *

■ 7. Amend § 660.150 as follows:

■ a. Revise the section heading;

■ b. Add the word ''and'' following the semicolon at the end of paragraph (b)(1)(i)(A);

■ c. Remove ''; and'' at the end of paragraph (b)(1)(i)(B) and add a period in its place;

■ d. Remove paragraphs (b)(1)(i)(C) and (b)(2)(i)(A)(*3*);

■ e. Redesignate paragraph (b)(2)(i)(A)(*4*) as paragraph (b)(2)(i)(A)(*3*);

■ f. Revise paragraph (c)(6)(i)(A);

■ g. Remove paragraph (c)(7);

■ h. Revise paragraph (d)(1)(ii) and the introductory text of paragraph (d)(1)(iii);

■ i. Remove paragraph (d)(1)(iii)(A)(*1*)(*iii*);

■ j. Redesignate paragraphs (d)(1)(iii)(A)(*1*)(*iv*) through (*xii*) as paragraphs (d)(1)(iii)(A)(*1*)(*iii*) through (*xi*);

■ k. Remove paragraph (f)(3);

■ l. Redesignate paragraphs (f)(4) through (6) as paragraphs (f)(3) through (5); and

■ m. Revise paragraph (g)(2)(i) introductory text.

The revisions read as follows:

§ 660.150 Mothership (MS) Co-op Program.

* * * * *

(c) * * *

(6) * * *

(i) * * *

(A) Through an inter-co-op agreement, the designated co-op managers of permitted MS co-ops may distribute Pacific whiting allocations among one or more permitted MS co-ops.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual registration and deadline.* Each year, a co-op entity intending to participate as a co-op under the MS Co-op Program must submit an application for a MS co-op permit between January 17 and March 17 of the year in which it intends to fish. NMFS will not consider any applications received after March 17. An MS co-op permit expires on December 31 of the year in which it was issued.

(iii) *Application for MS co-op permit.* The designated co-op manager, on behalf of the co-op entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a MS co-op permit. An application will not be considered complete if any required application fees and annual co-op reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS West Coast Region (WCR) website (*https://www.fisheries.noaa.gov/permit/groundfish-mothership-cooperative-permit*) or by request from NMFS. The designated co-op manager must sign the application acknowledging the responsibilities of a designated co-op manager defined in paragraph (b)(3) of this section. For permit owners with more than one MS/CV endorsement and associated CHA, paragraph (g)(2)(iv)(D) of this section specifies how to join an MS co-op(s).

* * * * *

(g) * * *

(2) * * *

(i) *Renewal.* An MS/CV-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). During renewal, all MS/CV-endorsed limited entry permit owners must make a preliminary declaration regarding their intent to participate in the co-op or non-co-op portion of the MS Co-op Program for the following year. MS/CV-endorsed permits not obligated to a permitted MS co-op by March 17 of the fishing year will be assigned to the non-co-op fishery. For an MS/CV-endorsed permit that is not renewed, the following occurs:

* * * * *

■ 8. Amend § 660.160 as follows:

■ a. Remove paragraph (b)(1)(i)(C); and

■ b. Revise paragraphs (d)(1)(ii), (e)(1)(iii), and (e)(2)(i).

The revisions read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual registration and deadline.* Each year, the co-op entity must submit a complete application to NMFS for a C/P co-op permit. The application must be submitted to NMFS by between January 17 and March 17 of the year in which it intends to participate. NMFS will not consider any applications received after March 17. A C/P co-op permit expires on December 31 of the year in which it was issued.

* * * * *

(e) * * *

(1) * * *

(iii) *Restriction on C/P vessel operating as mothership.* A vessel registered to a C/P-endorsed permit may operate as a mothership during the same calendar year it participates in the C/P sector but not on the same trip.

* * * * *

(2) * * *

(i) *Renewal.* A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4).

* * * * *

■ 9. Amend § 660.604 by revising paragraph (e) introductory text and paragraph (i) to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(e) *Electronic Monitoring (EM) Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their EM Authorizations effective for the primary whiting season start date must submit their complete application to NMFS by February 1 of the same year.

* * * * *

(i) *Renewing an EM Authorization.* To maintain a valid EM Authorization, vessel owners must renew annually prior to the permit expiration date. NMFS will mail EM Authorization renewal forms to existing EM Authorization holders each year on or about: September 1 for non-trawl shorebased IFQ vessels and January 1 for Pacific whiting IFQ and MS/CV vessels. Vessel owners who want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by October 15. Vessel owners who want to have their EM Authorizations effective for the primary whiting season start date of the following calendar year must submit their complete renewal form to NMFS by February 1.

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[FR Doc. 2022–19150 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 176
Tuesday, September 13, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of virtual business meeting.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a virtual business meeting of the New York Advisory Committee. The meeting scheduled for Friday, September 16, 2022, at 1 p.m. (ET) is cancelled. The notice is in the **Federal Register** of Friday, July 22, 2022, in FR Doc. 2022–15638 in the first and second columns of page 43784.

FOR FURTHER INFORMATION CONTACT: Liliana Schiller, *lschiller@usccr.gov,* (202) 770–1856.

Dated: September 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19700 Filed 9–12–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee, Revision of Virtual Meeting Platform and Additional Meeting Information

AGENCY: Commission on Civil Rights.

ACTION: Notice; revision of virtual meeting platform and additional meeting information.

SUMMARY: The Commission on Civil Rights is holding a meeting of the Iowa Advisory Committee on Tuesday, September 27, 2022, at 2 p.m. (CT). This notice revises the meeting virtual information. The notice is in the **Federal Register** of Tuesday, September 27, 2022.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, (202) 618–0857, *afortes@usccr.gov.*

SUPPLEMENTARY INFORMATION:

Revision: Replace with Zoom virtual details as follows: *https://www.zoomgov.com/j/1614116848.*

Join via phone 833 435 1820 USA Toll Free; Access Code: 161 411 6848#.

Dated: September 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19754 Filed 9–12–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Louisiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Louisiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold project planning meetings via Zoom on the following dates and times:

- Wednesday, November 16, 2022, at 2:00 p.m. ET
- Wednesday, December 21, 2022, at 2:00 p.m. ET
- Wednesday, January 18, 2023, at 2:00 p.m. ET

The purpose of these meetings is to discuss and vote to select the topic for the Committee's civil rights project. Each planning meeting will last for approximately one hour.

DATES: Wednesday, November 16, at 2:00 p.m. ET; Wednesday, December 21, at 2:00 p.m. ET; Wednesday, January 18, at 2:00 p.m. ET.

Meeting Link: https://www.zoomgov.com/j/1618269473?pwd=OUdORFNwUW91Y2tubnBnMnN5QWVzQT09.

Telephone (Audio Only): Dial 833–568–8864 USA Toll Free; Access code: 161 826 9473.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, DFO, and Director of the Eastern Regional Office (ERO, at *ero@usccr.gov* or 1–202- 539–8468).

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments via email. The comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed. The email subject line should state: Atten: LA and sent to this email address: *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at *ero@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Programs, 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, West Virginia 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 Eastern Regional Office at the above email address.

Agenda

I. Roll Call

II. Welcome

III. Project Planning

IV. Other Matters

V. Next Meeting

VI. Public Comments

VII. Adjourn

Dated: September 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19755 Filed 9–12–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Louisiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Louisiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold project planning meetings via Zoom at the dates and times listed in the **DATES** section of this notice.

The purpose of these meetings is to discuss and vote to select the topic for the Committee's civil rights project. Each planning meeting will last for approximately one hour.

DATES: Wednesday, November 16, at 2 p.m. ET; Wednesday, December 21, at 2 p.m. ET; Wednesday, January 18, at 2 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, DFO, and Director of the Eastern Regional Office (ERO, at *ero@usccr.gov* or 1–202–539–8468).

SUPPLEMENTARY INFORMATION:

Meeting Link: https://www.zoomgov.com/j/1618269473?pwd=OUdORFNwUW91Y2tubnBnMnN5QWVzQT09.

Telephone (Audio Only): Dial 833–568–8864 USA Toll Free; Access code: 161 826 9473.

Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments via email. The comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed. The email subject line should state: Atten: LA and sent to this email address: *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at *ero@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Programs, 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, West Virginia 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 Eastern Regional Office at the above email address.

Agenda

I. Roll Call
II. Welcome
III. Project Planning
IV. Other Matters
V. Next Meeting
VI. Public Comments
VII. Adjourn.

Dated: September 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19751 Filed 9–12–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina 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 North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 12:00 p.m. ET on Monday, October 3, 2022, to discuss their report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Monday, October 3, 2022, from 12:00 p.m.–1:30 p.m. ET.

Link to Join (Audio/Visual): https://tinyurl.com/55pnydjd.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 629 6173.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

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 *vmoreno@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 Liliana Schiller at *lschiller@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, 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, North Carolina 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 & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: September 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19696 Filed 9–12–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Ohio Advisory Committee (Committee) will hold a virtual meeting on Wednesday October 5, 2022, at 12:00 p.m. Eastern Time. The purpose of the meeting is to discuss various civil rights topics submitted for consideration for the Committee's first project.

DATES: The meeting will take place on Wednesday, October 5, 2022, at 12:00 p.m. ET.

Link to Join: https://tinyurl.com/n7myrcvw.

Join by Phone: (833) 435–1820 USA Toll Free; Meeting ID: 160 792 2869.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

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 1 (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 *mwojnaroski@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 *mwojnaroski@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, Ohio 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 & Roll Call
II. Administration
III. Proposed Civil Rights Topics
IV. Next Steps
V. Public Comments
VI. Adjournment

Dated: September 9, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19698 Filed 9–12–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee 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 a meeting of the Tennessee Advisory Committee to the Commission will convene by Zoom on Thursday, October 6, 2022, at 12:00 p.m. (CT). The purpose of the meeting is to continue discussing the draft interim memo and ideally take a vote.

DATES: The meeting will be held on: Thursday, October 6, 2022, 12:00 p.m. CT.

Join ZoomGov Meeting: https://www.zoomgov.com/j/1611139783?pwd=SjZabjVxTkFFUUF2SDJNc29tRHJrZz09.

Join via phone: 833–435–1820 USA Toll Free; Access Code: 161 113 9783 #.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and 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 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

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 respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *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, October 6, 2022; 12:00 p.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Discussion of Draft Interim Memo and Voting
4. Next Steps
5. Public Comment
6. Adjourn

Dated: September 7, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19697 Filed 9–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Community Survey and Puerto Rico Community Survey

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the American Community Survey and Puerto Rico Community Survey, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 14, 2022.

ADDRESSES: Interested persons are invited to submit written comments by email to *acso.pra@census.gov.* Please reference the American Community Survey and the Puerto Rico Community Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2022–0014, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Dameka Reese, U.S. Census Bureau, American Community Survey Office, 301–763–3804, *dameka.m.reese@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Since its founding, the U.S. Census Bureau has balanced the demands of a growing country requiring information about its people and economy with concerns for respondents' confidentiality and the time and effort it takes respondents to answer questions. Beginning with the 1810 Census, Congress updated the set of questions asked in the 1790 and 1800 Censuses by adding questions to support a range of public concerns and uses. Over the course of a century, Federal agencies requested to add questions about agriculture, industry, and commerce, as well as individuals' occupation, ancestry, marital status, disabilities, place of birth, and other topics. In 1940, the Census Bureau introduced the long-form census questionnaire in order to ask more detailed questions to a sample of the public.

In the early 1990s, the demand for current, nationally consistent data from a wide variety of users led Federal government policymakers to consider the feasibility of collecting social, economic, and housing data continuously throughout the decade. The benefits of providing current data, along with the anticipated decennial census benefits in cost savings, planning, improved census coverage, and more efficient operations, led the Census Bureau to plan the implementation of the Continuous Measurement Survey, later called the American Community Survey (ACS). After years of testing, the ACS was implemented in 2005 replacing the need for long-form data collection in future decennial censuses. The ACS is conducted throughout the United States and in Puerto Rico, where it is called the Puerto Rico Community Survey (PRCS). The ACS samples approximately 3.5 million housing unit addresses in the United States and about 36,000 housing unit addresses in Puerto Rico each year. A housing unit is a house, an apartment, a mobile home, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters. The ACS also collects detailed socioeconomic data from a sample of about 170,000 residents living in group quarters facilities in the United States and about 900 in Puerto Rico. Group quarters are places where people live or stay, in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents. People living in group quarters usually are not related to each other. Group quarters include such places as college/university student housing, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, workers' group living quarters and Job Corps centers, and emergency and transitional shelters.

In 2024, the ACS plans to add an internet self-response option to the group quarters data collection operation. The Census Bureau believes there is value in offering a self-response option to people living in certain types of group quarters—college/university student housing, group homes, military barracks, workers' group living quarters and Job Corps centers, and emergency and transitional shelters.

Beginning with the 2024 data collection year, the ACS will use administrative data. The Census Bureau is obligated by law (title 13, U.S. Code) to use existing information that has already been collected by other government agencies, whenever possible and consistent with the kind, timeliness, quality and scope of the statistics required, instead of asking for such information directly from the public. The Census Bureau is allowed to use these data for statistical purposes only and may not use these records for enforcement purposes or to decide on eligibility for a benefit. Additionally, Census Bureau research has shown that using administrative data can reduce respondent burden and improve the quality of the ACS data. The Census Bureau is focusing initial efforts to supplement or replace ACS survey data for several housing characteristics with administrative data from other sources, such as property tax records. At a minimum, administrative data will be used for the question asking about property acreage beginning in 2024. Implementation for other housing items, such as agricultural sales and year built, may start later.

In addition to using administrative records and in coordination with the Office of Management and Budget Interagency Committee for the ACS, the Census Bureau solicited proposals for question changes or additions from more than 20 Federal agencies. Approved topics underwent cognitive testing to verify that proposed question wording would be understood by respondents. Based on cognitive testing results, the Census Bureau proposes to update wording in 2024 for questions on three topics: condominium fees, home heating fuel, and journey to work. The Census Bureau proposes to implement these three topics without additional testing; other topics are still undergoing testing.

The condominium fees question would be extended to include homeowners' association (HOA) fees. Data sources continue to show housing units that are part of HOAs outnumber housing units in condominiums. In order to provide more comprehensive and accurate costs of owning a home, the ACS needs to capture HOA fees for these homes. Adding these fees to the existing condominium fees question

avoids adding a new question to the ACS and therefore minimizes respondent burden.

The change to the home heating fuel question would update the natural gas and bottled gas categories. This will aid respondents in identifying the correct category more easily by using more commonly used terminology.

The journey to work question would be updated to include ride-sharing services as a mode of transportation to work to account for new and growing travel trends. This will reduce ambiguity in the current question about where respondents should report ride-sharing commutes and will allow the government to monitor changes in transportation patterns for planning purposes.

II. Method of Collection

To encourage self-response in the ACS, the Census Bureau sends up to five mailings to housing unit addresses selected to be in the sample. The first mailing, sent to all mailable addresses in the sample, includes an invitation to participate in the ACS online and states that a paper questionnaire will be sent in a few weeks to those unable to respond online. The second mailing is a letter that reminds respondents to complete the survey online, thanks them if they have already done so, and informs them that a paper questionnaire will be sent at a later date if we do not receive their response. In a third mailing, the paper questionnaire is sent only to those sample addresses that have not completed the online questionnaire within two weeks of receipt of the first mailing. The fourth mailing is a postcard that reminds respondents to respond and informs them that an interviewer may contact them if they do not complete the survey. A fifth mailing is sent to respondents who have not completed the survey within five weeks. This letter provides a due date and reminds the respondents to return their questionnaires to be removed from future contact. If a respondent starts to answer the survey online and provides an email address but does not complete the survey, an email will be sent to the respondent to remind them to return to the survey to complete their online questionnaire. If the Census Bureau does not receive a response or if the household refuses to participate, the address may be selected for an interview in-person or by telephone by a Census Bureau field representative, which we call the nonresponse follow-up data collection operation. Respondents also have the option to call the Telephone Questionnaire Assistance line and complete the survey over the telephone. A small sample of respondents from the nonresponse follow-up data collection operation are recontacted for quality assurance purposes.

Some addresses are deemed unmailable because the address is incomplete or directs mail only to a post office box. The Census Bureau currently collects data for these housing units using both online and computer-assisted personal interviewing by a Census Bureau field representative. During the person-level phase, a field representative uses a computer-assisted personal interview automated instrument to collect detailed information for each sampled resident. A small sample of respondents from the nonresponse follow-up data collection operation are recontacted for quality assurance purposes.

For sample housing units in the Puerto Rico Community Survey (PRCS), a different mail strategy is employed. The Census Bureau continues to use the previously used mail strategy with no references to an internet response option. The Census Bureau sends up to five mailings to a Puerto Rico address selected to be in the sample. The first mailing includes a prenotice letter. The second and fourth mailings include the paper survey. The third and fifth mailings are postcards that serve as a reminder to respond to the survey. If the Puerto Rico address is deemed unmailable because the address is incomplete or directs mail only to a post office box, the address may be selected for an interview in-person or by telephone. A small sample of respondents from the nonresponse follow-up data collection operation are recontacted for quality assurance purposes.

The Census Bureau employs a separate strategy to collect data from group quarters. The Census Bureau collects data for sampled people in group quarters through personal interview and telephone interview. The Census Bureau will obtain the facility information by conducting a telephone or personal visit interview with a group quarter contact. During this interview, the Census Bureau obtains a roster of residents and randomly selects them for person-level interviews. The facility also has the option of uploading their facility roster to the Census Bureau online listing application. During the person-level phase, a field representative uses a computer-assisted personal interview automated instrument to collect detailed information for each sampled resident. The field representative also has the option to distribute a bilingual (English/Spanish) questionnaire to residents for self-response if they are unable to complete a computer-assisted personal interview. Beginning in 2024, respondents in some group quarters will have the option to self-respond to the survey online. A small sample of facilities are recontacted for quality assurance purposes.

III. Data

OMB Control Number: 0607–0810.

Form Number(s): ACS–1, ACS–1(SP), ACS–1(PR), ACS–1(PR)SP, ACS–1(GQ), ACS–1(PR)(GQ), GQFQ, ACS CAPI (HU), ACS RI (HU), AGQ QI, and AGQ RI.

Type of Review: Regular submission, request for a revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,576,000 for household respondents; 20,100 for contacts in GQ; 170,900 people in GQ; 22,875 households for reinterview; and 1,422 GQ contacts for reinterview. The total estimated number of respondents is 3,791,297.

Estimated Time per Response: 40 minutes for the average household questionnaire; 15 minutes for a GQ facility questionnaire; 25 minutes for a GQ person questionnaire; 10 minutes for a household reinterview; 10 minutes for a GQ-level reinterview.

Estimated Total Annual Burden Hours: 2,384,000 for household respondents; 5,025 for contacts in GQ; 71,208 for GQ residents 3,813 households for reinterview; and 237 GQ contacts for reinterview. The estimate is an annual average of 2,464,283 burden hours.

TABLE 1—ANNUAL ACS AND PRCS RESPONDENT AND BURDEN HOUR ESTIMATES

Data collection operation	Forms or instrument used in data collection	Annual estimated number of respondents	Estimated minutes per respondent by data collection activity	Annual estimated burden hours
I. ACS Household Questionnaire, Online Survey, Telephone, and Personal Visit.	ACS–1, ACS 1(SP), ACS–1PR, ACS–1PR(SP), Online Survey, Telephone, CAPI.	3,576,000	40	2,384,000
II. ACS GQ Facility Questionnaire CAPI—Telephone and Personal Visit.	CAPI GQFQ	20,100	15	5,025
III. ACS GQ CAPI Personal Interview or Telephone, and Paper Self-response.	CAPI, ACS–1(GQ), ACS–1(GQ)(PR)	170,900	25	71,208
IV. ACS Household Reinterview—CATI/CAPI	ACS HU–RI	22,875	10	3,813
V. ACS GQ-level Reinterview—CATI/CAPI	ACS GQ–RI	1,422	10	237
Totals		3,791,297	N/A	2,464,283

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 141 and 193.

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. 2022–19705 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–161–2022]

Foreign-Trade Zone 98—Birmingham, Alabama; Application for Subzone BLG Logistics of Alabama LLC, Northport, Alabama

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Birmingham, grantee of FTZ 98, requesting subzone status for the facility of BLG Logistics of Alabama LLC, located in Northport, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 07, 2022.

The proposed subzone (15.5 acres) is located at 6801 Fifth Street, Northport, Alabama. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 98.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 24, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 7, 2022.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: September 7, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–19702 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that large power transformers from the Republic of Korea were not sold in the United States at less than normal value during the period of review (POR), August 1, 2020, through July 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 13, 2022.

FOR FURTHER INFORMATION CONTACT: John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the antidumping duty order on large power transformers on August 31, 2012.[1] Commerce provided an opportunity to request an administrative review on August 2, 2021.[2] Between August 17 and 31, 2021, we received requests to conduct an administrative review from Hyosung,[3] Hyundai,[4] ABB Inc. and SPX Transformer Solutions Inc (the petitioners),[5] and Iljin Electric Co., Ltd.[6]

Commerce initiated this review on October 7, 2021.[7] We selected one mandatory respondent in this review, Hyosung Heavy Industries Corporation (Hyosung). For a more detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[8]

On January 18, 2022, the petitioners requested the Commerce conduct on-site (or other) verifications of Hyosung. As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon in determining the final results of review.

Scope of the Order

The scope of this *Order* covers large liquid dielectric power transformers having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the *Order* is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the *Order* is dispositive.[9]

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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.*

Rate for Non-Selected Respondents

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Hyosung is the only mandatory respondent. Accordingly, we have applied a rate of 2.38 percent from Hyosung to the non-selected companies.

Preliminary Results of Review

We preliminarily determine that, for the period August 1, 2020, through July 31, 2021, the following weighted-average dumping margins exist:

Producer/exporter	Weighted-average dumping margin (percent)
Hyosung Heavy Industries Corporation	2.38
Hyundai Electric & Energy Systems Co., Ltd	2.38
Iljin Electric Co., Ltd	2.38
ILJIN	2.38
LSIS Co., Ltd.[10]	2.38

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this administrative review within five days after public announcement of the preliminary results, in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs according to the timeline Commerce establishes after the issuance of the final verification report. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12] Parties who submit case briefs or rebuttal briefs in this administrative review 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.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a

[1] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 41436 (August 2, 2021).

[3] *See* Hyosung's Letter, ''Large Power Transformers from the Republic of Korea: Hyosung's Request for Administrative Review,'' dated August 17, 2021.

[4] *See* Hyundai's Letter, ''Large Power Transformers from South Korea: Administrative Review Request,'' dated August 17, 2021.

[5] *See* the petitioners' Letter, ''Large Power Transformers from Republic of Korea—Petitioners' Request for 2020/2021 Administrative Review,'' dated August 31, 2021. On January 20, 2022, counsel for the petitioners filed an amended entry of appearance, stating that ABB Enterprise Software Inc. changed its name to Hitachi Energy USA, Inc. On February 11, 2022, counsel for the petitioners filed an amended entry of appearance, stating that SPX Transformer Solutions, Inc. changed its name to Prolec-GE Waukesha, Inc.

[6] *See* Iljin Electric Co., Ltd.'s Letter, ''Antidumping Order on Large Power Transformers from Korea—Request for Administrative Review,'' dated August 31, 2021.

[7] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811 (October 7, 2021).

[8] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] The full text of the scope of the *Order* is contained in Preliminary Decision Memorandum.

[10] Commerce determined that LS Electric Co., Ltd. is the successor-in-interest to LSIS Co., Ltd. *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Successor-in-Interest Determination; 2018–2019,* 86 FR 30915 (June 10, 2021).

[11] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'')

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

[13] *See* 19 CFR 351.303 (for general filing requirements).

hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[14]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for Hyosung is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[15] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). If Hyosung's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16]

In accordance with Commerce's ''automatic assessment'' practice,[17] for entries of subject merchandise during the review period produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate of 22.00 percent established in the investigation.[18]

For the companies which were not selected for individual review (*i.e.,* Hyundai Electric & Energy Systems Co., Ltd., Iljin Electric Co., Ltd., ILJIN, and LSIS Co., Ltd.), we will assign an assessment rate based on the cash deposit rate calculated for the company selected for mandatory review (*i.e.,* Hyosung).[19] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[20]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Hyosung and other companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 22.00 percent, the rate established in the investigation of this proceeding.[21] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–19768 Filed 9–12–22; 8:45 am]

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[14] *See* 19 CFR 351.310(c).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[16] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[17] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *See Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 77 FR 40857 (July 11, 2012).

[19] *See* section 735(c)(5)(A) of the Act; *see also* Preliminary Decision Memorandum at Section VII, ''Rate for Non-Selected Companies.

[20] *See* section 751(a)(2)(C) of the Act.

[21] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that 15 companies had no shipments of certain frozen fish fillets from the Socialist Republic of Vietnam (Vietnam) during the period of review (POR) August 1, 2020, through July 31, 2021. Commerce also determines that one company subject to this review is part of the Vietnam-wide entity because it did not demonstrate eligibility for a separate rate.

DATES: Applicable September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] On June 17, 2022, we received a case brief from the petitioners.[2] On June 24, 2022, we received rebuttal briefs from Nam Viet Corporation (NAVICO) [3] and from Green Farms Seafood Joint Stock Company (Green Farms) and Hung Vuong Group (HVG).[4]

Scope of the Order [5]

The products covered by the *Order* are frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus*. For a complete description of the scope of this *Order, see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed by interested parties in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice in appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Changes Since the Preliminary Results

Based on a review of the record and the comments received from interested parties, and for the reasons explained in the Issues and Decision Memorandum, we made no changes to the *Preliminary Results*.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that 15 companies had no shipments of subject merchandise during the POR.[7] Following the publication of the *Preliminary Results,* we received comments from interested parties concerning our no shipment determinations regarding two of these companies, GODACO Seafood Joint Stock Company and Fatifish Company Limited.[8] However, no party identified record evidence which would call our preliminary no shipment determinations into question.[9] Therefore, for these final results, we find that all 15 companies had no shipments during the POR. *See* appendix II.

Vietnam-Wide Entity

In the *Preliminary Results,* Commerce stated that Hoa Phat Seafood Import-Export and Processing J.S.C. (Hoa Phat) did not establish eligibility for a separate rate.[10] We received no information or comments since the issuance of the *Preliminary Results* that provides a basis for reconsidering the preliminary finding. Accordingly, we continue to find that Hoa Phat is not eligible for a separate rate and is part of the Vietnam-wide entity.

Assessment Rates

We have not calculated any assessment rates in this administrative review. Where we determined that an exporter under review had no shipments of the subject merchandise to the United States during the POR, any suspended entries that entered during the POR under that exporter's U.S. Customs and Border Protection (CBP) case number will be liquidated at a rate of $2.39 per kilogram, the rate for the Vietnam-wide entity.[11]

Likewise, for the company that was found to be ineligible for a separate rate, *i.e.,* Hoa Phat, we will instruct CBP to liquidate entries of subject merchandise exported by the company at a rate of $2.39 per kilogram, the rate for the Vietnam-wide entity.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (Act): (1) the cash deposit

[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 29113 (May 12, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Petitioners' Letter, ''Case Brief,'' dated June 17, 2022. The petitioners are the Catfish Farmers of America and individual U.S. catfish processors: America's Catch; Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc.; Consolidated Catfish Companies, LLC d/b/a Country Select Catfish; Delta Pride Catfish, Inc.; Guidry's Catfish, Inc.; Heartland Catfish Company; Magnolia Processing, Inc. d/b/a Pride of the Pond; and Simmons Farm Raised Catfish, Inc.

[3] *See* NAVICO's Letter, ''Rebuttal Case Brief,'' dated June 24, 2022.

[4] *See* Green Farms/HVG's Letter, ''AR18 Rebuttal Case Brief on behalf of Green Farms and Hung Vuong Group,'' dated June 24, 2022.

[5] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003) (*Order*).

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See Preliminary Results,* 87 FR 29113.

[8] *See* Issues and Decision Memorandum.

[9] *Id.*

[10] *See Preliminary Results,* 87 FR 29114.

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

rates for the 15 companies in Appendix II will remain unchanged from the rates assigned to them in the most recently-completed segment for each company, as applicable; (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters that maintain their eligibility for a separate rate, the cash deposit rate will continue to be the exporter-specific rate published for the most recently-completed segment of this proceeding; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be $2.39 per kilogram, the rate established for the Vietnam-wide entity; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(l) and 777(i) of the Act, and 19 CFR 351.213(h).

Dated: September 7, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

Companies With No Shipments During the POR

1. C.P. Vietnam Corporation
2. CAFATEX Corporation (also known as Cafatex)
3. Dai Thanh Seafoods Company Limited (also known as DATHACO, Dai Thanh Seafoods or Dai Thanh Seafoods Co., Ltd.)
4. Fatifish Company Limited (also known as FATIFISH or FATIFISHCO)
5. GODACO Seafood Joint Stock Company (also known as GODACO, GODACO Seafood, GODACO SEAFOOD, GODACO_SEAFOOD, or GODACO Seafood J.S.C.)
6. Golden Quality Seafood Corporation (also known as Golden Quality, GoldenQuality, GOLDENQUALITY, or GoldenQuality Seafood Corporation)
7. Green Farms Seafood Joint Stock Company (also known as Green Farms, Green Farms Seafood JSC, GreenFarm SeaFoods Joint Stock Company, or Green Farms Seafoods Joint Stock Company)
8. Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Huong Seafood)
9. Hung Vuong Group [12]
10. Nam Viet Corporation (also known as NAVICO)
11. QVD Food Company Ltd. (aka QVD, QVD Food Co., Ltd., or QVD Aquaculture) [13]
12. Southern Fishery Industries Company, Ltd. (also known as South Vina, South Vina Co., Ltd., Southern Fishery Industries Co., Ltd., Southern Fisheries Industries Company, Ltd., or Southern Fisheries Industries Company Limited)
13. To Chau Joint Stock Company (also known as TOCHAU, TOCHAU JSC, or TOCHAU Joint Stock Company)
14. Viet Hai Seafood Company Limited (also known as Viet Hai, Viet Hai Seafood Co., Ltd., Viet Hai Seafood Co., Vietnam Fish-One Co., Ltd., or Fish One)
15. Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Corp., Vinh Quang Fisheries Joint Stock Company, or Vinh Quang Fisheries Co., Ltd.)

[12] Hung Vuong Group is a single entity comprised of the following individual companies: (1) An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish, AnGiang Fisheries Import and Export, An Giang Fisheries Import & Export Joint Stock Company); (2) Asia Pangasius Company Limited (also known as ASIA); (3) Hung Vuong Ben Tre Seafood Processing Company Limited (also known as Ben Tre, HVBT, or HVBT Seafood Processing VBT, or HVBT Seafood Processing); (4) Europe Joint Stock Company (also known as Europe JSC or EJS CO.); (5) Hung Vuong Corporation (also known as HVC, HV Corp. or Hung Vuong Joint Stock Company); (6) Hung Vuong-Sa Dec Co., Ltd. (also known as Hung Vuong Sa Dec Company Limited); (7) Hung Vuong-Vinh Long Co. Ltd. (also known as Hung Vuong Vinh Long Company Limited); and (8) Hung Vuong Mascato Company Limited.

[13] QVD is a single entity that also includes QVD Dong Thap Food Co., Ltd. (also known as Dong Thap or QVD DT) and Thuan Hung Co., Ltd. (also known as THUFICO).

[FR Doc. 2022–19773 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–833]

Certain Preserved Mushrooms From France: Preliminary Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain preserved mushrooms (preserved mushrooms) from France are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Williams, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5166.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated this investigation on April 20, 2022.[1] Bonduelle Europe Long Life (Bonduelle) and France Champignon are the mandatory respondents in this investigation. For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics

[1] *See Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 24941 (April 27, 2022) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the

Continued

included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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*.

Scope of the Investigation

The products covered by this investigation are preserved mushrooms from France. For a full description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[3] we set aside a period of time, as stated in the *Initiation Notice,* for parties to raise issues regarding product coverage (*i.e.,* scope).[4] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is not modifying the scope language as it appeared in the *Initiation Notice. See* the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Tariff Act of 1930, as amended (the Act). Pursuant to section 776(a) of the Act, Commerce has preliminarily relied upon facts otherwise available to assign estimated weighted-average dumping margins to the mandatory respondents in this investigation because neither of the respondents submitted a response to Commerce's antidumping duty questionnaire. Further, Commerce preliminarily determines that these mandatory respondents failed to cooperate by not acting to the best of their abilities to comply with a request for information and is using an adverse inference in selecting from among the facts otherwise available (*i.e.,* applying adverse facts available (AFA)) to these respondents, in accordance with section 776(b) of the Act. For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margins in this preliminary determination were calculated entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis,* or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the margins alleged in the petition and applies the results to all other entities not individually examined.[5]

In the Petitions,[6] Giorgio Goods, Inc. (the petitioner) calculated three estimated dumping margins, 124.41 percent, 188.75 percent and 360.88 percent. Therefore, consistent with our practice, for the all-others rate in this investigation, we preliminarily assigned a simple average of the dumping margins alleged in the Petitions, which is 224.68 percent.[7]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2021, through December 31, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Bonduelle Europe Long Life	360.88
France Champignon	360.88
All Others	224.68

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of preserved mushrooms from France, as described in the ''Scope of the Investigation'' in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit equal to the margins indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

Verification

Because the mandatory respondents in this investigation did not act to the best of their abilities to provide information requested by Commerce, and Commerce preliminarily determines each of the mandatory respondents to be uncooperative, we will not conduct verifications.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to each of the mandatory respondents in this investigation, and applied an AFA rate based on the Petitions, there are no calculations to disclose.

Public Comment

Interested parties are invited to comment on this preliminary determination no later than 30 days after the date of publication of this preliminary determination.[8] Rebuttal

Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from France,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[4] *See Initiation Notice,* 87 FR at 24942.

[5] *See, e.g., Thermal Paper from Spain: Final Determination of Sales at Less Than Fair Value,* 86 FR 54162, 54163 (September 30, 2021), and accompanying Issues and Decision Memorandum.

[6] *See* Petitioner's Letter, ''Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain—Petition for the Imposition of Antidumping Duties,'' dated March 31, 2022 (Petitions), at Volume II; *see also* Checklist, ''AD Investigation Initiation Checklist: Certain Preserved Mushrooms from France,'' dated April 20, 2022 (Initiation Checklist); and Petitioner's Letter, ''Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain—Petitioner's Supplement to Volume II Relating to Request for the Imposition of Antidumping Duties on imports from France,'' dated April 8, 2022 (Petition Supplemental).

[7] *See* Petitions at Volume II; *see also* Initiation Checklist; and Petition Supplemental.

[8] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), 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. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[10]

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 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 in the **Federal Register**. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of our affirmative preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 7, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus Agaricus. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–19769 Filed 9–12–22; 8:45 am]

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[9] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[10] *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–475–818]

Certain Pasta From Italy: Amended Rescission of Antidumping Duty Administrative Review, in Part; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** on August 2, 2022, for the preliminary results and partial recission of the 2020–2021 administrative review of the antidumping duty order on certain pasta (pasta) from Italy. Commerce is amending its partial rescission due to an incorrect name.

DATES: Applicable September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1468.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2021, based on timely requests for an administrative review, Commerce initiated an administrative review of the *Order*.[1] On August 2, 2022, in accordance with 19 CFR 351.213(d), we published together with the preliminary results of review a notice of rescission, in part, with respect to the administrative review of the antidumping duty order on pasta from Italy for the period July 1, 2020, through June 30, 2021.[2]

Amended Rescission of Review in Part

In the *Preliminary Results and Partial Rescission,* Commerce stated that the review was rescinded with respect to the companies ''listed in Appendix II.'' One of the companies listed in Appendix II is ''Pastificio Liguori dal 1870 SpA.'' This is not the correct name of the company on which we intended to rescind the review. We are amending the *Preliminary Results and Partial Recission* to replace that incorrect name with *Liguori Pastificio dal 1820 S.p.A.*

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034 (September 7, 2021).

[2] *See Certain Pasta from Italy: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Review; 2020–2021,* 87 FR 47185 (August 2, 2022) (*Preliminary Results and Partial Rescission*).

Notification to Interested Parties

We are issuing and publishing this amended partial rescission of review in accordance with section 751(h) of the Tariff Act of 1930, as amended, and 19 CFR 351.224(e).

Dated: September 8, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–19770 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 26, 2022, and Thursday, October 27, 2022, from 10 a.m. until 4 p.m., eastern time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, October 26, 2022, and Thursday, October 27, 2022, from 10 a.m. until 4 p.m., eastern time.

ADDRESSES: The meeting will be a hybrid meeting, held in-person at American Institute of Architects, 1735 New York Ave. NW, Washington, DC 20006, and virtually via Blue Jeans webcast. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Jeff Brewer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–2489, Email address: *jeffrey.brewer@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. app., notice is hereby given that the ISPAB will hold an open meeting Wednesday, October 26, 2022, and Thursday, October 27, 2022, from 10 a.m. until 4 p.m., eastern time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including through review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *https://csrc.nist.gov/projects/ispab.*

The agenda is expected to include the following items:

—Board Introductions and Member Activities,
—Update from the NIST's Information Technology Laboratory (ITL) Director,
—Introduction to the Board of the newly confirmed NIST Director, Dr. Laurie Locascio,
—Briefing from the National Academies of Science on their report on cryptography ''Fostering Responsible Computing Research'',
—Briefing from NIST on Identity Management Issues,
—Briefing from the Cybersecurity and Infrastructure Security Agency (CISA) on Critical Infrastructure Cybersecurity Performance Goals,
—Briefing and Board discussion on the National Cybersecurity Strategy,
—Update on NIST Cybersecurity and Privacy Activities,
—Public Comments,
—Board Discussion and Recommendations.

Note that agenda items may change without notice. The final agenda will be posted on the ISPAB event page at: *https://csrc.nist.gov/Events/2022/ispab-october-2022-meeting.*

Public Participation: Written questions or comments from the public are invited and may be submitted electronically by email to Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. on Tuesday, October 25, 2022.

The ISPAB agenda will include a period, not to exceed thirty minutes, for submitted questions or comments from the public between 3 p.m. and 3:30 p.m. on Wednesday, October 26, 2022. Submitted questions or comments from the public will be selected on a first-come, first-served basis and limited to five minutes per person.

Members of the public who wish to expand upon their submitted statements, those who had wished to submit a question or comment but could not be accommodated on the agenda, and those who were unable to attend the meeting via webinar are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory by email to: *Jeffrey.Brewer@nist.gov.*

Admittance Instructions: Participants planning to attend in-person do not need to register. Participants planning to attend via webinar, must register via the instructions found on ISPAB's event page at: *https://csrc.nist.gov/Events/2022/ispab-october-2022-meeting* by 5 p.m. eastern time, Tuesday, October 25, 2022.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–19699 Filed 9–12–22; 8:45 am]

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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; Northwest Region, Pacific Coast Groundfish Fishery: Trawl Rationalization Cost Recovery Program

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 November 14, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0663 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 Christopher Biegel, Cost Recovery Coordinator, NOAA Fisheries West Coast Region, 1201 Northeast Lloyd Boulevard, Suite 1100, Portland OR

97232, (503) 231–6291 or *cost.recovery@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) authorizes and requires that the Secretary of Commerce maintain a cost recovery program to cover part of the management, data collection and analysis, and enforcement costs of the limited access privilege programs, such as the Pacific Coast Groundfish Trawl Rationalization Program (Trawl Program). Cost recovery fees may not exceed three percent of the ex-vessel value. The Trawl Program cost recovery program requires fish sellers to submit fees to fish buyers who then submit those fees to NOAA's National Marine Fisheries Service (NMFS). Fish buyers must also submit information to NMFS on the volume and value of harvested groundfish when submitting the fees. Information is collected from monthly and annual reports as well as non-payment documents when necessary.

The information collected is used to track the payment of cost recovery fees, reconcile cost recovery payments with landings data from other sources, calculate average ex-vessel values, and, if necessary, help in the resolution of non-payment issues.

This program is authorized under the Pacific coast groundfish fishery regulations, trawl rationalization cost recovery program at 50 CFR 660.115.

II. Method of Collection

Cost recovery fee payments for the Trawl Program must be submitted online through the Federal web portal *Pay.gov.* Annual reports may be submitted by mail or email. Payments for the Shorebased Individual Fishing Quota (IFQ) and Mothership (MS) sectors cost recovery fees are submitted online monthly through *Pay.gov.* The Catcher Processor sector submits cost recovery fees online yearly through *Pay.gov.* All payments must be made online.

The MS sector submits an annual report yearly by mail or email.

III. Data

OMB Control Number: 0648–0663.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 65.

Estimated Time per Response: Cost recovery fee forms: 1 hour; Annual report: 1 hour; Failure to Pay Report: 4 hours.

Estimated Total Annual Burden Hours: 580.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: NMFS and the Pacific Fisheries Management Council (Council) manage the groundfish fisheries in the exclusive economic zone seaward of California, Oregon, and Washington under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared the FMP under the authority of the MSA, 16 U.S.C. 1801 *et seq.* Regulations governing United States fisheries and implementing the FMP appear at 50 CFR part 660.

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 Information Collection Request. 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. 2022–19706 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC363]

Marine Mammals; File No. 26226

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Robert DiGiovanni, Jr., Atlantic Marine Conservation Society, P.O. Box 932, Hampton Bays, NY 11946, has applied in due form for a permit to conduct research on 38 species of marine mammals including endangered blue (*Balaenoptera musculus*), fin (*B. physalus*), North Atlantic right (*Eubalaena glacialis*), sei (*B. borealis*), and sperm (*Physeter macrocephalus*) whales.

DATES: Written, telefaxed, or email comments must be received on or before October 13, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26226 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26226 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Sara Young, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to study 34 cetacean species and four pinniped species in U.S waters of the Atlantic Ocean from Maine to Virginia. Researchers seek to (1) document marine mammal seasonal occurrence and distribution, (2) collect baseline data to maintain comparative long-term data sets to evaluate changes in species trends, and (3) identify and document natural and anthropogenic threats to marine mammals. Researchers would conduct manned aerial surveys and vessel surveys, including operation of an unmanned aircraft system (UAS), for counts, behavioral observations, photography, and photo-identification of marine mammals. Researchers would also conduct ground surveys of pinnipeds for counts, scat collection, remote video monitoring, observations, photography or photo-identification, and UAS operations. Take numbers for each species can be found in the application's take table. The permit would be valid for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 8, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–19758 Filed 9–12–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC354]

Endangered Species; File No. 20528

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that Bill Post, South Carolina Department of Natural Resources, 217 Fort Johnson Road, Charleston, SC 29412, has requested a modification to scientific research Permit No. 20528–03.

DATES: Written, telefaxed, or email comments must be received on or before October 13, 2022.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20528 mod 11 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 20528 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Erin Markin, Ph.D., or Malcolm Mohead, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 20528–03, issued on February 28, 2022 (87 FR 22193, April 14, 2022) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 20528–03 authorizes the permit holder to conduct research on Atlantic (*Acipenser oxyrinchus*) and shortnose (*A. brevirostrum*) sturgeon to determine their presence, status, health, habitat use, and movements in South Carolina waters. Researchers may use gill nets to capture Atlantic and shortnose sturgeon to measure, weigh, passive integrated transponder tag (PIT), dart tag, tissue sample, acoustically tag, fin ray sample, gonad biopsy, and photograph prior to release. A subset of Atlantic and shortnose sturgeon may receive internal acoustic transmitters. Early life stages of each species may be lethally sampled to document occurrence of spawning in systems. Up to two sturgeon of each species may unintentionally die annually during sampling activities. The permit holder requests authorization in the Edisto River to: (1) increase the number of adult/subadult shortnose sturgeon to be captured, PIT tagged, dart tagged, biologically sampled (tissue sample, fin ray sample), measured, weighed, and photographed prior to release from 10 to 75, annually, and (2) increase the number of juvenile shortnose sturgeon to be captured, PIT tagged, dart tagged, biologically sampled (tissue sample, fin ray sample), measured, weighed, and photographed prior to release from 10 to 20, annually, to accommodate research efforts. The permit is valid through March 31, 2027.

Dated: September 6, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–19766 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC358]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits, permit amendments, and permit modifications.

SUMMARY: Notice is hereby given that permits, permit amendments, and permit modifications have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore (Permit No. 26447), Shasta McClenahan, Ph.D. (Permit Nos. 20556–01 and 21476–02), Amy Hapeman (Permit No. 21233–04), and Sara Young (Permit No. 26314); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit, permit amendment, or permit modification had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS

Permit No.	RTID	Applicant	Previous **Federal Register** Notice	Issuance date
20556–01	0648–XF508	Georgia Department of Natural Resources, 2070 U.S. Highway 278 Southeast, Social Circle, GA 30025 (Responsible Party: Jonathan Ambrose).	83 FR 21766, May 10, 2018	August 15, 2022.
21233–04	0648–XC113	NMFS Southeast Fisheries Center, 75 Virginia Beach Drive, Miami, FL 33149 (Responsible Party: Mridula Srinivasan, Ph.D.).	87 FR 37312, June 22, 2022	August 22, 2022.
21476–02	0648–XC127	Lars Bejder, Ph.D., University of Hawaii at Manoa, 46–007 Lilipuna Road, Kaneohe, HI 96744.	87 FR 39066, June 30, 2022	August 16, 2022.
26314	0648–XC072	St. George Traditional Council, P.O. Box 940, St. George Island, AK, 99591 (Responsible Party: Mark Merculief).	87 FR 26465, June 17, 2022	August 18, 2022.
26447	0648–XC140	National Museum of Natural History, P.O. Box 37012, Washington, DC 20013 (Responsible Party: Kirk Johnson, Ph.D.).	87 FR 39065, June 30, 2022	August 11, 2022.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permits was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: September 7, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–19765 Filed 9–12–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Renewal of the Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of renewal.

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing this notice to announce the renewal of the Technology Advisory Committee (TAC). The Commission has determined that the renewal of the TAC is necessary and in the public's interest, and the Commission has consulted with the General Services Administration's Committee Management Secretariat regarding the TAC's renewal.

FOR FURTHER INFORMATION CONTACT: Joseph Cisewski, Chief of Staff and Senior Counsel to Commissioner Christy Goldsmith Romero, at 202–418–5814 or *jcisewski@cftc.gov,* and Philip W. Raimondi, Senior Counsel and Policy Advisor to Commissioner Christy Goldsmith Romero, at 202–418–5717 or *praimondi@cftc.gov.*

SUPPLEMENTARY INFORMATION: The TAC's objectives and scope of activities shall be to conduct public meetings, to submit reports and recommendations to the Commission, and to otherwise assist the Commission in identifying and understanding the impact and implications of technological innovation in the financial services, derivatives, and commodity markets. The TAC will provide advice on the application and utilization of new technologies in financial services, derivatives, and commodity markets, as well as by market professionals and market users. The TAC may further provide advice to the Commission on the appropriate level of investment in technology at the Commission to meet its surveillance and enforcement responsibilities, and inform the Commission's consideration of technology-related issues to support the Commission's mission of ensuring the integrity of the markets and achievement of other public interest objectives.

The TAC will operate for two years from the date of renewal unless the Commission directs that the TAC terminate on an earlier date. A copy of the TAC renewal charter has been filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat. A copy of the renewal charter will be posted on the Commission's website at *www.cftc.gov.*

Dated: September 8, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–19725 Filed 9–12–22; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2022–FSA–0056]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled ''Common Services for Borrowers (CSB)'' (18–11–16). The information contained in this system is maintained for various purposes relating to aid applicants and recipients, cosigners, and endorsers. These include: determining program benefit eligibility; originating, disbursing, servicing, collecting, assigning, adjusting, transferring, referring, discharge, and furnishing of credit information for title IV, Higher Education Act of 1965, as amended (HEA), obligations; enforcing conditions or terms of title IV, HEA obligations; and ensuring program and

contractual requirements are met by education and financial institutions, guaranty agencies, and Department contractors including Federal Loan Servicers, Not-for-Profit (NFP) Federal Loan Servicers, the Federal Perkins Loan Servicer, and Private Collection Agencies (PCAs).

DATES: Submit your comments on this modified system of records notice on or before October 13, 2022. This modified system of records notice will become applicable upon publication in the **Federal Register** on September 13, 2022, except for the new and modified routine uses 1(a), (d), (e), (f), (g), (h), (i), (k), (l), (m), (n), (o), (q), (5)(b), (11), (12), (13), (14), (15), (16), (17) and (18) that are outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' which will be effective on October 13, 2022, unless they need to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mark LaVia, Executive Director, Servicing, Student Experience and Aid Delivery, Federal Student Aid, U.S. Department of Education, 1300 Market St., 5th floor, Philadelphia, PA 19107. Email: *Mark.LaVia@ed.gov*. Telephone: 202–805–4376.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Introduction

The ''Common Services for Borrowers (18–11–16)'' system of records notice was most recently amended and published in full on September 2, 2016 (81 FR 60683).

The Department is modifying the section entitled ''SYSTEM LOCATION'' as follows:

(i) For the Department, adding the System Manager located in Philadelphia, PA; deleting the Washington, DC, location; and adding the Department's regional offices in San Francisco, CA, Chicago, IL, and Atlanta, GA, which were previously set forth in the now deleted Appendix II;

(ii) For Maximus Federal Services, Inc., deleting the Manassas, VA, location; adding the Frederick, MD, Greenville, TX, and Jacksonville, FL, locations which were previously set forth in Appendix II; adding Seattle, WA, Upper Marlboro, MD, and Brownsville, TX, locations; and deleting locations previously set forth in Appendix II at Reston, VA (Department contractor—Help Desk Application), Westminster, CO (Department contractor—Debt Management Collection System (DMCS) Disaster Recovery Site), Utica, NY (Department contractor—DMCS Business and Financial Operations Management), Waldorf, MD (Department subcontractor—Fulfillment Services), and Coralville, IA and Jacksonville, FL (Department contractor—Call Centers);

(iii) For Nelnet Servicing, LLC, adding locations at Sioux Falls, SD, North Mankato, MN, Grove City, OH, West Sacramento, CA, Lincoln, NE, Omaha, NE, and North Monroe, NC; and deleting the location previously set forth at Jacksonville, FL;

(iv) For Great Lakes Educational Loan Services, Inc. (GLCS) adding Bellevue, NE, Sioux Falls, SD, Eau Claire, WI, Eagan, MN, Plano, TX, Boscobel, WI, and Stevens Point, WI locations; and updating the address of the Madison, WI, location;

(v) Adding Aidvantage, with locations in Chandler, AZ, Omaha, NE, West Sacramento, CA, Monroe, NC, Wilkes-Barre, PA, Fishers, IN, and Muncie, IN;

(vi) For Pennsylvania Higher Education Assistance Agency (PHEAA), adding locations at Boyers, PA, Jacksonville, FL, Brownsville, TX, Tampa, FL, San Angelo, TX, and Sterling Forest, NY; and deleting the duplicative reference to the Harrisburg, PA, location, which was previously set forth in Appendix II;

(vii) For the Missouri Higher Education Loan Authority (MOHELA), adding the Chesterfield, MO, and Sterling Forest, NY, locations, which were previously set forth in Appendix II; adding, and updating the address of, the Columbia, MO, location, which was previously set forth in Appendix II; adding Boyers, PA, and Washington DC, locations; and deleting the location at Harrisburg, PA, which was previously set forth in Appendix II;

(viii) For the Oklahoma Student Loan Authority (NFPOSLA), adding the Scottsdale, AZ, Bellevue, NE, and Sioux Falls, SD, locations, which were previously set forth in Appendix II; adding, and updating the address of, one of the Oklahoma City, OK, locations (namely, 525 Central Park Drive, instead of 11300 Partnership Drive), which was previously set forth in Appendix II; and deleting the locations at Stafford, TX, Omaha, NE, and one of the Oklahoma City, OK, locations (namely, 11300 Partnership Drive), which were previously set forth in Appendix II;

(ix) Adding the North Texas Higher Education Servicing Corporation (NFPHESC—EdFinancial), with locations in North Bellevue, NE, Sioux Falls, SD, Stafford, TX, and Knoxville, TN;

(x) For Educational Computer Systems, Inc (ECSI), deleting the reference to Coraopolis, PA; and adding Atlanta, GA, Warrendale, PA, Moon Township, PA, and Winston-Salem, NC, locations;

(xi) Deleting Navient Corporation in Fishers, IN;

(xii) Adding Action Financial Services located in Medford, OR;

(xiii) Adding Bass & Associates, P.C. located in Tucson, AZ;

(xiv) Adding Central Research, Inc. (CRI) located in Lowell, AR;

(xv) For Coast Professional, Inc., adding a location in Geneseo, NY, and deleting the location in West Monroe,

LA, which was previously set forth in Appendix II;

(xvi) Adding Credit Adjustments, Inc. (CAI) located in Defiance, OH;

(xvii) Adding F.H. Cann & Associates, Inc. located in North Andover, MA;

(xviii) For Immediate Credit Recovery (ICR) adding a location in Poughkeepsie, NY; and deleting the location in Wappingers Falls, NY, which was previously set forth in Appendix II;

(xix) Adding National Credit Services located in Bothell, WA;

(xx) For National Recoveries, Inc., adding the location in Ham Lake, MN, which was previously set forth in Appendix II;

(xxi) Adding Professional Bureau of Collections of Maryland, Inc. located in Greenwood Village, CO;

(xxii) Adding Reliant Capital Solutions located in Gahanna, OH;

(xxiii) Deleting the business description of the Department's work with Federal Loan Servicers because it is not required and is covered under the purposes of the system of records; and

(xxiv) Deleting the discussion of Appendix II, which is being deleted, in its entirety, from this modified system of records notice.

The Department is modifying the section entitled ''SYSTEM MANAGER(S)'' by updating the System Manager's title and address.

The Department is modifying the section entitled ''AUTHORITY FOR MAINTENANCE OF THE SYSTEM'' to add ''the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency).''

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' as follows:

(i) The purpose of the system has been modified to include a note detailing that ''[d]ifferent parts of the HEA use the terms 'discharge', 'cancellation' or 'forgiveness' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term 'discharge' to include all three terms ('discharge,' 'cancellation,' and 'forgiveness'), including but not limited to discharges of student loans made pursuant to specific benefit programs. At times, this system of records notice may refer by name to a specific benefit program, such as the 'Public Service Loan Forgiveness' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges;''

(ii) Purpose (4) was modified to delete and replace ''loan or grant'' with ''title IV, HEA obligation;''

(iii) Purpose (5) was modified to delete and replace ''make'' with ''originate'' and to add ''disburse,'' ''furnish credit information for,''and ''discharge a title IV, HEA obligation'' in order to more accurately reflect the appropriate terminology;

(iv) Purpose (6) was modified to delete that a purpose of the system is ''to counsel a debtor in repayment efforts'' and to instead clarify that a purpose of the system is to provide customers with information to help them make informed decisions on repayment options, including forbearance, deferment, and recurring debit options, based on their unique situations;

(v) Purpose (7) was modified to add verifying compliance with contract requirements;

(vi) Purpose (8) was modified to remove the word ''borrower'' and to delete and replace ''a loan or grant'' with ''a title IV, HEA obligation'' in order to more accurately reflect the appropriate terminology;

(vii) Purpose (9) was modified to indicate that a purpose of the system is to litigate a title IV, HEA obligation, or to prepare for, provide support services for, or audit the results of litigation on a title IV, HEA obligation;

(viii) Purpose (11) was modified to specify that a purpose of the system is to verify that, in addition to program requirements, Federal, State, local, or Tribal statutory and regulatory requirements are also met by the listed entities (*i.e.,* educational and financial institutions, guaranty agencies, Department contractors including Federal Loan Servicers, NFP Federal Loan Services the Federal Perkins Loan Servicer, and PCAs);

(ix) Purpose (12) was modified to delete and replace ''debt'' with ''title IV, HEA obligation;''

(x) Purpose (13) was modified to delete and replace ''debt'' with ''title IV, HEA obligation'' and to delete and replace ''credit-reporting agency'' with ''consumer reporting agency;''

(xi) Purpose (14) was modified to specify that a purpose of the CSB system is to investigate, respond to, or resolve complaints submitted to the Department or to other Federal, State, local, or Tribal agencies regarding an aid applicant's or recipient's title IV, HEA program eligibility, the disbursement or servicing of a title IV, HEA obligation, or the practices or processes of the Department and/or the Department's contractors; and to delete ''update information, or correct errors contained in Department records'' because this was moved to new purpose (19);

(xii) Purpose (15) was modified to reflect credit balances are refunded by the U.S. Department of the Treasury(Treasury) to the individual or loan holder;

(xiii) Purpose (16) was modified to delete and replace ''loans and grants made under title IV of the HEA'' with ''title IV, HEA obligations'' and to add ''NFP Federal Loan Servicers;''

(xiv) New purpose (18) was added to support research, analysis, and development of educational policies in relation to title IV, HEA student aid programs;

(xv) New purpose (19) was added to support Federal budget analysts in the Department, the Office of Management and Budget (OMB), and the Congressional Budget Office (CBO) in the development of budget needs and forecasts;

(xvi) New purpose (20) was added to help governmental entities at the Federal, State, Tribal, and local levels exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers); to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors; and to update information or correct errors contained in Department records;

(xvii) New purpose (21) was added to ensure that only authorized users access aid applicants' or recipients' records, to maintain a history of each instance in which the aid applicant's or recipient's records are viewed or updated, and to assist the Department in responding to a suspected or confirmed breach of this system or in preventing, minimizing, or remedying harm when the Department suspects or confirms that this system has been breached or when the Department determines that information from this system of records is reasonably necessary to assist another agency or entity in responding to a suspected or confirmed breach or in preventing, minimizing, or remedying the risk of harm resulting from a suspected or confirmed breach;

(xviii) New purpose (22) was added to support the Department in detecting, preventing, mitigating, and recouping

improper payments in title IV, HEA programs; and

(xix) New purpose (23) was added to allow the Department to conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA.

The Department is modifying the section entitled ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' as follows:

(i) The introductory paragraph was updated to delete and replace the phrase ''are otherwise obligated to repay a loan or grant made under title IV of the Higher Education Act of 1965, as amended (HEA)'' with ''otherwise owe a title IV, HEA obligation,'' and to delete and replace ''held and collected by the Department'' with ''held, originated, serviced, disbursed, adjusted, collected, or discharged by the Department;''

(ii) Category (12), the Civil Legal Assistance Attorney Student Loan Repayment Program (CLAARP), was deleted because CLAARP is a repayment benefit and is not being funded;

(iii) Category (13), the Public Service Loan Forgiveness (PSLF) Program, was deleted because PSLF is a repayment benefit similar to other discharge programs and is therefore already covered in this notice; and

(iv) The final paragraph was modified to delete and replace ''or as household members'' with ''co-signers, endorsers, or a spouse,'' to delete and replace ''Federal title IV, HEA loan or grant'' with ''Federal title IV, HEA program funds,'' and to delete and replace ''the grant or loan'' with ''a title IV, HEA obligation.''

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' as follows:

(i) The introductory paragraph was updated to read ''The Information Technology (IT) systems of the Department used to carry out activities with regard to title IV, HEA obligations held, originated, serviced, disbursed, collected, or discharged by the Department: DMCS, IT systems operated by the Federal Loan Servicers and NFP Federal Loan Servicers to accomplish the purpose(s) of this system of records, IT systems operated by the Federal Perkins Loan Program Servicer to accomplish the purpose(s) of this system of records, and IT systems operated by the PCAs to accomplish the purpose(s) of this system of records;'' to clarify the system of records also includes paper records received from guaranty agencies for appeals by title IV, HEA loan borrowers of guaranty agency decisions; to update ''making and servicing loans, including collecting or otherwise resolving obligations owed by an individual under title IV of the HEA'' with ''title IV, HEA obligations held, originated, serviced, disbursed, collected, discharged, by the Department;'' to remove the CLAARP system and PSLF system from the list of systems covered by this system of records notice because these are repayment benefits, not systems; to add IT systems operated by Not-For-Profit (NFP) Federal Loan Servicers to the list of systems covered by this modified system of records notice; and to remove the Total and Permanent Disability (TPD) system from the list of systems covered by this system of records notice because this is a discharge benefit;

(ii) The second paragraph was updated to delete and replace ''individuals'' with ''aid applicant or recipient'' and to delete and replace ''obligated on the debt'' with ''indebted on a title IV, HEA obligation;''

(iii) The second paragraph was updated to include ''Borrower Defense (including but not limited to, case decisions, principal and interest discharged, amount refunded, and borrower defense notifications)'' as an example of records related to discharge of title IV, HEA obligation;

(iv) The second paragraph was also updated to include the maintenance of records related to PSLF (including, but not limited to, employment records) and Borrower Defense (including but not limited to, case decisions, principal and interest discharged, amount refunded, and borrower defense notifications) as they relate to discharge.in the listing of grounds for discharge;

(v) Finally, the second paragraph was updated to include loan discharge eligibility information and associated discharge eligibility consent information submitted by the recipient;

(vi) The third paragraph was modified to delete and replace ''for all debts'' with ''for all title IV, HEA obligations'' and to delete and replace ''individuals obligated on the debt'' with ''the individual who owes a title IV, HEA obligation;'' and

(vii) A new fourth paragraph was added to include information obtained from matching programs or other information exchanges with other Federal and State agencies, and other entities, to assist in identifying individuals who may be eligible for benefits related to their title IV, HEA obligations, including, but not limited to, TPD discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment or discharge benefits or for the purpose of recouping payments on delinquent title IV, HEA obligations under title IV, HEA programs.

The Department is modifying the section entitled ''RECORD SOURCE CATEGORIES'' to include cosigners, endorsers, current or prior FFEL loan holders or servicers and ''NFP Federal Loan Servicers'' and Tribal to the list of individuals and entities from whom or from which the Department obtains information; and to add a statement that information in this system may be obtained from other persons or entities from whom or from which data is obtained under the listed routine uses.

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' as follows:

(i) The first paragraph was modified to delete the discussion of ''return information'' that the Department obtained from the Internal Revenue Service because the Department no longer obtains this information and to delete the reference to Appendix I, which is separately being deleted, in its entirety, from this modified system of records notice;

(ii) Routine use (1)(a) was modified to delete and replace ''the loan or grant'' with ''title IV, HEA program funds;'' to add Tribal agencies and their authorized representatives to the list of agencies to which disclosures can be made; and to delete and replace ''repay the debt'' with ''repay the title IV, HEA obligation;''

(iii) Routine use (1)(d) was modified to delete and replace ''the loan or grant'' with ''a title IV, HEA obligation,'' and to permit disclosures to be made to the individual whom the records identify as the party obligated to repay the title IV, HEA obligation for the purpose of enforcing the conditions or terms of a title IV, HEA obligation;

(iv) Routine use (1)(e) was modified to delete and replace ''making'' with ''originating, disbursing'' to better clarify the process and responsibilities; to delete and replace ''a loan or collecting a grant obligation'' with ''title IV, HEA obligations;'' to delete and replace the references to ''the debt'' with ''the title IV, HEA obligation;'' to delete and replace ''make'' with ''originated'' to better clarify the process of guaranty agencies, educational institutions, or financial institutions; and to add disbursing, furnishing of credit information, and discharging the title IV, HEA obligation to the list of purposes for which the Department may disclose records pursuant to the routine use;

(v) Routine use (1)(f) was modified to delete and replace ''[t]o counsel a debtor in repayment efforts'' with ''[t]o provide customers with information to help them make informed decisions on repayment options, including deferment, forbearance, and recurring auto debit, based on their unique situations'' to clarify the purpose of disclosures under the routine use;

(vi) Routine use (1)(g) was modified to add disclosures to verify compliance with contractual requirements, to delete and replace verifying compliance with program regulations with verifying compliance with Federal, State, local, or Tribal statutory, regulatory, or program requirements, and to add third-party servicers and their authorized representatives and Tribal agencies and their authorized representatives to the list of entities and individuals to which or to whom disclosures may be made under this routine use;

(vii) Routine use (1)(h) was modified to delete and replace ''an individual obligated to repay a loan or grant'' with ''an individual who owes a title IV, HEA obligation;''

(viii) Routine use (1)(i) was modified to permit disclosures to FFEL loan holders and servicers, Department contractors including but not limited to, Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Servicer, and PCAs, to delete and replace ''debt'' with ''title IV, HEA obligation;'' and to add Tribal agencies and their representatives to the list of entities to which or to whom disclosures may be made under this routine use;

(ix) Routine use (1)(k) was modified to add Tribal agencies and their authorized representatives, and NFP Federal Loan Servicers to the list of entities to which disclosures may be made to verify that HEA program requirements are met, and to provide greater clarity by moving the placement of accrediting agencies in the listing of entities to which disclosures may be made to verify that HEA program requirements are met;

(x) Routine use (1)(l) was modified to delete and replace ''debt'' with ''title IV, HEA obligation;''

(xi) Routine use (1)(m) was modified to delete and replace ''debt'' with ''title IV, HEA obligation'' and to delete and replace ''credit reporting agency'' with ''consumer reporting agency;''

(xii) Routine use (1)(n) was modified to permit the Department to make disclosures to investigate, respond to, and resolve complaints submitted to the Department or to other Federal, State, local, or Tribal agencies regarding an aid applicant's or recipient's title IV, HEA program eligibility, the disbursement or servicing of a title IV, HEA obligation, or the practices or processes of the Department and/or the Department's contractors, and to add Tribal agencies and their authorized representatives to the list of agencies to which disclosures can be made. Routine use (1)(n) was also modified to delete and replace ''credit reporting agency'' with ''consumer reporting agency;''

(xiii) Routine use (1)(o) was modified to clarify that the Department provides an individual's credit balance information to Treasury for distribution;

(xiv) Routine use (1) (p) was modified to delete and replace ''loans and grants made under title IV of the HEA'' with ''title IV, HEA obligations;'' and to add NFP Federal Loan Servicers;

(xv) Newly renumbered routine use (1)(q) was modified to read: ''To help Federal, State, Tribal, and local governmental entities exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of records relating to title IV, HEA obligations to permit these governmental entities to verify compliance with debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records;''

(xvi) Routine use (3) was deleted;

(xvii) Routine use (5)(b) was updated to add public agencies' agents and contractors and Department contractors to, and remove foreign agencies from, the entities to which the Department may disclose records from this system in connection with certain employment, benefit, and contracting matters;

(xviii) Newly renumbered routine use (11) was modified to include the requirement that the researcher must ''agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records'' as part of the disclosure of the records from this system of records;

(xix) Newly renumbered routine use (12) was updated to add that a Congressional Member's written request for a record must be made not only at the written request of, but also on behalf of, an individual constituent whose records are being disclosed; and to delete the phrase ''whose records are being disclosed;''

(xx) Newly renumbered routine use (13) was modified to include disclosures to the Congressional Budget Office (CBO) and to read: ''The Department may disclose records to OMB or the CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b;''

(xxi) Newly renumbered routine use (14) was modified to delete and replace the reference in item (a) to ''the Department suspects or has confirmed that the security or confidentiality of information in a system covered by this system of records notice has been compromised'' with ''the Department suspects or has confirmed that there has been a breach of the system of records;'' to delete and replace the reference in item (b) to ''compromise'' with ''breach'' and the reference in item (b) to ''economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other system or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information'' with ''individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security;'' and to delete and replace the reference in item (c) to ''compromise'' with ''breach;''

(xxii) New routine use (15) was added to allow the Department to disclose records from this system to another Federal agency or Federal entity when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in responding to a suspected or confirmed breach, or 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;

(xxiii) Routine use (16) was modified to delete the word ''computer'' before the term ''matching programs,'' and to delete the reference to Appendix I, which is being separately deleted, in its entirety, from this modified system of records notice;

(xxiv) Routine use (17) was modified to delete the last sentence stating ''disclosure may be made to conduct

computerized comparisons for this purpose;'' and

(xxv) New routine use (18) was added to allow the Department to disclose records from this system to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS'' to indicate that records are retained and disposed of in accordance with ED Records Schedule 075: FSA Loan Servicing, Consolidation, and Collections Records (N1–441–09–016) (ED 075); the Department has proposed amendments to ED 075 for NARA's consideration; and the Department will continue to preserve all records covered by ED 075 until the amendments are approved.

The Department is modifying the section entitled ''ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS'' as follows:

(i) In the first paragraph, the Department removed the reference to Appendix II, which is being separately deleted, in its entirety, from this modified system of records notice;

(ii) In the second paragraph, the Department updated the reference to its Administrative Communications Directive and clarified that its requirements to undergo a security clearance investigation apply to contract personnel who have facility access and system access;

(iii) In the third paragraph, the Department removed the reference to OMB Circular No. A–130, Appendix III, because OMB Circular No. A–130 no longer contains an Appendix III;

(iv) In the fourth paragraph, the Department deleted and replaced ''FSA Information Security and Privacy Policy'' with ''Standard PR.AC: Password Parameters Policy;''

(v) The Department included, in new fifth and sixth paragraphs, information on requirements under the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, to clarify that the Department system must receive a signed Authorization to Operate (ATO) and to provide a more detailed explanation of controls; and

(vi) In the final paragraph, the Department is updating the reference to additional system locations given that Appendix II is being separately deleted, in its entirety, from this system of records notice; and deleting the reference to ''additional physical security measures'' being in place.

The Department is removing APPENDIX I entitled ''COMPUTER MATCHING PROGRAMS IN WHICH THE DEPARTMENT CURRENTLY ENGAGES OR HAS RECENTLY ENGAGED WITH RESPECT TO THIS SYSTEM'' because the information that the Department receives from matching programs has been generally described in the section of the notice entitled ''CATEGORIES OF RECORDS'' and a separate appendix is not required by the Privacy Act or OMB and is not included in the Department's other systems of records notices.

The Department is removing APPENDIX II entitled ''ADDITIONAL SYSTEM LOCATIONS.'' As part of removing Appendix II, the Department has made the following modifications:

(i) From the subsection entitled ''The Department and its Contractors,'' the Department's locations have been moved to the ''SYSTEM LOCATION'' section, as described in greater detail in the above discussion of modifications thereto; and the PHEAA and Nelnet Servicing LLC locations have been deleted, as they were already, and continued to be, set forth in the ''SYSTEM LOCATION'' section;

(ii) From the subsection entitled ''Maximus Federal Services, Inc.,'' the Reston, VA, Westminster, CO, Waldorf, MD, Coralville, IA, Jacksonville, FL, and Utica, NY, locations have been deleted, and the remaining Maximus locations have been moved to the ''SYSTEM LOCATION'' section, as described in greater detail in the above discussion of modifications thereto;

(iii) From the subsection entitled ''Not-For-Profit (NFP) Servicers:'' (a) for MOHELA, the Chesterfield, MO, and Sterling Forest, NY, locations have been moved to, and the Columbia, MO, location has been moved to, and its address updated in, the ''SYSTEM LOCATION'' section; and the Harrisburg, PA, location has been deleted; (b) for NFPOSLA, the Scottsdale, AZ, Bellevue, NE, and Sioux Falls, SD, locations have been moved to, and one of its Oklahoma City, OK, locations (namely, 525 Central Park Drive) has been moved to, and its address updated in, the ''SYSTEM LOCATION'' section, and the locations at Stafford, TX, and Omaha, NE, and one of the Oklahoma City, OK, locations (namely, 11300 Partnership Drive) has been deleted; and (c) the following NFP Federal Loan Servicers have been deleted because they no longer service loans for the Department: Education Servicers of America, Inc. (ESA)/Edfinancial; Utah Higher Education Assistance Authority (UHEAA)/Cornerstone Education Loan Services, Vermont Student Assistance Corporation (VSAC), ISL Service Corporation/Aspire Resources Inc., New Hampshire Higher Education Loan Corporation (NHHELCO)/Granite State Management & Resources (GSM&R), South Carolina Student Loan Corporation, Tru Student, Inc., Kentucky Higher Education Student Loan Corporation (KHESLC), College Foundation, Inc., Council for South Texas Economic Progress (COSTEP), Georgia Student Finance Authority, New Mexico Educational Assistance Foundation, and Connecticut (Campus Partners); and

(iv) From the subsection entitled ''Private Collection Agencies (PCAs),'' Immediate Credit Recovery (ICR) and Coast Professional have been moved to the ''SYSTEM LOCATION'' section with updated addresses in Poughkeepsie, NY, and Geneseo, NY, respectively; the Nation Recoveries' Ham Lake, MN, location has been moved to the ''SYSTEM LOCATION'' section; and the following PCAs have been deleted because they no longer contract with the Department: Collecto, Inc., GC Services, Allied Interstate, The CBE Group, Inc., Diversified Collection Service, Financial Asset Management Systems, Inc., NCO Financial Systems, Inc., Pioneer Credit Recovery, Inc., Account Control Technology, Inc., Van Ru Credit Corporation, Progressive Financial Services, West Asset Management Enterprises, Inc., Premiere Credit of North America, ConServe, Financial Management Systems, Collection Technology, Inc., Enterprise Recovery Systems, Inc., Windham Professionals, Inc., and Delta Management Associates, Inc.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid (FSA), U.S. Department of Education (Department), publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

Common Services for Borrowers (CSB) (18–11–16).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) U.S. Department of Education:

- Executive Director, Servicing, Student Experience and Aid Delivery, Federal Student Aid, U.S. Department of Education, 1300 Market St., 5th Floor, Philadelphia, PA 19107 (System Manager);
- 50 Beale St., San Francisco, CA 94105;
- 500 West Madison St., Chicago, IL 60661; and
- 61 Forsyth St., Atlanta, GA 30303.

(2) Maximus Federal Services, Inc. (Contractor—Federal Loan Servicer for Collections—Debt Management Collection System (DMCS)):

- 5202 Presidents Ct., Frederick, MD 21703 (Department contractor—DMCS Program Management and Help Desk);
- Amazon Web Services Government Cloud, US East, 410 Terry Ave. North, Seattle, WA 98109–5210 (System Hosting);
- Mail Fulfillment and Imaging Center(s): 800 Commerce Dr., Upper Marlboro, MD 20774; and 6201 Interstate 30, Greenville, TX 75402; and
- Contact Centers: 1 Imeson Park Blvd., Suite 300, Jacksonville, FL 32218; and 4335 Paredes Line Rd., Brownsville, TX 78526.

(3) Nelnet Servicing, LLC (Contractor—Federal Loan Servicer):

- 1001 Fort Crook Rd. North, Suite 132, Bellevue, NE 68005 (System Hosting);
- 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104 (Backup site);
- Mail Fulfillment and Imaging Center: 1720 Northway Dr., North Mankato, MN 56003; 3125 Lewis Centre Way, Grove City, OH 43123; 3885 Seaport Blvd., Suite 40, West Sacramento, CA 95691; and 1803 Rocky River Rd., North Monroe, NC 28110; and
- Contact Center(s): 3015 South Parker Rd., Aurora, CO 80014; 121 South 13th St., Lincoln, NE 68508; and 4501 Abbott Dr., #2300, Omaha, NE 68110.

(4) Great Lakes Educational Loan Services, Inc. (GLCS) (Contractor—Federal Loan Servicer):

- 1001 Fort Crook Road North, Suite 132, Bellevue, NE 68005 (System Hosting);
- 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104 (Backup site);
- Mail Fulfillment and Imaging Center: 2401 and 2501 International Lane, Madison, WI 53704; and 1529 Continental Dr., Eau Claire, WI 54701; and
- Contact Center(s): 930 Blue Gentian Rd., Eagan, MN 55121; 6500 International Pkwy, Plano, TX 75093; 2401 and 2501 International Lane, Madison, WI 53704; 1529 Continental Dr., Eau Claire, WI 54701; 308 2nd St., Boscobel, WI 53805; and 1101 Center Point Dr., Stevens Point, WI 54481.

(5) Aidvantage (Contractor—Federal Loan Servicer):

- Chandler Data Center, 240 North Roosevelt Ave., Chandler, AZ 48226 (System Hosting);
- Omaha Data Center, 7305 Pacific St., Omaha, NE 68106 (Secondary/Backup site);
- Mail Fulfillment and Imaging Center(s): 3885 Seaport Blvd., #40, West Sacramento, CA 95691; 1803 North Rocky River Rd., #7961, Monroe, NC 28110; and 220 Lasley Ave., Wilkes-Barre, PA 18706; and
- Contact Center(s): 11100 USA Parkway, Fishers, IN 46037; 220 Lasley Ave., Wilkes-Barre, PA 18706; and 4501 North Superior Dr., Muncie, IN 47303.

(6) Pennsylvania Higher Education Assistance Agency (PHEAA)(Contractor—Federal Loan Servicer):

- 1137 Branchton Rd., Boyers, PA 16020 (System Hosting);
- 1200 North 7th St., Harrisburg, PA 17102–1419 (Mail Fulfillment and Imaging);
- Contact Center(s): 1 Imeson Park Blvd., Jacksonville, FL 32218; 4335 Paredes Line Rd., Brownsville, TX 78526; 6700 Lakeview Center Dr., Tampa, FL 33619; 2763 Southwest Blvd., San Angelo, TX 76904; and
- 300 Long Meadow Rd., Suite 200, Sterling Forest, NY 10979 (Disaster Recover Facility).

(7) Missouri Higher Education Loan Assistance Authority (MOHELA) (Contractor—Not-for-Profit (NFP) Federal Loan Servicer):

- 633 Spirit Dr., Chesterfield, MO 63005 (System Hosting);
- 555 Vandiver Dr., Columbia, MO 65202 (Backup site);
- 1137 Branchton Rd., Boyers, PA 16020;
- 300 Long Meadow Rd., Suite 200, Sterling Forest, NY 10979 (Secondary Site);
- Mail Fulfillment and Imaging ail Fulfillment and Imaging Center(s): 633 Spirit Dr., Chesterfield, MO 63005; and 555 Vandiver Dr., Columbia, MO 65202; and
- Contact Center(s): 633 Spirit Dr., Chesterfield, MO 63005; 555 Vandiver Dr., Columbia, MO 65202; and 820 First St. NE, Suite L–120, Washington, DC 20002.

(8) Oklahoma Student Loan Authority (NFPOSLA) (Contractor—NFP Federal Loan Servicer):

- 525 Central Park Dr., Ste. 600, Oklahoma City, OK 73105 (System Hosting);
- 7499 East Paradise Lane, Scottsdale, AZ 85260 (Backup site);
- 1001 Fort Crook Road. North, Suite 132, Bellevue, NE. 68005–4247;
- 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104;
- Mail Fulfillment and Imaging Center(s): 525 Central Park Dr., Ste. 600, Oklahoma City, OK 73105; and
- Call Center(s): 525 Central Park Dr., Ste. 600, Oklahoma City, OK 73105.

(9) North Texas Higher Education Servicing Corp. (NFPHESC—EdFinancial) (Contractor—NFP Federal Loan Servicer):

- 1001 Fort Crook Rd., Suite 132, North Bellevue, NE 68005–4247 (System Hosting);
- 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104;
- Mail Fulfillment and Imaging Center(s): 13271 North Promenade Blvd., Stafford, TX 77477–3957; and
- Contact Center(s): 120 North Seven Oaks Dr., Knoxville, TN 37922; and 298 North Seven Oaks Dr., Knoxville, TN 37922.

(10) Educational Computer Systems, Inc. (ECSI) (Contractor—Federal Perkins Loan Servicer):

- 1033 Jefferson St. NW, Atlanta, GA 30318 (System Hosting);
- Mail Fulfillment and Imaging Center(s): 100 Global View Dr., Warrendale, PA 15086; and
- Contact Center(s): 1200 Cherrington Parkway, Suite 200, Moon Township, PA 15108; and 3330 Healy Dr., Winston-Salem, NC 27103.

(11) Action Financial Services (Contractor—Private Collection Agency):

- 2055 Cardinal Ave., Medford, OR 97504 (Call Center, Administrative

Support, Compliance, Training and Human Resources).

(12) Bass & Associates, P.C. (Contractor—Private Collection Agency):

▪ 3926 E Fort Lowell Rd., Tucson, AZ 85712–1083 (Administration and Student Loan Collections).

(13) Central Research, Inc. (CRI) (Contractor—Private Collection Agency):

▪ 122 N Bloomington St., Suite I, Lowell, AR 72745 (Accounting/Corporate Administration).

(14) Coast Professional, Inc (Contractor—Private Collection Agency):

▪ 4273 Volunteer Rd., Geneseo, NY 14454 (Student Loan Servicing & Collecting).

(15) Credit Adjustments, Inc. (CAI) (Contractor—Private Collection Agency):

▪ 1270 Geneva Blvd. Defiance, OH 43512 (Collection Activity, Administrative Offices).

(16) F.H. Cann & Associates, Inc. (Contractor—Private Collection Agency):

▪ 1600 Osgood St., Suite 2–120, North Andover, MA 01845 (Collection Activity, Administrative Office).

(17) Immediate Credit Recovery (ICR) (Contractor—Private Collection Agency):

▪ 6 Neptune Rd., Suite 110, Poughkeepsie, NY 12601 (Call Center, Rehab Payer Service and Maintenance, Compliance, IT Staff, HR, Accounting, CEO, CIO, VP admin and other executive staff).

(18) National Credit Services (Contractor—Private Collection Agency):

▪ 2525 220th St. SE, Suite 200, Bothell, WA 98021 (Debt Collection, Rehabilitations, Skip Tracing, QA, Compliance, HR and Administrative Wage Garnishment (AWG)).

(19) National Recoveries Inc. (Contractor—Private Collection Agency):

▪ 14735 Hwy 65, NE, Ham Lake, MN 55304 (Collections, Invoice Processing, IT).

(20) Professional Bureau of Collections of Maryland, Inc. (Contractor—Private Collection Agency):

▪ 5295 DTC Parkway, Greenwood Village, CO 80111 (Executive, Administrative, Accounting, Collections, IT and Compliance).

(21) Reliant Capital Solutions (Contractor—Private Collection Agency):

▪ 670 Cross Pointe Rd., Gahanna, OH 43230 (Front Line Agents and Administrative Office).

SYSTEM MANAGER(S):

Executive Director, Servicing, Student Experience and Aid Delivery, Federal Student Aid, U.S. Department of Education, 1300 Market St., 5th Floor, Philadelphia, PA 19107.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles IV–A, IV–B, IV–D, and IV–E of the Higher Education Act (HEA) of 1965, as amended (20 U.S.C. 1070 *et seq.*) and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency).

PURPOSE(S) OF THE SYSTEM:

Note: Different parts of the HEA use the terms ''discharge'', ''cancellation'' or ''forgiveness'' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge'', ''cancellation'' and ''forgiveness''), including but not limited to discharges of student loans made pursuant to specific benefit programs. At times, this system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.

The information maintained in this system of records is used for the following purposes:

(1) To verify the identity of an individual;

(2) To determine program eligibility and benefits;

(3) To facilitate default reduction efforts by program participants;

(4) To enforce the conditions or terms of a title IV, HEA obligation;

(5) To originate, disburse, service, collect, assign, adjust, transfer, refer, furnish credit information for, and discharge a title IV, HEA obligation;

(6) To provide customers with information to help them make informed decisions on repayment options, including forbearance, deferment, and recurring debit options, based on their unique situations;

(7) To investigate possible fraud or abuse or verify compliance with program regulations or contract requirements;

(8) To locate a delinquent or defaulted individual obligated to repay a title IV, HEA obligation;

(9) To litigate a title IV, HEA obligation, or to prepare for, provide support services for, or audit the results of litigation on a title IV, HEA obligation;

(10) To prepare for, conduct, or enforce a limitation, suspension, termination, or debarment action;

(11) To verify that Federal, state, local, or Tribal statutory, regulatory, and program requirements are met by educational and financial institutions, guaranty agencies, and Department contractors including Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, and Private Collection Agencies (PCAs);

(12) To verify whether a title IV, HEA obligation qualifies for discharge;

(13) To conduct credit checks or respond to inquiries or disputes arising from information on the title IV, HEA obligation already furnished to a consumer reporting agency;

(14) To investigate, respond to, or resolve complaints submitted to the Department or to other Federal, State, local, or Tribal agencies regarding an aid applicant's or recipient's title IV, HEA program eligibility, the disbursement, or servicing of a title IV, HEA obligation, or the practices or processes of the Department and/or the Department's contractors;

(15) To determine credit balances to be refunded by the U.S. Department of the Treasury (Treasury) to the individual or loan holder;

(16) To allow educational institutions, financial institutions, Federal Loan Servicers, NFP Federal Loan Servicers the Federal Perkins Loan Servicer, PCAs, and guaranty agencies to report information to the Department on all aspects of title IV, HEA obligations in uniform formats to permit the Department directly to compare data submitted to the Department by individual educational institutions, financial institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, NFP Federal Loan Servicers the Federal Perkins Loan Servicer, or PCAs;

(17) To report to the Internal Revenue Service (IRS) information required by law to be reported, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S;

(18) To support research, analysis, and development of educational policies in relation to title IV, HEA student aid programs;

(19) To support Federal budget analysts in the Department, the Office of Management and Budget (OMB), and the Congressional Budget Office (CBO) in the development of budget needs and forecasts;

(20) To help governmental entities at the Federal, State, Tribal, and local levels to exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers); to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors; and to update information or correct errors contained in Department records;

(21) To ensure that only authorized users access aid applicants' or recipients' records, to maintain a history of each instance in which the aid applicant's or recipient's records are viewed or updated, and to assist the Department in responding to a suspected or confirmed breach of this system or in preventing, minimizing, or remedying harm when the Department suspects or confirms that this system has been breached or when the Department determines that information from this system is reasonably necessary to assist another agency or entity in responding to a suspected or confirmed breach or in preventing, minimizing, or remedying the risk of harm resulting from a suspected or confirmed breach;

(22) To support the Department in detecting, preventing, mitigating, and recouping improper payments in title IV, HEA programs; and

(23) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The CSB system contains records on individuals who received a loan or who otherwise owe a title IV, HEA obligation held, originated, serviced, disbursed, adjusted, collected, or discharged by the Department, which was made under:

(1) The Federal Family Education Loan (FFEL) Program, including Stafford Loans, Federal Insured Student Loans (FISL), Supplemental Loans for Students (SLS), PLUS Loans (formerly Parental Loans for Undergraduate Students), and Consolidation Loans;

(2) the William D. Ford Federal Direct Loan (Direct Loan) Program, including Federal Direct Unsubsidized and Subsidized Stafford/Ford Loans, Federal Direct Consolidation Loans, and Federal Direct PLUS Loans;

(3) the Federal Perkins Loan Program;

(4) the Federal Pell Grant Program;

(5) the Federal Supplemental Education Opportunity Grant (FSEOG) Program;

(6) the Leveraging Educational Assistance Partnership (LEAP) Program;

(7) the Special Leveraging Educational Assistance Partnership (SLEAP) Program;

(8) the Academic Competitiveness Grant (ACG) Program;

(9) the National Science and Mathematics Access to Retain Talent (SMART) Grant Program;

(10) the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; and

(11) the Iraq and Afghanistan Service Grant Program.

This system also contains records on individuals who apply for, but do not receive, a Direct Loan, as well as individuals identified by the borrower or recipient of the Federal title IV, HEA program funds as references, co-signers, endorsers, or a spouse whose income and expenses are considered in connection with the making or the enforcement of a title IV, HEA obligation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records covers the following Information Technology (IT) systems of the Department used to carry out activities with regard to title IV, HEA obligations held, originated, serviced, disbursed, collected, or discharged by the Department: DMCS, IT systems operated by the Federal Loan Servicers and NFP Federal Loan Servicers to accomplish the purpose(s) of this system of records, IT systems operated by the Federal Perkins Loan Program Servicer to accomplish the purpose(s) of this system of records, and IT systems operated by the PCAs to accomplish the purpose(s) of this system of records. This system of records also covers paper records obtained by the Department from guaranty agencies in the process of considering appeals by title IV, HEA loan borrowers of guaranty agency decisions.

This system of records maintains the employment information, educational status, family income, Social Security number (SSN), address(es), email address(es), and telephone number(s) of the aid applicant or recipient indebted on a title IV, HEA obligation or the individuals whose income and expenses are included in a financial statement submitted by the aid applicant or recipient. This system of records maintains the loan discharge income eligibility information and associated discharge eligibility consent information of the aid recipient indebted on a title IV, HEA obligation. This system also maintains records including, but not limited to, the application for, agreement to repay, and disbursements on the loan, and loan guaranty, if any; the repayment history, including deferments and forbearances; claims by lenders on the loan guaranty; and records related to discharge of title IV, HEA obligations on grounds of qualifying service, bankruptcy discharge, Total and Permanent Disability (including medical records submitted to support application for discharge by reason of disability), death, Public Service Loan Forgiveness (PSLF) (including, but not limited to, employment records), Borrower Defense (including but not limited to, case decisions, principal and interest discharged, amount refunded, and borrower defense notifications) or other statutory or regulatory grounds for relief.

Additionally, for title IV, HEA grant overpayments, the system contains records about the amount disbursed, the school that disbursed the grant, and the basis for overpayment; for all title IV, HEA obligations, the system contains demographic, employment, and other data on the individual who owes a title IV, HEA obligation or provided as references by the obligor, and the collection actions taken by any holder, including write-off amounts and compromise amounts.

This system also contains information obtained from matching programs or other information exchanges with other Federal and State agencies, and other entities, to assist in identifying individuals who may be eligible for benefits related to their title IV, HEA obligations, including, but not limited to, TPD discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment or discharge benefits or for the purpose of recouping payments on delinquent title IV, HEA obligations under title IV, HEA programs.

RECORD SOURCE CATEGORIES:

The system includes information that the Department obtains from applicants and those individuals and their families who received, or who are otherwise obligated to repay, a title IV, HEA obligation held and collected by the Department. The Department also obtains information from Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, references, cosigners, endorsers, current or prior FFEL loan holders or servicers, guaranty agencies, educational and financial institutions and their authorized representatives, and Federal, State, Tribal and local agencies and their authorized representatives; private parties, such as

relatives and business and personal associates; present and former employers; creditors; consumer reporting agencies; and adjudicative bodies. Information in this system may be obtained from other persons or entities from whom or from which data is obtained following a disclosure under the listed routine uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the information in the record was collected. These disclosures may be made on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records for the following program purposes:

(a) To verify the identity of the individual whom records indicate has applied for or received title IV, HEA program funds, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the title IV, HEA obligation;

(b) To determine program eligibility and benefits, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(c) To facilitate default reduction efforts by program participants, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to consumer reporting agencies; and to adjudicative bodies;

(d) To enforce the conditions or terms of a title IV, HEA obligation, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the title IV, HEA obligation;

(e) To permit originating, disbursing, servicing, collecting, assigning, adjusting, transferring, referring, furnishing of credit information, or discharging title IV, HEA obligations, disclosures may be made to guaranty agencies, educational institutions, or financial institutions that originated, held, serviced, or have been assigned the title IV, HEA obligation, and their authorized representatives; to a party identified by the debtor as willing to advance funds to repay the title IV, HEA obligation; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(f) To provide customers with information to help them make informed decisions on repayment options, including deferment, forbearance, and recurring auto debit, based on their unique situations, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; and to Federal, State, or local agencies, and their authorized representatives;

(g) To investigate possible fraud or abuse or to verify compliance with contractual requirements or Federal, State, local, or Tribal statutory, regulatory, or program requirements, disclosures may be made to guaranty agencies, educational and financial institutions, third-party servicers, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(h) To locate a delinquent or defaulted borrower, or an individual who owes a title IV, HEA obligation, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(i) To prepare a title IV, HEA obligation for litigation, to provide support services for litigation on a title IV, HEA obligation, to litigate a title IV, HEA obligation, or to audit the results of litigation on a title IV, HEA obligation, disclosures may be made to FFEL loan holders or servicers; Department contractors including but not limited to, Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Servicer, PCAs and to guaranty agencies and their authorized representatives; Federal, State, Tribal, or local agencies, and their authorized representatives; and to adjudicative bodies;

(j) To prepare for, conduct, or enforce a limitation, suspension, or termination or a debarment action, disclosures may be made to guaranty agencies, educational or financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; and to adjudicative bodies;

(k) To verify that HEA program requirements are met by educational and financial institutions, guaranty agencies, Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, and PCAs, disclosures may be made to guaranty agencies, educational or financial institutions, and their authorized representatives; to accrediting agencies; to auditors engaged to conduct an audit of a guaranty agency or an educational or financial institution; to Federal, State, Tribal, or local agencies, and their authorized representatives; and to adjudicative bodies;

(l) To verify whether a title IV, HEA obligation qualifies for discharge disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(m) To conduct credit checks or to respond to inquiries or disputes arising from information on the title IV, HEA obligation already furnished to a consumer reporting agency, disclosures may be made to consumer reporting

agencies; to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; and to adjudicative bodies;

(n) To investigate, respond to, and resolve complaints submitted to the Department or to Federal, State, local, or Tribal agencies regarding an aid applicant's or recipient's title IV, HEA program eligibility, the disbursement or servicing of a title IV, HEA obligation, or the practices or processes of the Department and/or the Department's contractors or to update information or correct errors contained in Department records, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, Tribal, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(o) To provide credit balances identified in the Department's systems to Treasury for distribution, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; and to creditors;

(p) To allow the reporting of information to the Department on all aspects of title IV, HEA obligations in uniform formats and to permit the Department to directly compare data submitted to the Department by individual educational institutions, financial institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, NFP Federal Loan Servicers, PCAs, and the Federal Perkins Loan Servicer, disclosures may be made to educational institutions, financial institutions, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, NFP Federal Loan Servicers, and PCAs;

(q) To report information required by law to be reported, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S, disclosures may be made to the IRS; and;

(r) To help Federal, State, Tribal, and local governmental entities exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of records relating to title IV, HEA obligations to permit these governmental entities to verify compliance with debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records.

(2) *Feasibility Study Disclosure.* The Department may disclose information from this system of records to other Federal agencies, and to guaranty agencies and to their authorized representatives, to determine whether matching programs should be conducted by the Department for purposes such as to locate a delinquent or defaulted debtor or to verify compliance with program regulations.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either alone or in connection with other information, a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose the relevant records to an entity charged with the responsibility for investigating or enforcing those violations or potential violations.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in judicial or administrative litigation or ADR, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Department of Justice (DOJ) has been requested to or agrees to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; and

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or an entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies or their Agents and Contractors, and Professional Organizations or the Department's Contractors.* The Department may disclose a records to a Federal, State, local, or other public authority or an agent or contractor of such public agency, or professional organization, or the Department's contractors in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting

of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action, the Department may disclose the record in this system of records in the course of investigation, fact-finding, or adjudication to any witness, designated factfinder, mediator, or other person designated to resolve issues or decide the matter.

(7) *Labor Organization Disclosure.* The Department may disclose a record from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or to OMB if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(9) *Disclosure to the DOJ.* The Department may disclose records to the DOJ, or the authorized representative of DOJ, to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contracting Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) of the Privacy Act with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(13) *Disclosure to OMB or CBO for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB or CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(14) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach and prevent, minimize, or remedy such harm.

(15) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(16) *Disclosure to Third Parties through Matching Programs.* Unless otherwise prohibited by other laws, any information from this system of records, including personal information obtained from other agencies through matching programs, may be disclosed to any third party through a matching program, which is conducted under a Computer Matching Agreement between the Department and the third party, and requires that the matching be conducted in compliance with the requirements of the Privacy Act. Purposes of these disclosures may be: (a) To establish or verify program eligibility and benefits; (b) to establish or verify compliance with program regulations or statutory requirements, such as to investigate possible fraud or abuse; and (c) to recoup payments or delinquent debts under any Federal benefit programs, such as to locate or take legal action against a delinquent or defaulted debtor.

(17) *Disclosure of Information to Treasury.* The Department may disclose records to (a) a Federal or State agency, its employees, agents (including contractors of its agents), or contractors, or (b) a fiscal or financial agent designated by the Treasury, including employees, agents, or contractors of such agent, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a State in a State-administered, Federally funded program.

(18) *Disclosure to National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a valid overdue claim of the Department; such information is limited to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim;

(2) the amount, status, and history of the claim; and

(3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained in hardcopy, microfilm, magnetic storage, and optical storage media, such as tape, disk, etc.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system pertaining to a title IV, HEA loan borrower or grant recipient are retrieved by one or more of the following data elements: the SSN, name, address, randomly generated number, debt number, phone number, debt type reference, debt type extension debt number, commercial name, commercial contact name, legacy ID, driver's license number, American Bankers Association (ABA) routing number, bankruptcy docket number, debt placement date, debt user defined page (UDP), email address, last worked date, payment additional extension reference ID, payment extension reference ID, tag short name, total balance, credit bureau legacy ID, debt type group short name, debt type short name, department name, institution account number, judgment docket number, license-issuing State, next scheduled payment amount, next scheduled payment date, office name, original debt type name, PCA group short name, and PCA short name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with ED Records Schedule 075: FSA Loan Servicing, Consolidation, and Collections Records (N1–441–09–016) (ED 075). The Department has submitted amendments to ED 075 for NARA's consideration and will continue to preserve all records covered by ED 075 until the amendments are approved.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All physical access to the Department's site, and to the sites of the Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, and other contractors listed in this notice, where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

In accordance with the Department's Administrative Communications System Directive ACSD–OFO–013 entitled ''Contractor Employee Personnel Security Screenings,'' all contract personnel who have facility access and system access are required to undergo a security clearance investigation. Individuals requiring access to Privacy Act records are required to hold, at a minimum, a moderate-risk security clearance level. These individuals are required to undergo periodic screening at five-year intervals.

In addition to conducting security clearances, contract and Department employees are required to complete security awareness training on an annual basis. Annual security awareness training is required to ensure that contract and Department users are appropriately trained in safeguarding Privacy Act records.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user identification and password. The Department's Standard PR.AC: Password Parameters Policy requires the enforcement of a complex password policy. In addition to the enforcement of a complex password policy, users are required to change their password at least every 60 to 90 days in accordance with the Department's Information Technology standards.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented comprise a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, assessment, authorization, and monitoring, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, program management, personnel security, personally identifiable information processing and transparency, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and supply chain risk management.

All of the Federal Loan Servicers, NFP Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs and other contractors, as listed in ''SYSTEM LOCATION,'' undergo FISMA security authorizations. In addition, access is monitored 24 hours per day, 7 days a week.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, provide the system manager with your name, date of birth, and SSN. Requests by an individual for access to a record must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record in this system of records, contact the system manager with your name, date of birth, and SSN; identify the specific items to be changed; and provide a written justification for the change. Requests to amend a record must meet the requirements of the regulations in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager with your name, date of birth, and SSN. Requests must meet the requirements of the regulations in 34 CFR 5b.5 and 5b.7, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Common Services for Borrowers (CSB)'' (18–11–16) was originally published in the **Federal Register** on January 23, 2006 (71 FR 3503–3507), modified on September 12, 2014 (79 FR 54685–54695), and was last modified on September 2, 2016 (81 FR 60683–60691).

[FR Doc. 2022–19887 Filed 9–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2022–FSA–0050]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records entitled ''Common Origination and Disbursement (COD) System'' (18–11–02). The information contained in this system is maintained for various

purposes relating to aid applicants and recipients including determining their eligibility for Federal student financial assistance under the programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA); institutions of higher education participating in and administering title IV, HEA programs; and the Department's oversight of title IV, HEA programs.

DATES: Submit your comments on this modified system of records notice on or before October 13, 2022

This modified system of records notice will become applicable upon publication in the **Federal Register** on September 13, 2022, except for the new and modified routine uses 1(a), (b), (c), (d), (e), (f), (g), (h), (i), (k), 2, 5(b), 11, and 15 that are outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' which will be effective on October 13, 2022, unless they need to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Shannon Mahan, Acting Director, Program Delivery Services Group, Union Center Plaza (UCP), Room 64E1, 830 First Street NE, Washington, DC 20202–5454. Telephone: 202–377–3019. Email: *Shannon.Mahan@ed.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The ''Common Origination and Disbursement (COD) System'' (18–11–02) was last published in full in the **Federal Register** on August 16, 2019 (84 FR 41979).

The Department is modifying the section entitled ''SYSTEM LOCATION'' to: clarify the name of, and remove the detailed description of the data held by, Amazon Web Services (AWS) Government Cloud; add Accenture Federal Services as a COD Support Center; add the NTT Global Data Centers as data centers for contact center technical infrastructure; and remove Senture, LLC, located in London, Kentucky, and Cooney Solutions Group as COD Customer Service Centers.

The Department is modifying the section entitled ''SYSTEM MANAGER(S)'' to make minor updates to the organization of the system manager—the Director of the Program Delivery Services Group.

The Department is modifying the section entitled ''AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM'' to add ''the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency).''

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' to change the wording of the purposes related to ''students and borrowers'' to purposes related to ''aid applicants and recipients under title IV of the HEA,'' to add a note that informs the readers that the term ''discharge'' is synonymous, for the purposes of this modified system of records notice, with ''forgiveness and cancellation,'' and to make the following additional changes:

(i) Purpose (1) was expanded to include ''aid applicants'' and to include the purpose of determining aid applicants' and recipients' eligibility for and benefits under title IV, HEA programs, including but not limited to, as examples of applicable determinations, ''receiving a loan, grant, or scholarship, and obtaining discharge of eligible loans under title IV of the HEA'';

(ii) Purpose (2) was updated to refer to the storage of data and documentation, rather than electronic data and documentation;

(iii) Purpose (3) was updated to delete and replace the reference to ''individual'' with ''aid recipient'' and ''a title IV, HEA Federal grant or loan'' with ''title IV, HEA program funds'';

(iv) Purpose (4) was updated to delete and replace the reference to ''individual'' with ''aid recipient'' and to delete and replace the reference to ''the annual award limits under title IV, HEA Federal grant or loan programs'' with ''title IV, HEA program fund award limits'';

(v) Purpose (5) was updated to delete and replace the reference to ''individual'' with ''aid applicant or recipient'' and to include the identification of an aid applicant or recipient who completed an electronic Direct Consolidation Loan Application and promissory note;

(vi) Purpose (6) was updated to delete and replace the reference to ''individual'' with ''aid applicant or recipient,'' to clarify that counseling includes entrance and exit counseling, and to include the full name of the Teacher Education Assistance for College and Higher Education (TEACH) Grant program;

(vii) Purpose (7) was updated to delete and replace the reference to ''individual'' with ''aid recipient,'' to include the identification of an aid recipient who completed an electronic request to repay a Department-held Perkins loan or Department-held Federal Family Education Loan (FFEL) Program loan, and to delete and replace the reference to ''income-based or income contingent (hereafter 'income-driven') repayment plans'' with ''income-driven repayment plans'';

(viii) Purpose (8) was deleted because the identification of an individual who completed an electronic Direct Consolidation Loan Application and promissory note was added to purpose (5);

(ix) The parts of purpose (9) relating to tracking the level of study,

Classification of Instructional Program (CIP) code, and educational program length to limit eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student is enrolled and to enabling Federal Loan Servicers to determine whether an aid recipient who enrolls will be responsible for the accruing interest on outstanding Direct Subsidized Loans were deleted because the Consolidated Appropriations Act, 2021, repealed the requirements referenced therein regarding limiting Direct Subsidized Loan eligibility;

(x) Newly renumbered purpose (8) was added to reflect the tracking of student enrollments by educational program for purposes of determining educational program outcomes, including using that information to obtain average earnings of students by educational program from another Federal agency, as previously set forth in part of purpose (9);

(xi) Newly renumbered purpose (9) was added to maintain a qualifying employer database to allow aid recipients who apply for Public Service Loan Forgiveness (PSLF), Temporary Expanded Public Service Loan Forgiveness (TEPSLF), or the limited PSLF waiver to search for and select their PSLF qualifying employer;

(xii) New purpose (10) was added to enable the Department, or other Federal, State, Tribal, or local agencies to investigate, respond to, or resolve complaints regarding the Department's and/or the Department's contractors' practices or processes, and to investigate, respond to, or resolve aid applicants' and recipients' requests for assistance or relief regarding title IV, HEA program funds;

(xiii) New purpose (11) was added to enable an aid applicant, recipient, and, where applicable, an endorser, to initiate online credit checks when they complete an electronic Federal Direct PLUS Loan Application or an Endorser Addendum; and

(xiv) New purpose (12) was added to identify an aid recipient obligated to repay title IV, HEA program funds pursuant to various stored data and documentation such as promissory notes, applications, and agreements.

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' relating to institutions of higher education (also referred to herein as ''educational institutions'') participating in and administering title IV, HEA programs as follows:

(i) Purpose (1) was updated to delete and replace the reference to ''title IV, HEA Federal grant and Direct Loan funds'' with ''title IV, HEA program funds'';

(ii) Purpose (2) was updated to clarify that an institution of higher education may use this system to request online credit checks on aid applicants, recipients, or endorsers as part of the process to determine the aid applicant's eligibility for a title IV, HEA Federal Direct PLUS Loan;

(iii) Purpose (3) was updated to delete and replace the reference to ''title IV, HEA Federal grant or loan'' with ''title IV, HEA program funds''; and

(iv) New purpose (6) was added to collect Campus-Based expenditure information for the previous award year and the ability to apply for Campus-Based program funds using the Fiscal Operation Report and Application to Participate (FISAP).

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' relating to the Department's administration and oversight of title IV, HEA programs by adding the term ''administration,'' and as follows:

(i) Purpose (1) was updated to delete and replace the reference to ''title IV, HEA Federal grant and loan programs'' with ''title IV, HEA programs'';

(ii) Purpose (2) was updated to include limiting student aid eligibility for institutions of higher education or programs offered by institutions of higher education that are ineligible to receive title IV, HEA program funds;

(iii) Purpose (6) regarding the performance of data analytics and reporting to inform and optimize the effectiveness of the Department's student financial assistance programs was deleted;

(iv) New purpose (6) was added to ensure that Federal, State, local, and Tribal statutory, regulatory, contractual, and program requirements are met by educational and financial institutions, and the Department's contractors including Federal Loan Servicers and the Federal Perkins Loan Servicer;

(v) New purpose (7) was added to help governmental entities at the Federal, State, Tribal, and local levels exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers); to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors; and to update information or correct errors contained in Department records regarding title IV, HEA program funds;

(vi) New purpose (8) was added to provide reporting capabilities for educational institutions, guaranty agencies, lenders, Department contractors including Federal Loan Servicers, and the Federal Perkins Loan Servicer for use in title IV, HEA administrative functions, and for use by the Department or Federal, State, Tribal, or local agencies for oversight and compliance;

(vii) New purpose (9) was added to support research, analysis, and development of educational policies in relation to title IV, HEA programs;

(viii) New purpose (10) was added to support the Department in detecting and mitigating improper payments in title IV, HEA programs; and

(ix) New purpose (11) was added to allow the Department to conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA.

The Department is modifying the section entitled ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' as follows:

(i) In the first paragraph, the Department added the word ''aid'' before ''applicants,'' included endorsers and parents and spouses of aid applicants in the list of covered individuals, and deleted and replaced the reference to ''Federal grant or loan under one of the programs authorized under title IV of the HEA'' with ''title IV, HEA programs'';

(ii) In the first paragraph, the Department deleted category (10), the Auxiliary Loans to Assist Students Program also referred to as the ''ALAS Program,'' because it is not a title IV, HEA program but rather was a type of loan under the FFEL program; and category (11), Health Profession Student Loans (HPSL) Program, and category (12), Health Education Assistance Loans (HEAL) Program, because they are not title IV, HEA programs and the records of aid applicants and recipients with loans under the HEAL and HPSL Programs are not maintained in this system of records; and

(iii) The second paragraph was updated to replace the phrase ''title IV recipients'' with ''aid recipients under title IV of the HEA,'' to delete the phrase that limited the system to covering aid recipients who ''are currently or were previously enrolled at an institution of higher education,'' and to clarify that the cohort default rates (CDRs) are calculated by the National Student Loan Data System (NSLDS) from guaranty agency-reported and Federal Loan Servicer-reported data at the institution-level.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' as follows:

(i) In the first paragraph, the Department modified the introductory language to refer to ''data about aid applicants and recipients, endorsers, aid applicants' and recipients' parents, and spouses of aid applicants and recipients who are part of an aid applicant's title IV, aid application or receive title IV, HEA aid,'' and to replace the reference to ''Federal grant or loan under one of the programs authorized under title IV of the HEA'' with ''title IV, HEA aid'';

(ii) Category (1) was updated to include mailing address, email address, driver's license number, and telephone number, as the Department considers these data elements in combination as identifiers;

(iii) Category (2) was updated to delete examples of an aid applicant's and recipient's demographic data, moving some of these examples, as well as spousal identifiers, to Category (1), to add demographic information of parent(s) and spouse, and to cover ''aid applicant and recipient demographic information, including demographic information of the aid applicant's and recipient's parent(s) and aid applicant's and recipient's spouse (if applicable), expected student enrollment, list of participating title IV, HEA institutions of higher education designated by the aid applicant to receive the Free Application for Federal Student Aid (FAFSA®) form data along with residency plans, and the financial profile of an aid applicant, an aid applicant's parent(s), or an aid applicant's spouse, as reported and calculated through the FAFSA form, and to also include processing flags, indicators, rejections, and overrides'';

(iv) Category (3) was updated to include additional data elements, date of disbursement, disbursement amounts, demographic and contact information from the guaranty agency, lender(s), holder(s), and servicer(s) of an aid recipient's FFEL program loan(s);

(v) Category (4) was updated to reflect ''Federal grant(s) aid recipient'' instead of ''students receiving Federal grants,'' and ''Pell Grant additional eligibility indicator'' rather than ''Pell Grant over-award indicator'';

(vi) Category (5) was deleted because Direct Loan dates of disbursement and disbursement amounts were added to Category (3);

(vii) Category (6) was deleted because the guaranty agencies, lender(s), holder(s), and servicer(s) of the aid recipient's FFEL program loan(s) information were added to Category (3);

(viii) Newly renumbered Category (5) was updated to include Pell Grant collection status indicator;

(ix) Newly renumbered Category (6) was updated to delete and replace ''Direct Loan promissory notes'' with ''promissory notes,'' to add Federal Direct PLUS loans, and to clarify that the accrued interest applies to Department-held FFEL program loans;

(x) Newly renumbered Category (8) was updated to include the Annual School Loan Acknowledgement (ASLA);

(xi) Newly renumbered Category (9) was updated to clarify that the credit report information is for Federal Direct PLUS loan aid applicants, recipients, and endorsers;

(xii) Newly renumbered Category (11) was updated to delete and replace the references to ''borrower'' with ''aid recipient'' and to include Special Direct Consolidation Loan aid recipient identifier information;

(xiii) Newly renumbered Category (13) was updated to delete and replace the references to ''borrower'' with ''aid recipient'' and to specify that accounts placed with the Federal Loan Servicer(s) are placed by the Department;

(xiv) New Category (14) was added to include information obtained pursuant to matching programs or other information exchanges with Federal and State agencies, and other external entities, to assist in identifying aid recipients who may be eligible for benefits related to their title IV, HEA loans or other title IV, HEA obligations, including, but not limited to, Total and Permanent Disability discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment, discharge benefits or for the purpose of recouping payments or delinquent debts under title IV, HEA programs;

(xv) The Department deleted the discussion of the data elements used to perform data analysis for improper payments to prevent false reporting and potential fraud;

(xvi) The Department updated the penultimate paragraph to reflect that the Department no longer collects or monitors for the 150 percent Direct Subsidized Loan Limit; and

(xvii) The Department deleted the reference to the Appendix in the last paragraph of this section, which contained a description of the data added to the system as a result of the exchanges of data within FSA, because the Department is deleting the Appendix section.

The Department is modifying the section entitled ''RECORD SOURCE CATEGORIES'' as follows:

(i) In the first paragraph, the Department added that the system includes records on parents and spouses of aid applicants and recipients, and that information is provided by applicants for, in addition to recipients of, title IV, HEA program assistance, via, for example, Federal Direct Consolidation Loan or Special Direct Loan Consolidation application forms and promissory notes. In addition, the reference to the *StudentLoans.gov* website was updated to *Studentaid.gov* with respect to the receipt of completion information for Direct Loan and TEACH Grant program counseling;

(ii) The Department updated the second paragraph to delete and replace ''credit reporting agencies'' with ''consumer reporting agencies'' and to clarify consumer reporting agencies provide the system with information on endorsers and recipients, in addition to aid applicants, for Federal Direct PLUS loans;

(iii) The Department added a new third paragraph to indicate that information is obtained from other Federal, State, Tribal, and local agencies, guaranty agencies, consumer reporting agencies, educational institutions, financial institutions, servicers, aid applicants and recipients, parents of aid applicants and recipients, spouses of aid applicants, and endorsers who request to repay a Direct Loan or Federal Direct PLUS Loan under an income-driven repayment plan;

(iv) The Department clarified that record sources include information obtained from successors to the Department's systems referenced in the ''RECORD SOURCE CATEGORIES'' section, as the Department is working to replace some of these systems;

(v) The Department deleted descriptions of information received by the COD System from the Central Processing System (CPS), the National Student Loan Data System (NSLDS), the Financial Management System (FMS), the Postsecondary Education Participants System (PEPS), and the Common Services for Borrowers (CSB) system because those descriptions are not required and the underlying information is already described by, and covered under, each of the aforementioned systems' specific system of records notices; and

(vi) The Department added the Customer Engagement Management System (CEMS) (covered by the Department's Privacy Act system of records notice entitled ''Customer Engagement Management System (CEMS)'' (18–11–11)) to the listing of FSA systems from which the COD System obtains information.

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' as follows:

(i) Routine use (1)(a) was modified to delete ''verify the identity of the recipient or the accuracy of the record,'' and to add Tribal agencies to the entities to which the Department can disclose records from this system to assist with program eligibility and benefits determinations;

(ii) Routine use (1)(b) was modified to delete the word ''electronic'' because the Department stores paper and electronic documents;

(iii) Routine use (1)(c) was updated to delete and replace ''individual'' with ''aid recipient,'' and to delete and replace ''title IV, HEA Federal grant or loan'' with ''title IV, HEA program funds'';

(iv) Routine use (1)(d) was updated to delete and replace ''individual'' with ''aid recipient,'' to delete and replace ''the title IV, HEA Federal grant or Direct Loan programs'' with ''title IV, HEA program funds,'' and to delete the word ''annual'' in describing the ''award limits'' in the title IV, HEA regulations;

(v) Routine use (1)(e) was updated to delete and replace ''title IV, HEA Federal grant and Direct Loan funds'' with ''title IV, HEA program funds'';

(vi) Routine use (1)(f) was updated to add ''aid applicants, recipients, or endorsers'' in the listing of individuals on whom an institution of higher education can request online credit checks as part of the process for eligibility determinations for Federal Direct PLUS Loans, and to delete and replace ''applicants or borrowers'' with ''aid applicants and recipients'';

(vii) Routine use (1)(g) was updated to delete and replace ''a title IV, HEA Federal grant or loan'' with ''title IV, HEA program funds'';

(viii) Routine use (1)(h) was modified to delete and replace ''title IV, HEA Federal grant and loan programs'' with ''title IV, HEA program funds,'' and to add Tribal agencies to the entities to which the Department may disclose records from the system to support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA programs;

(ix) Routine use (1)(i) was updated to delete and replace ''a borrower or student'' with ''an aid applicant or recipient'';

(x) Routine use (1)(j) was deleted because the Consolidated Appropriations Act, 2021, repealed the requirements referenced therein regarding limiting Direct Subsidized Loan eligibility;

(xi) Previous routine use (1)(k) was redesignated as routine use (1)(j);

(xii) New routine use (1)(k) was added to allow for the disclosure of records from this system to governmental entities at the Federal, State, Tribal, and local levels to help such entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors;

(xiii) Routine use (2) was updated to add that a Congressional member's request for a record must be made not only at the written request of, but also on behalf of, an individual constituent whose records are being disclosed;

(xiv) Routine use (5)(b) was updated to add public agencies' agents and contractors and Department contractors to, and remove foreign agencies from, the entities to which the Department may disclose records from this system in connection with certain employment, benefit, and contracting matters;

(xv) Routine use (11) was updated to remove the reference to ''appropriate official'' and to remove the references to the ''disclosure and research is consistent with the uses and restrictions set forth in Sections 483(a)(3)(E), 485B(d)(2), and 485B(d)(5)(B) of the HEA, and the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 34 CFR part 99'' to make the language in this routine use more consistent with the routine uses in other Department systems of records notices; and

(xvi) New routine use (15) has been added to allow the Department to disclose records from this system to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR STORAGE OF RECORDS'' to delete and replace ''Perkins aid'' with ''Perkins loan,'' ''AWS Data Center'' with ''AWS Government Cloud'' and ''borrower'' with ''aid recipient.''

The Department is modifying the section entitled ''ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS'' to include information on requirements under the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, to clarify that the Department system must receive a signed Authorization to Operate (ATO) from a designated Department official, and to describe privacy and security controls in place to protect the information maintained in the system.

The Department is deleting the Appendix, which contained detailed descriptions of the data added to the COD System as a result of data exchanges within FSA, consistent with the Department's policy on the removal of such appendices from system of records notices.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the U.S. Department of Education (Department) publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

Common Origination and Disbursement (COD) System (18–11–02).

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Program Management Services, Federal Student Aid (FSA), Union Center Plaza (UCP), Room 64E1, 830 First St. NE, Washington, DC 20202–5454.

Amazon Web Services (AWS) Government Cloud, 1200 12th Ave., Suite 1200, Seattle, WA 98114. (This is the Computer Center for the COD application, where all electronic COD information is processed and stored.)

Accenture, 22451 Shaw Rd., Sterling, VA 20166–4319. (The COD Sterling Cloud-based Operations is located here.)

Accenture DC, 820 First St. NE, Washington, DC 20202–4227. (This is the COD Operations Center.)

Accenture Federal Services, 10931 Laureate Dr., San Antonio, TX 78249. (This is a COD Support Center.)

Atlanta Federal Records Center, National Archives and Records Administration (NARA), 4712 Southpark Blvd., Ellenwood, GA 30294. (This is where Direct Loan paper promissory notes (also referred to as master promissory notes (MPNs), Endorser Addenda, and Power of Attorney documents are stored.)

NTT Global Data Centers Americas (Raging Wire), 44664 Guilford Drive, Ashburn, VA 20147. (This is a datacenter for contact center technical infrastructure.)

NTT Global Data Centers Americas (Raging Wire), 2008 Lookout Dr, Garland, TX 75044. (This is a datacenter for contact center technical infrastructure.)

The following three listings are the locations of the COD Customer Service Centers:

ASM Research, 2429 Military Rd., Suite 200, Niagara Falls, NY 14304–1551. (This center images and stores all the Direct Loan paper MPNs and Endorser Addenda); Senture, LLC, 4255 W Highway 90, Monticello, KY 42633–3398; and

Veteran Call Center, 53 Knightsbridge Rd., Suite 216, Piscataway, NJ 08854–3925.

SYSTEM MANAGER(S):

Director, COD System, Program Delivery Services Group, Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), room 64E1, 830 First Street NE, Washington, DC 20202–5454.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070 *et seq.*) and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is maintained for the following purposes related to aid applicants and recipients under title IV of the HEA:

Note: Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including, but not limited to, discharges of student loans made pursuant to specific benefit programs. At times, the system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.

(1) To determine aid applicants' and recipients' eligibility for and benefits under title IV, HEA programs, including, but not limited to, receiving a loan, grant, or scholarship, and obtaining discharge of eligible loans under title IV of the HEA;

(2) To store data and documentation, including, but not limited to, HEA and promissory notes and other agreements that evidence the existence of a legal obligation to repay funds disbursed under title IV, HEA programs;

(3) To identify whether an aid recipient may have received title IV, HEA program funds at more than one educational institution for the same enrollment period in violation of title IV, HEA program regulations;

(4) To identify whether an aid recipient may have exceeded title IV, HEA program fund award limits in violation of title IV, HEA program regulations;

(5) To identify an aid applicant or recipient who completed an electronic Direct Consolidation Loan Application and promissory note or a Special Direct Consolidation Loan application and promissory note;

(6) To identify an aid applicant or recipient who completed entrance and exit counseling in the Direct Loan or Teacher Education Assistance for College and Higher Education (TEACH) Grant programs;

(7) To identify an aid recipient who completed an electronic request to repay a Direct Loan, a Department-held Perkins loan, or a Department-held Federal Family Education Loan (FFEL) Program loan under income-driven repayment plans;

(8) To track student enrollments by educational program for purposes of determining educational program outcomes, including using that information to obtain average earnings of students by educational program from another Federal agency;

(9) To maintain a qualifying employer database to allow aid recipients who apply for Public Service Loan Forgiveness (PSLF), Temporary Expanded Public Service Loan Forgiveness (TEPSLF), or the limited PSLF waiver to search for and select their PSLF qualifying employer;

(10) To enable the Department, or other Federal, State, Tribal, or local government agencies, to investigate, respond to, or resolve complaints concerning the practices or processes of the Department and/or the Department's contractors, and to investigate, respond to, or resolve aid applicant and recipient requests for assistance or relief regarding title IV, HEA program funds;

(11) To enable an aid applicant, recipient, and, where applicable, an endorser, to initiate online credit checks when they complete the electronic Federal Direct PLUS Loan Application or an Endorser Addendum (**Note:** If an applicant for a Federal Direct PLUS Loan is determined to be ineligible for a loan because they have an adverse credit history, they may still get a loan if they have a qualified endorser); and

(12) To identify an aid recipient obligated to repay title IV, HEA program funds pursuant to various stored data and documentation such as promissory notes, applications, and agreements.

The information in this system is also maintained for the following purposes relating to institutions of higher education (also referred to herein as ''educational institutions'') participating in and administering title IV, HEA programs:

(1) To enable an institution of higher education to reconcile, on an aggregate and recipient-level basis, the amount of title IV, HEA program funds that an institution received for disbursements it made to, or on behalf of, eligible students (including reconciling verification codes, reconciling the funds received with disbursements made by type of funds received, and making necessary adjustments);

(2) To enable an institution of higher education to request online credit checks on an aid applicant, recipient, or endorser in connection with the determination of the aid applicant's

eligibility for a title IV, HEA Federal Direct PLUS Loan;

(3) To assist an institution of higher education, a software vendor or a third-party servicer with questions about title IV, HEA program funds;

(4) To assist an institution of higher education with student loan default prevention;

(5) To reconcile an institution of higher education's cash drawdowns from the U.S. Department of the Treasury with its reported disbursements and to ensure that the institution of higher education receives the appropriate amount of funds during the respective time period; and

(6) To collect Campus-Based expenditure information for the previous award year and the ability to apply for Campus-Based program funds using the Fiscal Operation Report and Application to Participate (FISAP).

The information in this system is also maintained for the following purposes relating to the Department's administration and oversight of title IV, HEA programs:

(1) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA programs;

(2) To confirm that an institution of higher education, or a program offered by an institution of higher education, is eligible to receive title IV, HEA program funds, and to limit student aid eligibility for ineligible institutions or programs accordingly;

(3) To set and adjust program funding authorization levels for each institution;

(4) To enforce institutional compliance with Department reporting deadlines;

(5) To apply appropriate title IV, HEA funding controls;

(6) To ensure that Federal, State, local, and Tribal statutory, regulatory, contractual, and program requirements are met by educational and financial institutions, and the Department's contractors including Federal Loan Servicers and the Federal Perkins Loan Servicer;

(7) To help governmental entities at the Federal, State, Tribal, and local levels to exercise their supervisory and administrative powers (including, but not limited to, licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers); to investigate, respond to, or resolve complaints regarding the practices or processes of the Department and/or the Department's contractors; and to update information or correct errors contained in Department records regarding title IV, HEA program funds;

(8) To provide reporting capabilities for educational institutions, guaranty agencies, lenders, Department contractors including Federal Loan Servicers, and the Federal Perkins Loan Servicer for use in title IV, HEA administrative functions, and for use by the Department or Federal, State, Tribal, or local agencies for oversight and compliance;

(9) To support research, analysis, and development of educational policies in relation to title IV, HEA programs;

(10) To support the Department in detecting and mitigating improper payments in title IV, HEA programs; and

(11) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of aid applicants, aid applicants' parents, spouses of aid applicants, and where applicable, endorsers, who apply for title IV, HEA programs including, but not limited to, the:

(1) Federal Pell Grant Program;

(2) Federal Perkins Loans Program;

(3) Academic Competitiveness Grant (ACG) Program;

(4) National Science and Mathematics Access to Retain Talent (National SMART) Grant Program;

(5) TEACH Grant Program;

(6) Iraq and Afghanistan Service Grant (IASG) Program;

(7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans, Federal Direct PLUS Loans, and Federal Direct Consolidation Loans;

(8) FFEL Program; and

(9) Federal Insured Student Loan (FISL) Program.

The COD System also maintains records of aid recipients under title IV of the HEA and cohort default rates (CDRs) calculated by the National Student Loan Data System (NSLDS) from guaranty agency-reported and Federal Loan Servicer-reported data at the institution-level.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the COD System include, but are not limited to, the following data about aid applicants and recipients, endorsers, aid applicants' and recipients' parents, and spouses of aid applicants and recipients who are part of an aid applicant's title IV, HEA aid application or receive title IV, HEA aid:

(1) Identifier information, including name, Social Security number (SSN), date of birth (DOB), mailing address, email address, driver's license number, and telephone number;

(2) Aid applicant and recipient demographic information, including demographic information of the aid applicant's and recipient's parent(s) and aid applicant's and recipient's spouse (if applicable), expected student enrollment, list of participating title IV, HEA institutions of higher education designated by the aid applicant to receive the Free Application for Federal Student Aid (FAFSA®) form data along with residency plans, and the financial profile of an aid applicant, an aid applicant's parent(s), or an aid applicant's spouse, as reported and calculated through the FAFSA form, and to also include processing flags, indicators, rejections, and overrides;

(3) Aid recipient's loan(s) information including information about Direct Loan, FFEL program loans, Perkins loans, and FISL program loans. This includes information about the period from the origination of the loan through final payment, and milestones, including, but not limited to: discharge, consolidation, or other final disposition including details such as loan amount, date of disbursement, disbursement amounts, balances, loan status, repayment plan and related information, collections, claims, deferments, forbearances, refunds, and guaranty agencies, lender(s), holder(s), and servicer(s) of an aid recipient's FFEL program loan(s);

(4) Information about Federal grant aid recipients, including recipients of Pell Grants, ACG, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and including grant amounts, grant awards, verification status, lifetime eligibility used (LEU), IASG eligible veteran's dependent indicator, Children of Fallen Heroes Scholarship eligibility indicator, and the Pell Grant additional eligibility indicator;

(5) Pell Grant collection status indicator and overpayment collection information;

(6) Promissory notes including promissory note identification numbers, loan type, current servicer, principal balance, and the accrued interest for Direct Loans, Federal Direct PLUS, or Department-held FFEL program loans;

(7) TEACH Agreements to Serve;

(8) Direct Loan Entrance Counseling forms, Federal Student Loan Exit Counseling forms, Federal Direct PLUS Loan Counseling forms, the Annual School Loan Acknowledgement (ASLA), Federal Direct PLUS Loan Requests, endorser addendums, and counseling in the Direct Loan and TEACH Grant

programs, such as the date that the aid applicant completed counseling;

(9) Credit report information for Federal Direct PLUS Loan applicants, recipients, and endorsers;

(10) Aid applicant identifier information for an electronic request to repay a Direct Loan under an income-driven repayment plan and endorser/spouse information, such as the SSN of the applicant, the date that the applicant completed the income-driven repayment plan application, and current loan balances;

(11) Electronic Direct Consolidation Loan or Special Direct Consolidation Loan aid recipient identifier information, such as the aid recipient's SSN, the date that the aid recipient completed the Federal Direct Consolidation Loan application and promissory note, and current loan balances;

(12) Information concerning the date of any default on a loan;

(13) Demographic and contact information for aid recipient accounts that the Department places with the Federal Loan Servicer(s) for collection of the aid recipient's title IV, HEA loans; and

(14) Information obtained pursuant to matching programs or other information exchanges with Federal and State agencies, and other external entities, to assist in identifying aid recipients who may be eligible for benefits related to their title IV, HEA loans or other title IV, HEA obligations, including, but not limited to, Total and Permanent Disability discharges, loan deferments, interest rate reductions, PSLF, and other Federal and State loan repayment, discharge benefits or for the purpose of recouping payments or delinquent debts under title IV, HEA programs.

The system also contains the following data about students provided by institutions of higher education that participate in an experiment under the Experimental Sites Initiative: award year, experiment number, Office of Postsecondary Education identification number (OPEID), student SSN, student last name, and any data collection instrument elements authorized under the Information Collection Request associated with each experiment.

The system also contains records from 2014–2021 on the level of study, Classification of Instructional Program code (field of study), and published length of an educational program in which a student receiving title IV, HEA Federal student aid was enrolled to limit their eligibility for Direct Subsidized Loans to no more than 150 percent of the published length of the educational program in which the student was enrolled, and to determine when an aid recipient who enrolled after reaching the 150 percent limit would have been responsible for the accruing interest on outstanding Direct Subsidized Loans.

RECORD SOURCE CATEGORIES:

This system includes records on aid applicants or recipients, aid applicants' and recipients' parents, and spouses of aid applicants or recipients who are part of an applicant's or recipient's title IV, HEA aid application, or who have received title IV, HEA program assistance. These records include information provided by applicants for and recipients of title IV, HEA program assistance, via, for example, Federal Direct Consolidation Loan or Special Direct Loan Consolidation application forms and promissory notes, the parents of dependent aid recipients, and the spouses of aid applicants who request to repay a Direct Loan under an income-driven repayment plan. This system also includes Federal grant and Direct Loan origination and disbursement records provided to the Department by institutions of higher education or their agents. The system also receives completion information for Direct Loan and TEACH Grant program counseling through *Studentaid.gov* (the student-facing portion of the website) or from institutions of higher education, or both.

The system also receives information on Federal Direct PLUS Loan applicants, recipients, and endorsers from consumer reporting agencies.

Information is also obtained from other Federal, State, Tribal, and local agencies, guaranty agencies, consumer reporting agencies, educational institutions, financial institutions, servicers, aid applicants and recipients, parents of aid applicants and recipients, spouses of aid applicants, and endorsers who request to repay a Direct Loan or Federal Direct PLUS loan under an income-driven repayment plan.

Information is also obtained from other Department systems, including the following systems, or their successor systems:

(1) The Central Processing System (CPS) (covered by the Department's Privacy Act of 1974, as amended (Privacy Act), system of records notice entitled ''Federal Student Aid Application File'' (18–11–01));

(2) The National Student Loan Data System (NSLDS) (covered by the Department's Privacy Act system of records notice entitled ''National Student Loan Data System'' (18–11–06));

(3) The Financial Management System (FMS) (covered by the Department's Privacy Act system of records notice entitled ''Financial Management System (FMS)'' (18–11–17));

(4) The Postsecondary Education Participants System (PEPS) (covered by the Department's Privacy Act system of records notice entitled ''Postsecondary Education Participants System (PEPS)'' (18–11–09));

(5) The Customer Engagement Management System (CEMS) (covered by the Department's Privacy Act system of records notice entitled ''Customer Engagement Management System (CEMS)'' (18–11–11)); and

(6) The Common Services for Borrowers (CSB) system (covered by the Department's Privacy Act system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16)).

The system may also obtain information from other persons or entities from which data is obtained following a disclosure under the routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records from the system of records for the following program purposes:

(a) To assist with the determination of program eligibility and benefits, the Department may disclose records to institutions of higher education, financial institutions, third-party servicers, and Federal, State, Tribal, or local agencies;

(b) To store data that supports the existence of a legal obligation to repay funds disbursed under title IV, HEA programs, including documentation such as promissory notes and other agreements, the Department may disclose records to institutions of higher education, third-party servicers, and Federal agencies;

(c) To identify whether an aid recipient may have received title IV, HEA program funds at more than one institution of higher education for the same enrollment period in violation of title IV, HEA regulations, the Department may disclose records to

institutions of higher education, third-party servicers, and Federal, State, or local agencies;

(d) To identify whether an aid recipient may have exceeded the award limits under title IV, HEA program funds in violation of title IV, HEA regulations, the Department may disclose records to institutions of higher education, third-party servicers, and Federal agencies;

(e) To enable institutions of higher education to reconcile, on an aggregate and recipient-level basis, the amount of title IV, HEA program funds that an institution received with the disbursements it made to, or on behalf of, eligible students (including reconciling verification codes, reconciling the funds received with disbursements made by type of funds received, and making necessary corrections and adjustments), the Department may disclose records to institutions of higher education, third-party servicers, and Federal, State, or local agencies;

(f) To enable an institution of higher education to request online credit checks of aid applicants, aid recipients, or endorsers as part of the process for determining the eligibility of aid applicants and recipients for a title IV, HEA Federal Direct PLUS Loan, disclosures may be made to institutions of higher education, third-party servicers, consumer reporting agencies, and Federal agencies;

(g) To assist individuals, institutions of higher education, third-party servicers, or software vendors with questions about title IV, HEA program funds, disclosures may be made to institutions of higher education, software vendors, third-party servicers, and Federal, State, or local agencies;

(h) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA program funds, disclosures may be made to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies;

(i) To assist institutions of higher education with student loan default prevention, disclosures may be made to institutions of higher education as to whether an aid applicant or recipient has completed required counseling in the Direct Loan or TEACH Grant programs;

(j) To assist the Department in determining eligibility for a Federal Direct PLUS Loan, disclosures may be made to consumer reporting agencies; and

(k) To help Federal, State, Tribal, and local governmental entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, eligible lenders, and third-party servicers) or to investigate, respond to, or resolve complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of records relating to loans and grants made under title IV of the HEA, to permit these governmental entities to verify compliance with debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records.

(2) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Enforcement Disclosure.* If information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with investigating or prosecuting that violation or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records from this system of records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation of the employee;

(iv) Any Department employee in his or her individual capacity when the Department has agreed to represent the employee; and

(v) The United States when the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records from this system of records to an adjudicative body before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose information from this system of records to a Federal, State, or local agency, or to another public authority or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies or their Agents and Contractors, Professional Organizations, or the Department's Contractors.* The Department may disclose records to a

Federal, State, local, or other public agency or an agent or contractor of such a public agency, professional organization, or the Department's contractor in connection with the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary proceeding involving a present or former employee of the Department, the Department may disclose the record in the course of investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter. The disclosure may only be made during the course of investigation, fact-finding, or adjudication.

(7) *Labor Organization Disclosure.* The Department may disclose a record to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or the Office of Management and Budget (OMB) if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(9) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to the functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure to OMB and the Congressional Budget Office (CBO) for Federal Credit Reform Act (CRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(13) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(14) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(15) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency the following information regarding a valid, overdue claim of the Department:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

The Department may disclose the information specified in this section under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Department electronically stores, for the entire Federal Student Aid lifecycle from application through loan payoff, student and applicant demographic, and title IV, HEA aid data such as, but not limited to, FFEL program, FISL program, and Perkins loan records, on hard disk at the AWS Government Cloud in Seattle, Washington. The Department stores electronic master promissory notes, electronic Special Direct Consolidation Loan opportunity applications and promissory notes, electronic requests to repay a Direct Loan under an income-driven repayment plan, and Federal Direct Consolidation Loan applications and promissory notes on hard disk at the AWS Government Cloud in Seattle, Washington. Paper Direct Loan promissory notes and endorser addendums are stored in locked vaults in ASM Research in Niagara Falls, New York and at the NARA-operated Atlanta Federal Records Center near Atlanta, Georgia. Data obtained from the paper promissory notes are stored on hard disks at the AWS Government Cloud in Seattle, Washington. This data is referred to as metadata and is used by the system to link promissory notes to aid recipient data. The Department also creates and stores electronic images of the paper promissory notes at the ASM Research facility in Niagara Falls, New York. For information on the storage of other documents, see the section entitled ''SYSTEM LOCATION''.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in the COD System are retrieved by the individual's SSN or name, or by the institution's OPEID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with Department Records Schedule 072: FSA Application, Origination, and Disbursement Records (DAA–0441–2013–0002) (ED 072). ED 072 is being amended, pending approval by NARA. Records will not be destroyed until NARA-approved amendments to ED 072 are in effect, as applicable.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Physical access to the sites of the Department's contractors, where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the buildings for his or her employee or visitor badge.

In accordance with the Department's Administrative Communications System Directive ACSD–OFO–013 entitled ''Contractor Employee Personnel Security Screenings,'' all contract and Department personnel who have facility access and system access must undergo a security clearance investigation. Individuals requiring access to Privacy Act data are required to hold, at a minimum, a moderate-risk security clearance level. These individuals are required to undergo periodic screening at five-year intervals.

In addition to undergoing security clearances, contract and Department employees are required to complete security awareness training on an annual basis. Annual security awareness training is required to ensure that contract and Department users are appropriately trained in safeguarding Privacy Act data.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All users of this system of records are given unique user identification. The Department's FSA Information Security and Privacy Policy requires the enforcement of a complex password policy. In addition to the enforcement of the complex password policy, users are required to change their password at least every 90 days in accordance with the Department's information technology standards.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

Security and privacy controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager at the address listed above. You must provide necessary particulars of your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Requests by an individual for access to a record must meet the requirements in 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of your personal record within the system of records, contact the system manager at the address listed above and provide your name, DOB, and SSN. Identify the specific items to be changed and provide a written justification for the change. Requests to amend a record must meet the requirements in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars such as your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Requests must meet the requirements in 34 CFR 5b.5.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Common Origination and Disbursement (COD) System'' (18–11–02) was last altered and published in full in the **Federal Register** on August 16, 2019 (84 FR 41979–41987). The Department renamed its previous system of records entitled, ''Recipient Financial Management System'' (RFMS) (18–11–02), as the ''Common Origination and Disbursement (COD) System'' (18–11–02), on September 27, 2010 (75 FR 59242–59246). The Department previously published the RFMS system of records notice on June 4, 1999 (64 FR 30106, 30161–30162).

[FR Doc. 2022–19888 Filed 9–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0112]

Agency Information Collection Activities; Comment Request; Federal Direct Loan Program Regulations for Forbearance and Loan Rehabilitation

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before November 14, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0112. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those*

submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Loan Program Regulations for Forbearance and Loan Rehabilitation.

OMB Control Number: 1845–0119.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 129,027.

Total Estimated Number of Annual Burden Hours: 35,094.

Abstract: This information collection for the Direct Loan (DL) Program regulations is related to regulations for forbearance in § 685.205 and reasonable and affordable loan rehabilitation in § 685.211. The Department of Education is requesting an extension without change of the current burden calculated for this information collection. Due to the COVID–19 pandemic and loan payment pause, there is not sufficient information to estimate burden changes. These regulations provide additional flexibilities for DL borrowers and permit oral requests for forbearance, as well as allow a borrower to object to the initially established reasonable and affordable loan repayment amount. In addition, if a borrower incurs changes to his or her financial circumstances, the borrower can provide supporting documentation to change the amount of the reasonable and affordable loan monthly repayment amount. There has been no change to the regulatory language.

Dated: September 8, 2022

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–19767 Filed 9–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2022–FSA–0073]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a new system of records and of the rescindment of two systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a new system of records entitled ''Aid Awareness and Application Processing'' (18–11–21) and of the rescindment of the system of records notices entitled ''Federal Student Aid Application File'' (18–11–01) and ''Customer Engagement Management System (CEMS)'' (18–11–11). The Aid Awareness and Application Processing system of records consolidates the Federal Student Aid Application File and CEMS system of records notices to create a new system of records notice that combines customer information necessary for the Department to process customer applications for Federal student financial program assistance under title IV of the Higher Education Act of 1965, as amended (HEA); to perform the duties and responsibilities of the Federal Student Aid (FSA) Ombudsman; and, separately, to provide Federal student loan repayment relief including under the borrower defense to repayment regulations. The Department's will use the new Digital and Customer Care (DCC) information technology (IT) system to accomplish these functions and duties. The Department will also use DCC IT to make customers aware of aid program opportunities and updates under title IV of the HEA via digital communication channels and establishes the *StudentAid.gov* website as the front end for assisting customers with all their Federal student financial aid needs throughout the student aid lifecycle.

DATES: Submit your comments on this new system of records notice and rescindment of two system of records notices on or before October 13, 2022.

This new system of records notice will become applicable on September 13, 2022, unless it needs to be changed as a result of public comment, except for the routine uses. The routine uses that are outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' will become applicable on October 13, 2022, unless they need to be changed as a result of public comment. The Department will publish any changes to the new system of records notice or routine uses resulting from public comment.

This notice of the rescindment of two system of records notices will become applicable September 13, 2022, unless it needs to be changed as a result of public comment. The Department will publish any changes to the notice of the rescindment of two system of records notice that result from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including

instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Rachel Coghlan, Central Processing System (CPS)—System Manager, Student Experience and Aid Delivery, Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454. Telephone: (202) 377–3205. Email: *Rachel.Coghlan@ed.gov.*

Bonnie Latreille, Ombudsman/Director, Ombudsman Group, Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454. Telephone: (202) 377–3726. Email: *Bonnie.J.Latreille@ed.gov.*

Pardu Ponnapalli, Digital and Customer Care (DCC) Information System Owner, Technology Directorate, Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454. Telephone: (240) 382–5825. Email: *Pardu.Ponnapalli@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, the Department proposes to establish a new system of records notice entitled, ''Aid Awareness and Application Processing.'' This new system of records combines records that previously were maintained in the ''Federal Student Aid Application File'' (18–11–01) and ''Customer Engagement Management System (CEMS)'' (18–11–11) systems of records and the Department's new Digital and Customer Care (DCC) information technology (IT) system to consolidate the Department's functions that require personally identifiable information (PII) from customers for purposes of, among other things, the following: processing applications, and determining eligibility and benefits, for Federal student financial program assistance under title IV of the HEA; and providing information and updates about aid program opportunities under title IV of the HEA via digital communication channels.

This new system of records uses the Department's DCC IT system, which contains a digital platform that provides a unified digital access point, through the *StudentAid.gov* website, to assist aid applicants and recipients (also referred to herein as ''customers'') with information about the Federal student financial assistance programs authorized by title IV of the HEA, and application processing throughout the student aid lifecycle. This single unified website consolidates the content and services previously provided across the following Department customer sites: *StudentLoans.gov*, *FSAID.ed.gov*, *NSLDS.ed.gov*, *BorrowerDischarge.ed.gov*, and *FAFSA.gov*. The DCC IT system contains a digital marketing and communications platform that sends digital communications to customers for various purposes which include informing them of title IV, HEA aid marketing campaigns and sending them transactional communications (such as confirmation emails when a user completes an action). The DCC IT system also contains a customer care platform that uses customer information to provide a complete customer view to customer service representatives and the FSA Ombudsman to facilitate improved customer service and better case solution outcomes.

The Department proposes to rescind the system of records notice entitled ''Federal Student Aid Application File'' (18–11–01). The records in the Federal Student Aid Application File system of records contain information provided by applicants for title IV, HEA program assistance, which is collected from the Free Application for Federal Student Aid (FAFSA®), for purposes that include, but are not limited to: assisting with the determination, correction, processing, tracking, and reporting of program eligibility and benefits for Federal student financial assistance programs authorized by title IV of the HEA; making a loan or grant; and verifying the identity of the applicant, and the parent(s) of a dependent applicant, and the accuracy of the information in the system. The Department is rescinding the Federal Student Aid Application File system of records notice because the records previously covered by that system are now covered by the Aid Awareness and Application Processing system of records notice.

The Department proposes to rescind the system of records notice entitled ''Customer Engagement Management System (CEMS)'' (18–11–11). The records in the CEMS system of records contain information that is used for purposes related to the duties and responsibilities of the FSA Ombudsman; and, separately, to perform the duties and responsibilities of the Department under the Department's borrower defense to repayment regulations. The purposes of the CEMS system of records include, but are not limited to: verifying the identities of individuals; recording complaints and comments; tracking individual cases, including complaints, borrower defense submissions, general inquiries, and chat sessions, through final resolution; and receiving, reviewing, evaluating, and processing requests for relief under the borrower defense to repayment regulations. The Department is rescinding the CEMS system of records notice because the records previously covered by that system are now covered by the Aid Awareness and Application Processing system of records notice.

Accessible Format: On request to either of the program contact persons listed under **FOR FURTHER INFROMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes a new system of records notice entitled ''Aid Awareness and Application Processing'' (18–11–21):

SYSTEM NAME AND NUMBER:

Aid Awareness and Application Processing (18–11–21).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Education, 830 First Street NE, Washington, DC 20202.

Lee's Summit Federal Records Center, National Archives and Records Administration (NARA), 200 Space Center Drive, Lee's Summit, MO 6464–1182. This is where paper applications are stored.

General Dynamics Information Technology (GDIT) Image and Data Capture (IDC) Center, 1084 South Laurel Road, Building 1, London, KY 40744. The IDC scans paper financial aid documents and correspondence, key-enters the data, and electronically transmits the data and related images to the Central Processing System (CPS) for processing.

Next Generation Data Center (NGDC), 250 Burlington Drive, Clarksville, VA 23927. NGDC hosts the infrastructure that supports CPS applications including backend application processing.

CPS Print Facility, 327 Columbia Pike, Rensselaer, NY 12144. This facility handles print operations.

Salesforce Government Cloud, 415 Mission Street, 3rd Floor, San Francisco, CA 94105. The system is accessible via the internet to different categories of users, including Department personnel, customers, and designated agents of the Department at any location where they have internet access. This site is the location where customer interactions with contact center support via all inbound and outbound channels (phone, email, chat, webform, email, customer satisfaction survey, fax, physical mail, and controlled correspondence) and customer-provided feedback (complaints, suspicious activities, positive feedback, and dispute cases) are tracked and worked by contractors and the Department. This site also contains workflow management for processing tasks including, but not limited to: credit appeals, borrower defense to repayment, commingled Social Security numbers (SSNs), and archived document retrieval in the Common Origination and Disbursement (COD) System, and the Free Application for Federal Student Aid® (FAFSA) special correction application process. This site stores customer-provided documentation to support the interactions and processing tasks, as needed. This site will also be used by the Department for determining employer eligibility to support Public Service Loan Forgiveness (PSLF), and Office of Inspector General (OIG) fraud referrals.

Amazon Web Services (AWS) GovCloud (East/West), 410 Terry Avenue, North Seattle, WA 98109–5210. The Digital and Customer Care (DCC) information technology (IT) system is hosted at this location. This site is the location where the Shado (Dynamo) application collects, processes, stores, and makes available user activity events from across the DCC IT system to provide a complete view of the customer to the Department and its contractors. This site is also the location where the Adobe Marketing Campaign application delivers strategic and real-time personalized email and short message service (SMS) communications.

Contact Center Fulfillment Center (Senture facility), 4255 W. Highway 90, Monticello, KY 42633. This facility handles mail fulfillment and imaging operations.

The following ten listings are the locations of the Aid Awareness and Application Processing Customer Contact Centers:

Jacksonville Contact Center, One Imeson Park Boulevard, Jacksonville, FL 32118;

Knoxville, TN Servicing Center, 120 N. Seven Oaks Drive, Knoxville, TN 37922;

1600 Osgood Street, Suite 2–120, North Andover, MA 01845;

11499 Chester Road, Suite 101, Sharonville, OH 45246;

100 Domain Drive, Suite 200, Exeter, NH 03833;

221 N Kansas Street, Suite 700, El Paso, TX 79901;

4255 W. Highway 90, Monticello, KY 42633;

555 Vandiver Drive, Columbia, MO 65202;

633 Spirit Drive, Chesterfield, MO 63005; and

820 First Street NE, Washington, DC 20002.

SYSTEM MANAGER(S):

CPS—System Manager, Student Experience and Aid Delivery, FSA, U.S. Department of Education, Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

Ombudsman, FSA, U.S. Department of Education, UCP, 830 First Street NE, Washington, DC 20202–5454.

DCC—Information System Owner, Technology Directorate, Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070 *et seq.*); 20 U.S.C. 1018(f) and 1087e(h); and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the Federal student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency). The collection of SSNs of individuals, and parents of dependent students, who apply for or receive Federal student financial assistance under programs authorized by title IV of the HEA is also authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is maintained for the following purposes related to applying for Federal student financial assistance and administering title IV, HEA programs:

(*Note:* Different parts of the HEA use the terms ''discharge'', ''cancellation'' or ''forgiveness'' to describe when a borrower's loan amount is reduced in whole or in part by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge'', ''cancellation'' and ''forgiveness''), including but not limited to discharges of student loans made pursuant to specific benefit programs. At times, the system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges.)

(1) Assisting with the determination, correction, processing, tracking, and reporting of program eligibility and benefits for the Federal student financial assistance programs authorized by title

IV of the HEA, including, but not limited to, discharge of eligible loans under title IV, HEA programs;

(2) Making a loan or grant;

(3) Verifying the identity of the applicant for Federal financial assistance under title IV of the HEA, the spouse of a married applicant, and the parent(s) of a dependent applicant, and the accuracy of the information in this system;

(4) Reporting the results of the need analysis and Federal Pell Grant eligibility determination to applicants, institutions of higher education (IHEs), third-party servicers, State agencies designated by the applicant, and Departmental and investigative components;

(5) Reporting the results of duly authorized matching programs between the Department and other Federal, State, or local agencies to applicants, IHEs, third-party servicers, State agencies designated by the applicant, and Departmental and investigative components where the Department is required by law to do so or where it would be essential to the conduct of the matching program to report, such as for the imposition of criminal, civil, or administrative sanctions;

(6) Enforcing the terms and conditions of a title IV, HEA loan or grant;

(7) Servicing and collecting a delinquent title IV, HEA loan or grant;

(8) Initiating enforcement action against individuals, IHEs, or other entities involved in program fraud, abuse, or noncompliance;

(9) Locating a debtor or recipient of a grant overpayment;

(10) Maintaining a record of the data supplied by those requesting title IV, HEA program assistance;

(11) Ensuring compliance with and enforcing title IV, HEA programmatic requirements and various consumer protection laws;

(12) Acting as a repository and source for information necessary to fulfill the requirements of title IV of the HEA;

(13) Evaluating title IV, HEA program effectiveness;

(14) Enabling IHEs and State grant agencies designated by the applicant to review and analyze the financial aid data of their applicant population;

(15) Enabling IHEs and State grant agencies to assist applicants with the completion of the application for the Federal student financial assistance programs authorized by title IV of the HEA;

(16) Assisting State agencies, eligible IHEs, and other entities that award aid to students and that are designated by the Secretary with making eligibility determinations for the award of aid and with administering these awards; and

(17) Promoting and encouraging application for title IV, HEA program assistance, State assistance, and aid awarded by eligible IHEs or by other entities designated by the Secretary.

The information contained in this system is also maintained for the following purposes related to managing customer engagement:

(1) Carrying out the duties and responsibilities of the FSA Ombudsman, including investigating and resolving complaints, inquiries, and requests for assistance, updating borrower account records, correcting errors, analyzing complaint trends, and making appropriate recommendations pursuant to 20 U.S.C. 1018(f);

(2) Carrying out the duties and responsibilities of the Department to provide Federal student loan repayment relief under Federal law;

(3) Verifying the identity of FSA customers;

(4) Recording complaints, suspicious activities, positive feedback, and comments as provided by customer interactions with contact center support via inbound and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, social media platforms, digital engagement platforms, and controlled correspondence);

(5) Tracking individual cases, including complaints, borrower defense submissions, general inquiries, and chat sessions, through final resolution, reporting trends, and analyzing the data to recommend improvements in Federal student financial assistance programs;

(6) Assisting in the informal resolution of disputes submitted by aid applicants or aid recipients about issues related to title IV, HEA program assistance;

(7) Carrying out the duties and responsibilities of the Department under the borrower defense to repayment regulations at 34 CFR 685.206, including receiving, reviewing, evaluating, and processing requests for relief under the borrower defense to repayment regulations; and

(8) Initiating proceedings, where appropriate, to require IHEs to pay the Department the amounts of the loans on which borrower defense discharges have been granted.

The information contained in this system is also maintained for the following purposes related to assisting aid applicants and recipients with Federal student financial assistance programs authorized by title IV of the HEA, and managing customer relationships for marketing and improving customer service:

(1) Determining employer qualification for borrowers to receive discharge under the PSLF Program;

(2) Collecting, processing, storing, and making available user activity events and user-submitted documentation from across the DCC IT system to provide a complete view of the customer to the Department and its contractors;

(3) Sending aid applicants and aid recipients strategic and real-time, personalized communications via email, and SMS ''text messages'' via mobile phone communications to inform them of title IV, HEA aid marketing campaigns (such as encouraging completion of their FAFSA), and sending transactional communication to customers (such as confirmation emails when a user completes an action);

(4) Measuring customer satisfaction and analyzing results; and

(5) Promoting and encouraging the repayment of title IV, HEA program loans in a timely manner.

The information in this system is also maintained for the following purposes relating to the Department's administration and oversight of title IV, HEA programs:

(1) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in the title IV, HEA Federal grant and loan programs;

(2) To support compliance with title IV, HEA statutory and regulatory requirements;

(3) To provide an aid recipient's financial aid history, including information about the recipient's title IV, HEA loan defaults, title IV, HEA aid receipt, and title IV, HEA grant program overpayments;

(4) To facilitate receiving and correcting application data, processing Federal Pell Grants and Direct Loans, and reporting Federal Perkins Loan Program expenditures to the Department's processing and reporting systems;

(5) To support pre-claims/supplemental pre-claims assistance;

(6) To assist in locating holders of title IV, HEA loan(s);

(7) To assist in assessing the administration of title IV, HEA program funds by guaranty agencies, lenders and loan holders, IHEs, and third-party servicers;

(8) To initiate or support a limitation, suspension, or termination action, an emergency action, or a debarment or suspension action;

(9) To inform the parent(s) of a dependent applicant of information

about the parent(s) in an application for title IV, HEA funds;

(10) To disclose to the parent(s) of a dependent applicant applying for a PLUS loan (to be used on behalf of a student), to identify the student as the correct beneficiary of the PLUS loan funds, and to allow the processing of the PLUS loan application and promissory note;

(11) To expedite the student application process;

(12) To enable an applicant, at the applicant's written request, to obtain information from other Federal agencies' records;

(13) To identify, prevent, reduce, and recoup improper payments, prevent fraud, and conduct at-risk campaigns, including protecting customers from Third-Party Debt Relief firms;

(14) To help Federal, State, Tribal, and local government entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of educational institutions, Department contractors, guaranty agencies, lenders and loan holders, and third-party servicers) or to respond to individual aid applicant or recipient complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding the aid applicant's or recipient's title IV, HEA program funds;

(15) To provide eligible applicants for title IV, HEA aid, and when necessary, the spouse or parents of an applicant, with information about certain Federal means-tested benefits and services for which they may qualify;

(16) To collect, track, and process Office of Inspector General (OIG) fraud referrals;

(17) To support research, analysis, and development of educational policies in relation to title IV, HEA student aid programs; and

(18) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains records on individuals who are, were, or may be participants in any of the Federal student financial assistance programs under title IV of the HEA who request assistance, directly or through a designated third party, from the Department.

In addition, this system maintains records on individuals who are students in attendance at a secondary school, as defined under 20 U.S.C. 7801(45), for which State grant agencies and other eligible requesting entities such as secondary schools, local educational agencies (LEAs), Tribal agencies, or other designated entities that have an established relationship with the student pursuant to the terms and conditions of the Student Aid internet Gateway (SAIG) Participation Agreement for State grant agencies, submit information (*e.g.,* name, date of birth (DOB), and zip code) to the Department in order for the Department to provide such entities with the student's FAFSA filing status information to promote and encourage the student to apply for title IV, HEA program assistance, State assistance, and aid awarded by IHEs or by other entities designated by the Secretary, as currently permitted by Section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)).

This system also maintains records on student and parent applicants (and their authorized third parties) who apply for Federal student financial assistance under one of the programs authorized under title IV of the HEA, including, but not limited to the: (1) Federal Pell Grant Program; (2) Federal Perkins Loans Program; (3) Academic Competitiveness Grant (ACG) Program; (4) National Science and Mathematics Access to Retain Talent (National SMART) Grant Program; (5) Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; (6) Iraq and Afghanistan Service Grant (IASG) Program; (7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans, Federal Direct PLUS Loans, and Federal Direct Consolidation Loans; (8) Federal Family Education Loan (FFEL) Program; and (9) Federal Insured Student Loan (FISL) Program.

Also, this system contains records on individuals who are the parent(s) of a dependent applicant, or the spouse of a married applicant.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records that contain the following information:

(1) Information provided by applicants for title IV, HEA program assistance on an incomplete or completed FAFSA, including, but not limited to, the applicant's name, address, SSN, DOB, telephone number, driver's license number, email address, citizenship status, marital status, legal residence, status as a veteran, educational status, and Federal tax information and financial information;

(2) Information provided about the parent(s) of a dependent applicant, including, but not limited to, the parent's highest level of schooling completed, marital status, SSN, last name and first initial, DOB, email address, number of people in the household supported by the parent, and income and asset information;

(3) Information on spousal income and assets, for an applicant who is married;

(4) Information provided by IHEs on behalf of student and parent applicants, including, but not limited to, verification results, dependency overrides, and resolution of comment codes or reject codes;

(5) Information on applicants' expected family contributions (EFCs), Institutional Student Information Record (ISIR), and Student Aid Report (SAR). The system determines an applicant's EFC. The EFC is used by IHEs to determine the student's eligibility for Federal and institutional program assistance, by State grant agencies to determine the student's eligibility for State grants, and by the Bureau of Indian Affairs for tribal assistance. The Department notifies the applicant of the results of his or her application via the SAR. The Department provides the IHEs identified on the applicant's FAFSA with the ISIR, which indicates whether there are discrepant or insufficient information, school adjustments, or CPS assumptions that affect processing of the FAFSA. Other information in the system includes, but is not limited to: Secondary EFC (an EFC that is calculated from the full EFC formula and is printed in the financial aid administrator's (FAA) Information section of the ISIR), dependency status, Federal Pell Grant eligibility, duplicate SSN (an indicator that is set to alert ISIR recipients that two applications were processed with the same SSN), selection for verification, Simplified Needs Test (SNT) or Automatic Zero EFC (used for extremely low family income), CPS processing comments, reject codes (explanation for applicant's FAFSA not computing EFC), assumptions made with regard to the student's information due to incomplete or inconsistent FAFSA information, FAA adjustments including dependency status overrides, and CPS record processing information (application receipt date, transaction number, transaction process date, SAR Serial Number, Compute Number, Data Release Number (DRN), a four-digit number assigned to each application), National Student Loan Database System (NSLDS) match results, a bar code, and transaction source);

(6) Information that identifies aid applicant or aid recipient complaints, positive feedback, reports of suspicious activity, requests for assistance, requests for borrower defense relief, requests for PSLF reconsideration, or other inquiries. Such information includes, but is not limited to: written documentation of an aid applicant or aid recipient's complaint, request for assistance, request for relief under the borrower defense regulations, case tracking number, case appeal identifier, or other comment or inquiry; and information pertaining to the aid recipient's or the aid recipient's parent's student financial assistance program account(s) under title IV of the HEA, such as the aid recipient and the aid recipient's parent's name and Federal Student Aid ID (FSA ID). Information may include the name, address, and phone numbers of the aid recipient's counsel or representative, IHE(s), lender(s), secondary holder(s) or lender(s), guaranty agency(ies), servicer(s), and private collection agency(ies), if applicable, and may contain other loan-level information;

(7) Information provided and generated through customer interactions with contact center support via inbound and outbound channels (phone, chat, webform, email, customer satisfaction survey, fax, physical mail, social media platforms, digital engagement platforms, and controlled correspondence). Information includes, but is not limited to: chat transcripts, email communications, audio recordings of customer calls, and screen recordings of contact center support desktop during customer interactions;

(8) Loan discharge eligibility and verification information for use in determining whether a title IV, HEA debt/loan qualifies for discharge;

(9) Aid recipient's employer information to determine employer qualification for borrowers to receive discharge under PSLF; OIG fraud referral information; and customer support interactions including phone, chat, webform, email, fax, physical mail, and controlled correspondence;

(10) Information for collecting, processing, and storing user activity events from across the DCC IT system: campaign details, delivery details, email/SMS sent timestamp, transaction ID, Federal Account Number (FAN) ID, activity details, activity date, pages/URL accessed, user IP address, user-submitted materials, and user request details;

(11) Information needed to aid in the delivery of strategic and real-time communication to customers, including, but not limited to, first name, last name, DOB, state of residence, email, phone number, mobile device ID, device data, FAFSA transaction data, uniform resource locator (URL), computer-related data, and customer communication preferences and user-activity (open or clicks) for email and SMS communications.

Note: This system of records also maintains information that is collected in this system and stored in other systems of records. The following information about individuals who apply for or receive a Federal grant or loan under one of the programs authorized under title IV of the HEA is collected in this system and stored in the ''Common Origination and Disbursement (COD) System'' (18–11–02) system of records: applicant identifiers including applicant's name, SSN, and DOB; demographic information, including Federal tax information (tax return status, adjusted gross income, Internal Revenue Service exemptions, and tax year), and enrollment information; borrower's loan(s) information, including information about recipients of Direct Loans, FFEL Program loans, Perkins Loans, and FISL Program loans, such as the period from the origination of the loan through final payment, and milestones, including, but not limited to, consolidation, discharge, or other final disposition including details such as loan amount, disbursements, balances, loan status, repayment plan and related information, collections, claims, deferments, forbearances, and refunds; information about students receiving Federal grants, including recipients of Pell Grants, ACG, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and including grant amounts, grant awards, verification status, lifetime eligibility used (LEU), IASG eligible veteran's dependent indicator, Children of Fallen Heroes Scholarship eligibility indicator, and the Pell Grant additional eligibility indicator; Pell Grant collection status indicator and overpayment collection information; promissory notes, Direct Loan Entrance Counseling forms, Federal Student Loan Exit Counseling forms, PLUS Loan Counseling forms, the Annual School Loan Acknowledgement (ASLA), Direct PLUS Loan Requests, endorser addendums, and counseling in the Direct Loan and TEACH Grant programs, such as the date that applicant completed counseling; PLUS Loan credit report information; applicant identifier information for an electronic request to repay a Direct Loan under an income-driven repayment plan and endorser/spouse information, such as the SSN, date that applicant completed the income-driven repayment plan application, and current loan balances; Electronic Direct Consolidation Loan borrower identifier information, such as the borrower's SSN, the date that borrower completed the Federal Direct Consolidation Loan application and promissory note, and current loan balances; and credit check decisions, credit appeals, credit appeal identifiers, and credit history information to support the credit appeal process. Further, information from the ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22) system of records is accessible in the DCC IT system to: allow real-time updates to a customer's identifiers, demographic attributes, address, phone, and email contact details; update customer preference for receiving marketing information via text message; allow the Department and its contractors to identify customers who have completed a customer satisfaction survey; and enable the Department to contact borrowers who have been identified by the Department as potentially having fraudulent activity from a Third-Party Debt Relief (TPDR) company and are at risk of loan default. Information that is modifiable by the customer through *StudentAid.gov* are the following: name, DOB, address, phone number, and email address. The DCC IT system also sends the following information to the EDMAPS system for analytics and reporting: case information including complaints, and OIG fraud referral data. Information includes, but is not limited to: SSN, DOB, address, phone, and email. Additionally, information from Federal Loan Servicers' systems (covered by the ''Common Services for Borrowers (CSB)'' (18–11–16) system of records) is accessible on *StudentAid.gov* to allow customers to view their relevant Federal Loan Servicer information, payment information, loan information, and to make payments on *StudentAid.gov*as they would on the various Federal Loan Servicer websites. Finally, customers can use *StudentAid.gov* to update their contact information and access financial aid history that is stored in the ''National Student Loan Data System (NSLDS)'' (18–11–06) system of records.

RECORD SOURCE CATEGORIES:

Information maintained in this system of records is obtained from applicants, the parents of dependent applicants, and the spouse of married applicants for title IV, HEA program assistance, on the paper FAFSA, Portable Document Format (PDF) FAFSA, the online FAFSA form, and FAFSA by phone; the authorized employees or representatives of authorized entities (namely, IHEs, institutional third-party servicers, FFEL Program lenders, FFEL Program guaranty agencies, Federal loan servicers, State grant agencies, other Federal agencies, and research agencies); and from other persons or entities from which information is obtained following a disclosure under the routine uses set forth below.

The Financial Aid Administrators at IHEs designated by the applicant and IHEs' third-party servicers may correct the records in this system as a result of documentation provided by the applicant or by a dependent applicant's parents, such as Federal income return(s) (Internal Revenue Service (IRS) Form 1040), Social Security card(s), and Department of Homeland Security I–551 Permanent Resident Card.

This system maintains information added during CPS processing and

information received from other Department systems, including the NSLDS, the COD System, and the SAIG Participation Management System. The results of matching programs with Federal and non-Federal agencies are added to the student's record during CPS processing. The Department's present matching programs are with the Social Security Administration (SSA) to verify the SSNs of applicants, and dependent applicants' parent(s), and to confirm the U.S. citizenship status of applicants as recorded in SSA records and date of death (if applicable) of applicants, and dependent applicants' parents, pursuant to sections 428B(f)(2), 483(a)(12), and 484(g) and (p) of the HEA (20 U.S.C. 1078–2(f)(2), 1090(a)(12), and 1091(g)and (p)); with the Department of Veterans Affairs (VA) to verify the status of applicants who claim to be veterans, pursuant to section 480(c) and (d)(1)(D) of the HEA (20 U.S.C. 1087vv(c) and (d)(1)(D)); with the U.S. Department of Homeland Security (DHS) to confirm the immigration status of applicants for assistance as authorized by section 484(g) of the HEA (20 U.S.C. 1091(g)); with the U.S. Department of Justice (DOJ) to enforce any requirement imposed at the discretion of a court, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, as amended by section 1002(d) of the Crime Control Act of 1990, Public Law 101–647 (21 U.S.C. 862), denying Federal benefits under the programs established by title IV of the HEA to any individual convicted of a State or Federal offense for the distribution or possession of a controlled substance; and with the U.S. Department of Defense (DoD) to identify dependents of U.S. military personnel who died in service in Iraq and Afghanistan after September 11, 2001, to determine if they are eligible for increased amounts of title IV, HEA program assistance, pursuant to sections 420R and 473(b) of the HEA (20 U.S.C. 1070h and 1087mm(b)).

During CPS processing, the Department's COD System sends information to this system for students who have received a Federal Pell Grant. The CPS uses this information for verification analysis and for end-of-year reporting. These data elements include, but are not limited to: Verification Selection and Status, Potential Over-award Project (POP) indicator, Institutional Cost of Attendance, Reporting and Attended Campus Pell ID and Enrollment Date, and Federal Pell Grant Program information (Scheduled Federal Pell Grant Award, Origination Award Amount, Total Accepted Disbursement Amount, Number of Disbursements Accepted, Percentage of Eligibility Used At This Attended Campus Institution, and Date of Last Activity from the Origination or Disbursement table).

The CPS also receives applicant information from the Department's NSLDS system each time an application is processed or corrected. This process assesses student aid eligibility, updates financial aid history, and ensures compliance with title IV, HEA regulations. Some of this information appears on the applicant's SAR and ISIR. Title IV, HEA award information is provided to NSLDS from several different sources. Federal Perkins Loan information and Federal Supplemental Educational Opportunity Grant (FSEOG) overpayment information is sent from IHEs or their third-party servicers; the Department's COD System provides Federal Pell Grant and Direct Loan data; and State and guaranty agencies provide information on FFEL loans received from lending institutions participating in the FFEL programs. Financial aid transcript information reported by NSLDS provides aid recipients, IHEs, and third-party servicers with information about the type(s), amount(s), dates, and overpayment status of prior and current title IV, HEA funds the aid recipient has received. FFEL and William D. Ford Federal Direct Student Loan data information reported by NSLDS includes, but is not limited to: (1) Aggregate Loan Data, such as Subsidized, Unsubsidized; Combined Outstanding Principal Balances; Unallocated Consolidated Outstanding Principal Balances, Subsidized, Unsubsidized; Combined Pending Disbursements, Subsidized, Unsubsidized; Combined Totals; and Unallocated Consolidated Totals; (2) Detailed Loan Data, such as Loan Sequence Number; Loan Type Code; Loan Change Flag; Loan Program Code; Current Status Code and Date; Outstanding Principal Balance and Date; Net Loan Amount; Loan Begin and End Dates; Amount and Date of Last Disbursement; Guaranty Agency Code; School Code; Contact Code; and Institution Type and Grade Level; and (3) system flags for Additional Unsubsidized Loan; Capitalized Interest; Defaulted Loan Change; Discharged Loan Change; Loan Satisfactory Repayment Change; Active Bankruptcy Change; Overpayments Change; Aggregate Loan Change; Defaulted Loan; Discharged Loan; Loan Satisfactory Repayment; Active Bankruptcy; Additional Loans; Direct Loan Master Promissory Note; Direct PLUS Loan Master Promissory Note; Subsidized Loan Limit; and the Combined Loan Limit. Federal Perkins Loan information reported by NSLDS includes, but is not limited to: Cumulative and Current Year Disbursement Amounts; flags for Perkins Loan Change; Defaulted Loan; Discharged Loan; Loan Satisfactory Repayment; Active Bankruptcy; Additional Loans; and Perkins Overpayment Flag and Contact (School or Region). Federal Pell Grant payment information reported includes, but is not limited to: Pell Sequence Number; Pell Attended School Code; Pell Transaction Number; Last Update Date; Scheduled Amount; Award Amount; Amount Paid to Date; Percent Scheduled Award Used; Pell Payment EFC; Flags for Pell Verification; and Pell Payment Change. TEACH Grant Program information includes, but is not limited to: TEACH Grant Overpayment Contact; TEACH Grant Overpayment Flag; TEACH Grant Loan Principal Balance; TEACH Grant Total; and TEACH Grant Change Flag. Iraq and Afghanistan Service Grants information includes, but is not limited to, Total Award Amount. The Department obtains from and exchanges information that is included in this system of records with IHEs, third-party servicers, and State agencies. These eligible entities register with the SAIG system to participate in the information exchanges specified for their business processes.

Additionally, for individuals who request assistance, directly or through a designated third party, from the Department, information is obtained from individuals (*e.g.,* borrowers), their counsel or representatives, or students or their parents (when the individual is a borrower and depending on whether the individual is a parent or student), Federal agencies, State agencies, IHEs, lenders, private collection agencies, guaranty agencies, accreditors, and from other persons or entities from whom or from which data is obtained following a disclosure under routine uses set forth below.

Note: Customer information that is retrieved from Federal Loan Servicers' IT systems (covered by the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16)) is accessible through StudentAid.gov to provide customers with payment and loan information and to enable customers to make loan payments as they would on the various Federal Loan Servicer websites. Information that is collected in this system is stored in and retrieved from the COD System (covered by the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02)) to allow: applicants and borrowers to submit Counseling (Entrance, Exit, Financial

Awareness Counseling, PLUS, TEACH Initial, TEACH Exit, TEACH Conversion), Master Promissory Note (MPN), Endorser Addendum, TEACH Agreement to Serve (ATS), Loan Consolidation, Income-Driven Repayment, PLUS Loan Request, and Annual Student Loan Acknowledgement (ASLA) applications through *StudentAid.gov;* credit check decision, credit appeal, and credit history information to be viewable on StudentAid.gov to support credit appeal processing; users to view and search the PSLF employer database as retrieved from the COD System and provide updates to employers' information; and the PDF version of the PSLF/Temporary Expanded PSLF (TEPSLF) certification and application form that is generated from the PSLF Help Tool to be accessible. Information is also retrieved from the COD System to provide StudentAid.gov functionality for creating and updating customer records. The following information from the EDMAPS system is accessible in the DCC IT system: customer information that is retrieved to allow real-time updates to a customer's identifiers, demographic attributes, address, phone, and email contact details; SMS opt in/out information for customer communication preferences to opt in/out of receiving marketing information via text message; information for customers who have been identified by the Department and its contractors as having completed a customer satisfaction survey; information for borrowers who will be contacted by the Department because they have been identified by the Department as having potentially fraudulent activity from a TPDR company; and information on borrowers who have been identified by the Department and its contractors as being at risk for loan default.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information maintained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or pursuant to a matching agreement that meets the requirements of the Privacy Act of 1974, as amended (Privacy Act). Until June 30, 2023, Section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)) restricts the use of the information gathered from the electronic version of the FAFSA to the application, award, and administration of aid awarded under title IV of the HEA, aid awarded by States, aid awarded by eligible institutions, or aid awarded by such entities as the Secretary may designate.

(1) *Program Disclosures.* The Department may disclose records from the system of records for the following program purposes:

(a) To verify the identity of the applicant, the spouse of a married applicant, and the parent(s) of a dependent applicant, to determine the accuracy of the information contained in the record, to support compliance with title IV, HEA statutory and regulatory requirements, and to assist with the determination, correction, processing, tracking, and reporting of program eligibility and benefits, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, or Tribal agencies;

(b) To provide an applicant's financial aid history to IHEs, guaranty agencies and State agencies, lenders and loan holders participating in the FFEL Program, and third-party servicers, including information about the applicant's title IV, HEA loan defaults and title IV, HEA grant program overpayments, the Department may disclose records to IHEs, guaranty agencies and State agencies, lenders and loan holders participating in the FFEL Program, and third-party servicers;

(c) To facilitate receiving and correcting application information, processing Federal Pell Grants and Direct Loans, and reporting Federal Perkins Loan Program expenditures to the Department's processing and reporting systems, the Department may disclose records to IHEs, State agencies, and third-party servicers;

(d) To assist loan holders with the collection and servicing of title IV, HEA loans, to support pre-claims/supplemental pre-claims assistance, to assist in locating borrowers, and to assist in locating students who owe grant overpayments, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(e) To facilitate assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies and IHEs, third-party servicers, and Federal, State, and local agencies;

(f) To assist in locating holders of loans, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(g) To assist in assessing the administration of title IV, HEA program funds by guaranty agencies, lenders and loan holders in the FFEL Program, IHEs, and third-party servicers, the Department may disclose records to Federal and State agencies;

(h) To enforce the terms of a loan or grant or to assist in the collection of loan or grant overpayments, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(i) To assist borrowers in repayment, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, and local agencies;

(j) To determine the relief that is appropriate if the Secretary grants a borrower defense to repayment discharge application, as well as to pursue repayment of the amount of such discharges against the IHE, the Department may disclose records to Federal, State, and Tribal agencies, accreditors, IHEs, lenders and loan holders, guaranty agencies, third-party servicers, and private collection agencies;

(k) To initiate legal action against an individual or entity involved in an illegal or unauthorized title IV, HEA program expenditure or activity, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(l) To initiate or support a limitation, suspension, or termination action, an emergency action, or a debarment or suspension action, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, IHEs, third-party servicers, and Federal, State, local, and Tribal agencies;

(m) To investigate and resolve complaints, inquiries, requests for assistance, requests for Federal student loan repayment relief and other relief under the borrower defense to repayment regulations, and to update borrower account records and to correct errors, the Department may disclose records to guaranty agencies, lenders and loan holders participating in the FFEL Program, accreditors, IHEs, third-party servicers, private collection agencies, and Federal, State, and local agencies;

(n) To inform the parent(s) of a dependent applicant of information about the parent(s) in an application for title IV, HEA funds, the Department may disclose records to the parent(s);

(o) To identify the student as the correct beneficiary of the PLUS loan funds, and to allow the processing of the

PLUS loan application and promissory note, the Department may disclose records to the parent(s) applying for the parent PLUS loan;

(p) To encourage a student to complete a FAFSA or to assist a student with the completion of a FAFSA, the Department may disclose the FAFSA filing status of the student to an LEA, a secondary school where the student is or was enrolled, a State, local, or Tribal agency, or an entity that awards aid to students and that has been designated by the Secretary, as currently permitted by Section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E));

(q) To enable an applicant, at the applicant's written request, to obtain information from other Federal agencies' records that will assist the applicant in completing the FAFSA or income-driven repayment plan forms online, the Department may disclose information from this system of records to other Federal agencies, such as the IRS;

(r) To determine an applicant's eligibility for the award of State postsecondary education assistance and for the award of aid by eligible IHEs or by other entities that have been designated by the Secretary, as currently permitted by Section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)), and to administer those awards, the Department may disclose information from this system of records to State agencies, eligible IHEs, and other entities designated by the Secretary that award aid to students, as currently permitted by Section 483(a)(3)(E) of the HEA (20 U.S.C. 1090(a)(3)(E)); and

(s) To help Federal, State, Tribal, and local government entities exercise their supervisory and administrative powers (including, but not limited to licensure, examination, discipline, regulation, or oversight of IHEs, Department contractors, guaranty agencies, lenders and loan holders, and third-party servicers) or to respond to aid applicant or recipient complaints submitted regarding the practices or processes of the Department and/or the Department's contractors, or to update information or correct errors contained in Department records regarding the aid applicant's or recipient's title IV, HEA program funds, the Department may disclose records to governmental entities at the Federal, State, Tribal, and local levels. These records may include all aspects of loans and grants made under title IV of the HEA in order to permit these governmental entities to verify compliance with applicable debt collection, consumer protection, financial, and other applicable statutory, regulatory, or local requirements. Before making a disclosure to these Federal, State, local, or Tribal governmental entities, the Department will require them to maintain safeguards consistent with the Privacy Act to protect the security and confidentiality of the disclosed records.

Note: Some information that is maintained in this system of records is also maintained in other Department systems of records and, therefore, may be disclosed pursuant to the routine uses published in those other systems' system of records notices, including the ''Common Origination and Disbursement (COD) System'' (18–11–02), ''National Student Loan Data System (NSLDS)'' (18–11–06), and ''Common Services for Borrowers (CSB)'' (18–11–16).

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulations, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) of this routine use is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity where the U.S. Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation of the employee;

(iv) Any Department employee in their individual capacity where the Department has agreed to represent the employee; and

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or to the Office of Management and Budget (OMB) if the Department determines that disclosure is desirable or necessary in determining whether records are required to be disclosed under the FOIA or the Privacy Act.

(5) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records in this system of records to the contractor's employees, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(6) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of and on behalf of the individual whose records are being disclosed. The member's right to the information is no greater than the right of the individual who requested it.

(7) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency, or to another public agency or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records, if necessary to obtain information relevant to a

Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or other public agency or professional organization, or the Department's contractor in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(8) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose a record from this system of records in the course of investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(9) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(10) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher must agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure to the OMB and Congressional Budget Office (CBO) for Federal Credit Reform Act (FCRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill FCRA requirements in accordance with 2 U.S.C. 661b.

(13) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(14) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(15) *Disclosure of Information to State and Federal Agencies.* The Department may disclose records from this system to (a) a Federal or State agency, its employees, agents (including contractors of its agents), or contractors, or (b) a fiscal or financial agent designated by the U.S. Department of the Treasury, including employees, agents, or contractors of such agent, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds.

(16) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose the following information to a consumer reporting agency regarding a valid, overdue claim of the Department: (1) the name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

System records are paper-based and stored in locked rooms or electronic and stored on secured computer systems and in the cloud.

Paper applications are stored in standard Federal Records Center boxes in locked storage rooms at the contractor facility in London, Kentucky, and then moved to the NARA Federal Records Center listed in the ''System Location'' section above, where the records are stored until disposed.

Digitized paper applicant records, which include optically imaged documents, are stored on DADS (disks) in a virtual disk library, which is also electronic, in the computer facilities controlled by the Next Generation Data Center (NGDC) in Clarksville, VA.

Records that are collected in this system for applicants of Federal grants or loans are stored in the COD System for individuals who apply under one of the programs authorized under title IV of the HEA, including, but not limited to the: (1) Federal Pell Grant Program; (2) Federal Perkins Loans Program; (3) ACG Program; (4) National SMART Grant Program; (5) TEACH Grant Program; (6) Iraq and Afghanistan Service Grant Program; (7) Direct Loan Program, which includes Federal Direct Stafford/Ford Loans, Federal Direct Unsubsidized Stafford/Ford Loans and Federal Direct PLUS Loans and Federal Direct Consolidation Loans; (8) FFEL Program; and (9) FISL Program.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system pertaining to a title IV, HEA loan applicant, borrower, or grant recipient are indexed and retrieved by a single data element, or a

combination of the following data elements, to include SSN, name, DOB, the academic year in which the applicant applied for title IV, HEA program assistance, and case tracking number. These data elements are also used to retrieve information of title IV, HEA program applicants for and recipients of Federal grants or loans from the COD System (applicant information is collected in this system of records and stored in the COD System).

This system also uses a credit appeal identifier to retrieve credit appeal information from the COD System to support the credit appeal process.

Additionally, this system uses a combination of SSN, DOB, and name data elements to retrieve records from Federal Loan Servicers' systems (covered by the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16)) to allow customers to access their relevant Federal Loan Servicer information, payment information, loan information and to make payments on *StudentAid.gov* as they would on the various Federal Loan Servicer websites.

This system also uses customer identifiers to retrieve customer information data from the EDMAPS system (covered by the system of records noticed entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–xx)) to allow real-time updates to customer information and communication preferences; and for the Department and its contractors to identify customers who have completed a customer satisfaction survey in the DCC system; who may have potential fraudulent activity from a TPDR company; and who may be at risk for loan default.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records maintained in this system are primarily retained and disposed of in accordance with the records schedules listed below. The Department has submitted amendments to these records schedules to NARA for its review and approval.

(a) Department Records Schedule 051: FSA National Student Loan Data System (NSLDS) (DAA–0441–2017–0004) (ED 051). (Records covered by ED 051 will not be destroyed until NARA-approved amendments to ED 051 are in effect, as applicable.)

(b) Department Records Schedule 052: Ombudsman Case Files (N1–441–09–21) (ED 052). (Records covered by ED 052 will not be destroyed until NARA-approved amendments to ED 052 are in effect, as applicable.)

(c) Department Records Schedule 072: FSA Application, Origination, and Disbursement Records (DAA–0441–2013–0002) (ED 072). (Records covered by ED 072 will not be destroyed until NARA-approved amendments to ED 072 are in effect, as applicable.)

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users of the system will have a unique user ID with a password. All physical access to the data housed at system locations is controlled and monitored by security personnel who check each individual entering the building for their employee or visitor badge. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention with firewalls, encryption, and password protection. This security system limits data access to Department and contract staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All interactions by users of the system are recorded.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager at the address listed above. You must provide necessary particulars such as your name, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Alternatively, to gain access to a record in the system, you may make a Privacy Act request through the U.S. Department of Education, FOIA Service Center at *https://www2.ed.gov/policy/gen/leg/foia/request_privacy.html* by completing the applicable request forms. Requests by an individual for access to a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

Borrowers are able to access their financial aid history from NSLDS in this system. If you wish to gain access to other records in the NSLDS, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

For title IV, HEA program applicants and recipients of Federal grants or loans, if you wish to gain access to such information about you from the COD System, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

If you wish to gain access to the EDMAPS system information that is about you and accessible in this system, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–xx).

If you wish to gain access to information in the Federal Loan Servicers' IT systems that is about you and accessible in this system, please refer to the RECORD ACCESS PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

CONTESTING RECORD PROCEDURES:

If you wish to contest or change the content of a record about you in the system of records, provide the System Manager with your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Identify the specific items to be changed and provide a written justification for the change.

To contest the content of a FAFSA record for the current processing year, send your request to the FOIA Service

Center listed in the Notification Procedures section. The application processing cycle lasts 21 months. For example, for the 2021–2022 award year, applications were accepted from October 1, 2020, through June 30, 2022.

Financial aid history from NSLDS is accessible in this system. To contest name and address records about you, provide the System Manager with your name, DOB, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. All other financial aid history records from NSLDS must be contested by following the CONTESTING RECORD PROCEDURES identified in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

For title IV, HEA program applicants and recipients of Federal grants or loans, if you wish to contest such information about you, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

To contest information about you in a Federal Loan Servicer IT system, payment information, and loan information that is accessible in this system, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

To contest the EDMAPS system information that is accessible in this system, please refer to the CONTESTING RECORD PROCEDURES section in the system of records notice entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–xx).

Requests to amend a record must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists about you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars such as your name, SSN, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Alternatively, you may make a Privacy Act request through the U.S. Department of Education, FOIA Service Center at *https://www2.ed.gov/policy/gen/leg/foia/request_privacy.html* by completing the applicable request forms.

If you wish to submit a request for notification to determine whether a record exists about you in the COD System as a title IV, HEA program applicant or recipient of a Federal grant or loan, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Common Origination and Disbursement (COD) System'' (18–11–02).

Borrowers are able to access their financial aid history from NSLDS in this system. If you wish to submit a request for notification to determine whether a record exists about you in the NSLDS system of records, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''National Student Loan Data System (NSLDS)'' (18–11–06).

If you wish to submit a request for notification to determine whether a record exists about you in a Federal Loan Servicer IT system, please refer to the NOTIFICATION PROCEDURES section in the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16).

If you wish to submit a request for notification to determine whether a record exists about you in EDMAPS system, please refer to the NOTIFICATION PROCEDURES section in the system of records entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS) System'' (18–11–xx).

Requests for notification about whether the system of records contains information about an individual must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes the rescindment of the system of records notice entitled ''Federal Student Aid Application File'' (18–11–01):

SYSTEM NAME AND NUMBER:

Federal Student Aid Application File (18–11–01).

HISTORY:

The ''Federal Student Aid Application File'' system of records notice, was published in the **Federal Register** at 64 FR 30159 (June 4, 1999), modified at 64 FR 72384, 72407 (December 27, 1999), modified at 65 FR 11294 (March 2, 2000), modified at 66 FR 18758 (April 11, 2001), modified at 74 FR 68802 (December 29, 2009), modified at 76 FR 46774 (August 3, 2011), modified at 84 FR 57856 (October 29, 2019), and is being rescinded by this notice.

For the reasons discussed in the preamble, the Chief Operating Officer, Federal Student Aid (FSA) of the U.S. Department of Education (Department) publishes the rescindment of the system of records notice entitled ''Customer Engagement Management System (CEMS)'' (18–11–11):

SYSTEM NAME AND NUMBER:

Customer Engagement Management System (CEMS) (18–11–11).

HISTORY:

The ''Customer Engagement Management System (CEMS)'' (18–11–11) system of records notice was published in the **Federal Register** at 83 FR 27587 (June 13, 2018). Prior to being covered by the CEMS system of records notice, records that are about individuals who have asserted defenses to the repayment of their Federal student loans, also known as ''borrower defenses,'' pursuant to the Department's regulations at 34 CFR 685.206, were covered by the system of records notice entitled ''Common Services for Borrowers (CSB)'' (18–11–16), which was first published in the **Federal Register** at 71 FR 3503 (January 23, 2006), subsequently modified at 79 FR 54685 (September 12, 2014), and last modified at 81 FR 60683 (September 2, 2016). Prior to being covered by the CEMS system of records notice, records that are about individuals who requested assistance from the FSA Ombudsman were covered by the system of records notice entitled ''Office of the Student Loan Ombudsman Records'' (18–11–11), which was first published in the **Federal Register** at 64 FR 72384, 72399 (December 27, 1999) and then subsequently modified at 81 FR 12081 (March 8, 2016). The CEMS system of records notice is being rescinded by this notice.

[FR Doc. 2022–19890 Filed 9–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2022–FSA–0108]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the U.S. Department of Education (Department) publishes this notice of a new system of records titled ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22). The EDMAPS system is a data analytics platform that ingests data from multiple Federal Student Aid (FSA) systems of records to perform big-data analytics on FSA data in one common location, produce reports and statistical models, and serve as a centralized repository of information about FSA customers across the full student aid life cycle.

DATES: Submit your comments on this new system of records notice on or before October 13, 2022.

This new system of records will become effective upon publication in the **Federal Register** on September 13, 2022, unless it needs to be changed as a result of public comment, except for the routine uses. The routine uses, listed in the section titled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' will become effective on October 13, 2022, unless they need to be changed as a result of public comment. The Department will publish any significant changes to the new system of records notice or routine uses resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Barry Goldstein, Chief Data Officer, FSA, U.S. Department of Education, UCP, Room 64E1, 830 First Street NE, Washington, DC 20202–5454. Telephone: (202) 377–4563.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Introduction

The EDMAPS system provides a unified data platform and common data environment for FSA to improve the accuracy and consistency of student aid life cycle data. As described in greater detail below, the EDMAPS system brings together one of FSA's largest data platforms, the Enterprise Data Warehouse and Analytics (EDWA), and two newly created components, a Data Lake and Person Master Data Management (pMDM), to manage and reconcile data.

Information from the student aid life cycle will be stored in EDMAPS to, among other things, support the principle of Master Data Management, with the goal of establishing a master copy of key data elements after reconciling and resolving interface discrepancies among various FSA databases.

The EDMAPS system provides a more flexible data architecture that will allow FSA to, among other things, more efficiently and accurately respond to complex data requests and mandated changes in title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070 *et seq.*), policies and operations. It will also allow FSA to, for instance, provide additional insights into title IV, HEA programs, improve oversight of FSA vendors, and develop a global view of FSA operations.

In summary, the EDMAPS system consists of the following components:

(i) Enterprise Data Warehouse and Analytics (EDWA)—a data warehouse that ingests enterprise-wide data for the purposes of reporting, analytics, and the development of statistical models. FSA leverages EDWA in daily operations to help aid applicants and recipients achieve better outcomes through outreach to borrowers at risk of default and of being defrauded;

(ii) Person Master Data Management (pMDM)—an EDMAPS system component that uses algorithms to identify the most accurate and/or up-to-date identifying and contact records for an aid applicant, aid recipient, and parent or spouse of an aid applicant or recipient, as applicable; and

(iii) Data Lake—a secure environment for receiving large quantities of raw data with the capability to curate the data into structured databases or the EDWA, archive data for future use, present structured and unstructured data to users for reporting and query purposes, and manage unstructured data for search or conversion to structured data utilizing optical character recognition (OCR) software. Unstructured data include pdf files, servicer telephone conversations, and free-text fields from feedback/complaint forms.

EDMAPS differs from other FSA systems that contain similar or the same information in that its architecture and purpose primarily focus on analytics, reporting, and modeling, with limited focus on production including loan discharge (as explained below). FSA's production systems interact with key participants in the financial aid process, such as postsecondary institutions, and in many cases, can be used to generate reports or analysis, but their primary purpose is production and operations of the title IV, HEA programs. For instance, in addition to receiving replicated data, EDMAPS maintains month-end snapshots of data and roll ups of data, which facilitate reporting, analysis, and trending not only of recent data but also of historical data.

EDMAPS also contains built-in statistical tools, such as Python and SAS, to facilitate regressions, modeling,

and big data analysis, all features that do not exist in the other systems.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the U.S. Department of Education publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

Amazon Web Services (AWS), 1200 12th Avenue, Suite 1200, Seattle, WA 98114. (This is the Computer Center for the EDMAPS system's application, where all electronic EDMAPS system information is processed and stored.)

Accenture, 22451 Shaw Road, Sterling, VA 20166–4319. (The EDMAPS system's Sterling Cloud-based Operations is located here.)

Accenture DC, 810 First Street NE, Washington, DC 20202–4227. (This is the EDMAPS system's Operations Center.)

SYSTEM MANAGER(S):

System Owner, EDMAPS System, Federal Student Aid (FSA), U.S. Department of Education (Department), Union Center Plaza (UCP), Room 102–E5, 830 First Street NE, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The EDMAPS system is authorized under title I, Part D, and title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1018—1018b and 20 U.S.C. 1070 *et seq.*), the Presidential Memorandum entitled, ''A Student Aid Bill of Rights to Help Ensure Affordable Loan Repayment'' (March 10, 2015), the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency), and sections 701(b) and 702(m) of the FAFSA Simplification Act, title VII, Division FF of Public Law (Pub. L.) 116–260, Consolidated Appropriations Act, 2021.

The EDMAPS system is largely comprised of records that originate from, and are also maintained in, other Department systems of records. Therefore, the Department is also listing the more specific authorities for those systems of records here:

(1) National Student Loan Data System (NSLDS) (18–11–06). The authority under which the NSLDS system of records is maintained includes sections 101, 102, 132(i), 485, and 485B of the HEA (20 U.S.C. 1001, 1002, 1015a(i), 1092, and 1092b), and sections 431(2) and (3) of the General Education Provisions Act (20 U.S.C. 1231a(2)–(3)). The collection of Social Security numbers (SSNs) of aid applicants and recipients who are covered by the NSLDS system is authorized by 31 U.S.C. 7701 and Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008);

(2) Common Origination and Disbursement (COD) (18–11–02). The COD system of records is authorized under title IV of the HEA and the HEROES Act (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency);

(3) Common Services for Borrowers (CSB) (18–11–16). The CSB system of records is authorized by titles IV–A, IV–B, IV–D, and IV–E of the HEA;

(4) Health Education Assistance Loan (HEAL) Program (18–11–20). The authority for maintenance of the HEAL Program system of records includes sections 701 and 702 of the Public Health Service Act, as amended (PHS Act) (42 U.S.C. 292 and 292a), which authorize the establishment of a Federal program of student loan insurance; section 715 of the PHS Act (42 U.S.C. 292n), which directs the Secretary of Education to require institutions to provide information for each student who has a loan; section 709(c) of the PHS Act (42 U.S.C. 292h(c)), which authorizes disclosure and publication of HEAL defaulters; the Debt Collection Improvement Act (31 U.S.C. 3701 and 3711–3720E); and the Consolidated Appropriations Act, 2014, Division H, title V, section 525 of Pub. L. 113–76, which transferred the authority to administer the HEAL program from the Secretary of Health and Human Services to the Secretary of Education;

(5) Financial Management System (FMS) (18–11–17). The FMS system of records is authorized by title IV of the HEA;

(6) Postsecondary Education Participants Systems (PEPS) (18–11–09). The PEPS system of records is authorized by sections 481, 487, 498 of the HEA (20 U.S.C. 1088, 1094, 1099c) and section 31001(i)(1) of the Debt Collection Improvement Act of 1996, Pub. L. 104–134 (31 U.S.C. 7701);

(7) Person Authentication Service (PAS) (18–11–12). The PAS system of records and the collection of personal information for the creation and management of an FSA ID (which includes a user ID and a password) is authorized programmatically by title IV of the HEA;

(8) Student Aid Internet Gateway (SAIG), Participation Management System (18–11–10). The SAIG, Participation Management System, system of records is authorized by title IV of the HEA. The collection of SSNs of users of the SAIG, Participation Management System is authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008);

(9) Aid Awareness and Application Processing (18–11–21). The Aid Awareness and Application Processing system of records is authorized under title IV of the HEA (20 U.S.C. 1070 *et seq.*) and 20 U.S.C. 1018(f) and 1087e(h). The collection of SSNs of users of the Federal Student Aid Application File system is also authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system of records is maintained for the following purposes (Note: Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when a borrower's loan amount is reduced, in whole or in part, by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including, but not limited to, discharges of student loans made pursuant to specific benefit programs. At times, this system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges):

(1) To provide master data management, to serve as a production database, and to provide common naming conventions and standards;

(2) To provide a data warehouse for analytics, reporting, and modeling;

(3) To provide the Data Lake for the storage of large data sets, both structured and unstructured. (PDFs and audio files are examples of unstructured data);

(4) To provide analytics and reporting, including querying, modeling, forecasting, and visualizing, for the purpose of administering the title IV, HEA programs effectively and efficiently;

(5) To improve transparency by publicly releasing information and reports, as required by the Foundations for Evidence-Based Policymaking Act of 2018 and title IV of the HEA;

(6) To support research, analysis, and development, and the implementation and evaluation of education policies in relation to title IV, HEA programs;

(7) To support Federal budget analysts in the Department, the Office of Management and Budget (OMB), and the Congressional Budget Office (CBO) in the development of budget needs and forecasts;

(8) To help aid applicants and recipients achieve better outcomes through outreach to aid applicants and recipients at risk of default and of being defrauded;

(9) To determine aid recipients' eligibility for discharges of loans under title IV of the HEA;

(10) To maintain and process information and documentation, including, but not limited to, loan discharge income eligibility information, associated consent information for the purposes of eligibility determination and verification information obtained from applicants, or applicable applicant's parent(s) or spouse, and income verification documentation of an aid recipient or applicable aid recipient's parent(s) or spouse, pertaining to discharge of eligible loans under title IV, HEA and promissory notes and other agreements that evidence the existence of a legal obligation to repay funds disbursed under title IV, HEA programs;

(11) To provide a more flexible data architecture that will allow FSA to respond more efficiently and accurately to complex data requests and changes in title IV, HEA policies and operations;

(12) To provide additional insights into title IV, HEA programs, improve oversight of FSA vendors, and develop a global view of FSA operations;

(13) To facilitate the collection, processing, and transmission of information to students, post-secondary and financial institutions, lenders, State agencies, and other authorized operational parties;

(14) To identify, prevent, reduce, and recoup improper payments;

(15) To communicate with aid applicants and recipients regarding including, but not limited to, the Free Application for Federal Student Aid (FAFSA®) processing timelines, debt counseling references, and Public Service Loan Forgiveness (PSLF) information;

(16) To enforce the conditions or terms of a title IV, HEA obligation;

(17) To investigate possible fraud or abuse or verify compliance with program regulations or contract requirements;

(18) To litigate a title IV, HEA obligation, or to prepare for, provide support services for, or audit the results of litigation on a title IV, HEA obligation;

(19) To verify the identity of FSA aid recipients for the purpose of loan discharge eligibility;

(20) To assist audit and program review planning and reviews; and

(21) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The EDMAPS system maintains records on the following categories of individuals:

(1) Individual recipients of, and applicants for, aid under one of the programs authorized under title IV of the HEA, including, but not limited to, the: (a) Direct Loan Program; (b) Federal Family Education Loan (FFEL) Program; (c) Federal Insured Student Loan (FISL) Program; and (d) Federal Perkins Loan Program including National Defense Student Loans, National Direct Student Loans, and Perkins Expanded Lending and Income Contingent Loans (Perkins Loans);

(2) Individuals who serve as endorsers on Direct PLUS loans;

(3) Recipients of Federal Pell Grants, Academic Competitiveness Grants (ACG), National Science and Mathematics Access to Retain Talent (SMART) Grants, Teacher Education Assistance for College and Higher Education (TEACH) Grants, and Iraq and Afghanistan Service Grants;

(4) Individuals who owe an overpayment on a Federal Pell Grant, an ACG, a National SMART Grant, a Federal Supplemental Educational Opportunity Grant (FSEOG), or an Iraq and Afghanistan Service Grant, or TEACH or a Federal Perkins Loan;

(5) Individuals who have applied for borrower defense discharges (**Note:** The system contains case tracking records on these individuals);

(6) Individuals who received aid under the HEAL Program for analysis of their use of the title IV, HEA programs;

(7) Individuals who are title IV, HEA aid applicants or recipients, and parents or spouses of aid applicants or recipients, who submit feedback/complaints to the Department regarding title IV, HEA programs, contractors, or practices or processes of the Department and those who serve as contacts at educational institutions listed on the program participation agreement, including, but not limited to, financial aid directors and college presidents;

(8) Individuals who are not aid applicants or recipients under title IV, HEA programs, but who have submitted feedback or a complaint or whose information has been provided to the Department as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs;

(9) Aid applicants and recipients under title IV, HEA programs, the parents of aid applicants and recipients under title IV, HEA programs, and PLUS loan endorsers who apply for an FSA user ID and password; and

(10) Individuals who are, or once were, the parent(s) of a dependent applicant or aid recipient, or the spouse of a married applicant or aid recipient, under title IV, HEA programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The EDMAPS system includes, but is not limited to, the following categories of records:

(1) Aid applicant and recipient identifier information, including SSN, FSA user ID (FSA ID), name (both current and previous), date of birth, physical mailing address, phone number, email address, and driver's license information;

(2) Information on the aid recipient's loan(s) covering the period from the origination of the loan through final payment, cancellation, consolidation, discharge, or other final disposition, including details such as loan amount, disbursements, balances, loan status, repayment plan payments and related information, collections, lender and guaranty agency claims, deferments, forbearances, refunds, and cancellations, master promissory notes, information collected to determine loan discharge eligibility along with eligibility and income verification consents;

(3) Aid applicant and recipient demographic information from aid

applications, such as dependency status, citizenship, veteran status, marital status, sex/gender, race/ethnicity, income and asset information (including income and asset information on the student's parent(s), if a dependent student, and the aid applicant's or recipient's spouse, if married), and expected family contribution or Student Aid Index;

(4) Demographic information on the parent(s) of a dependent aid applicant and recipient from aid applications, including, but not limited to, name (current and previous), date of birth, SSN, FSA ID, U.S. passport number, state administered driver's license number, marital status, telephone number, email address, highest level of schooling completed, and income and asset information;

(5) Information related to a borrower's application for an income-driven repayment plan, including information such as current income, family size, repayment plan selection, and, if married, information about the borrower's spouse;

(6) Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, and Iraq and Afghanistan Service Grant amounts and dates of disbursement;

(7) Federal Pell Grant, ACG Grant, National SMART Grant, Iraq and Afghanistan Service Grant, FSEOG, and Federal Perkins Loan Program overpayment amounts;

(8) Information maintained by a guaranty agency, including, demographic, contact, and identifier information, a borrower's FFEL loan(s), and the lender(s), holder(s), and servicer(s) of the borrower's FFEL loan(s);

(9) Information concerning the date of any default on loans;

(10) Information on financial institutions participating in the loan participation and sale programs established by the Department under the Ensuring Continued Access to Student Loan Act of 2008 (ECASLA) (Pub. L. 110–227), including the collection of ECASLA loan-level funding amounts, dates of ECASLA participation for financial institutions, dates and amounts of loans sold to the Department under ECASLA, and the amount of loans funded by the Department's programs but repurchased by the lender;

(11) Student enrollment information for individuals who have received title IV, HEA aid, such as enrollment status, information on the student's educational institution, level of study, the Classification of Instructional Programs (CIP) code, and published length for the program in which the student enrolled for at an institution or programs of studies at the post-secondary institution;

(12) Case records on applications for borrower defense discharge;

(13) Case records on complaints and feedback regarding title IV, HEA programs, Department contractors, and the practices and processes of the Department and fraud referrals;

(14) Records on title IV, HEA aid applicants and recipients under title IV, HEA programs, the parents of aid applicants and recipients under title IV, HEA programs, and PLUS loan endorsers who apply for an FSA user ID and password, including password recovery questions and answers;

(15) Records of borrower contacts (phone calls and letters);

(16) HEAL Program records, when loaded into the system for analysis of HEAL borrowers' use of the title IV, HEA programs;

(17) Reference data about lenders and guaranty agencies, such as parent-subsidiary lender relationships, in addition to aggregated financials from lenders and guaranty agencies;

(18) Centralized identifying and contact information received from the FAFSA®, origination and disbursement records, loan servicers, and customers (via the studentaid.gov interface), augmented by algorithms to identify the most accurate and/or up-to-date identifying and contact records;

(19) Credit check details, decision, adverse reasons/credit bureau info and credit appeal information on PLUS loan applicants, recipients and endorsers; and

(20) The system maintains student enrollment information for individuals who have received title IV, HEA aid and records on the level of study, CIP code, and published length of an educational program in which a student receiving title IV, HEA aid; and

(21) Loan discharge income eligibility information, associated discharge eligibility and income verification consent information from discharge applicants or applicable applicant's parent(s) or spouse, and income verification documentation of an aid recipient or applicable aid recipient's parent(s) or spouse, pertaining to discharge of eligible loans under title IV, HEA programs.

RECORD SOURCE CATEGORIES

Information for this system is obtained from other Department systems, such as Federal Loan Servicers' IT systems (covered by the system of records titled ''Common Services for Borrowers (CSB)'' (18–11–16)); the Debt Management and Collection System (DMCS) (covered by the system of records titled ''Common Services for Borrowers (CSB)'' (18–11–16)); COD (covered by the system of records titled ''Common Origination and Disbursement (COD) System'' (18–11–02)); and the Financial Management System (FMS) (covered by the system of records titled ''Financial Management System (FMS)'' (18–11–17).)

In addition, the EDMAPS system currently receives Federal Loan Servicer, DMCS, guaranty agency, and certain postsecondary education institution information on Perkins Loans via the SAIG, Participant Management System (covered by the system of records titled ''Student Aid internet Gateway (SAIG), Participation Management System'' (18–11–10)).

Further, the EDMAPS system currently receives data originating from PEPS (covered by the system of records titled ''Postsecondary Education Participants System'' (18–11–09)) and the Central Processing System (CPS) (covered by the system of records titled ''Federal Student Aid Application File'' (18–11–01)) via COD.

The EDMAPS system also receives enrollment records, including program-level enrollment records, from NSLDS (covered by the system of records titled ''National Student Loan Data System (NSLDS)'' (18–11–06)) or any successor system.

The EDMAPS system receives origination and disbursement records on Federal Pell Grants, ACGs, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and Direct Loans; master promissory note records; records of PLUS loan credit checks and credit appeals; annual aggregated Federal Campus-Based Program (FWS, FSEOG, and Perkins Loan) records from post-secondary institutions; consolidation loan application records; repayment plan application records; and financial literacy (entrance and exit) counseling records from COD (covered by the systems of records titled ''Common Origination and Disbursement (COD) System'' (18–11–02)) or any successor system.

In addition, the EDMAPS system receives aggregated guaranty agency and lender financials, as well as lender, guaranty agency, and parent-subsidiary organization lender reference data from FMS (covered by the system of records titled ''Financial Management System (FMS)'' (18–11–17)) or any successor system.

Further, the EDMAPS system receives records from PAS (covered by the system of records titled ''Person Authentication Service (PAS)'' (18–11–12)) or any successor system, which covers aid applicants and recipients

under title IV, HEA programs, the parents of aid applicants and recipients under title IV, HEA programs, and PLUS loan endorsers who apply for an FSA user ID and password

Upon request, approved EDMAPS users also receive reports from HEAL (covered by the system of records titled ''Health Education Assistance Loan (HEAL) Program'' (18–11–20)), which they upload into EDMAPS for analytical and reporting purposes.

Moreover, the EDMAPS system receives borrower defense case records and complaint, feedback, and fraud referral case records from CEMS (covered by the system of records entitled ''Customer Engagement Management System (CEMS)'' (18–11–11)) or its successor system.

Finally, the EDMAPS system may also obtain information from other persons or entities from whom or from which information is obtained following a disclosure under the routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose records from this system of records for the following program purposes:

(a) To promote transparency, and the effective and efficient administration, of title IV, HEA programs, the Department may disclose records to guaranty agencies, educational institutions, financial institutions, and Federal, State, Tribal, and local government agencies;

(b) To detect, prevent, mitigate, and recoup improper payments in title IV, HEA programs, the Department may disclose records to guaranty agencies, educational institutions, financial institutions, and Federal, State, Tribal, and local government agencies; and

(c) To support auditors and program reviewers in planning and carrying out their assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and Federal, State, Tribal, and local government agencies; and

(d) To assist with the determination of eligibility for loan discharges, the Department may disclose records to holders of loans made under title IV of the HEA;.

(2) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate government agency, whether Federal, State, Tribal, or local, charged with investigating or prosecuting that violation or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in subparagraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records from this system of records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation of the employee;

(iv) Any Department employee in their individual capacity when the Department has agreed to represent the employee;

(v) The United States when the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records from this system of records to an adjudicative body before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record from this system of records to a Federal, State, Tribal, or local government agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public agency or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, Tribal, local, or other government or public agency or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose the record during investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to

the party's counsel or representative; to a witness; or to a designated fact finder, mediator, or other person designated to resolve issues or decide the matter.

(7) *Labor Organization Disclosure.* The Department may disclose a record to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or the OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(9) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Research Disclosure.* The Department may disclose records to a federal researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to the functions or purposes of this system of records. The Department may disclose records from this system of records to that federal researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The federal researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(13) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) *Disclosure to the OMB and CBO for Federal Credit Reform Act (FCRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill FCRA requirements in accordance with 2 U.S.C. 661b, except for federal tax information, per 26 U.S.C. 6103.

(15) *Disclosure to National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Department electronically stores information at the AWS site referenced in the foregoing section titled ''SYSTEM LOCATION.'' For example, the Department electronically stores, for the entire Federal Student Aid life cycle from application through loan payoff, student and aid applicant demographic and title IV, HEA aid information such as, but not limited to, FFEL program, FISL program, and Perkins loan records on AWS site. The Department also stores electronic master promissory notes, electronic Special Direct Consolidation Loan opportunity applications and promissory notes, electronic requests to repay a Direct Loan under an income-driven repayment plan, and Federal Direct Consolidation Loan applications and promissory notes on AWS site. Finally, data obtained from the paper promissory notes or the paper loan discharge eligibility form are stored on hard disks at the AWS site. (These are referred to as metadata and are used by the system to link promissory notes or loan discharge eligibility form to aid recipient.)

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

With some exceptions, the Department does not generally use the EDMAPS system for the retrieval of individual records. However, system administrators and a handful of privileged users are able to retrieve records from the EDMAPS system by award ID, customer ID, borrower ID, an individual's SSN, last name, first name, and date of birth. Further, the Department uses the EDMAPS system to retrieve individual records to process income eligibility information and other information about income of aid recipients and to send it to Federal Loan Servicers for the discharge of eligible student loans under the title IV, HEA programs. Internal reports also provide a secure vehicle for approved Department employees and Department contractor staff to access samples of individual records, for example as part of performing program reviews.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department has submitted a retention and disposition schedule that covers the primary records contained in this system to NARA for review. The Department will treat these records as ''permanent records,'' as defined in 36 CFR 1220.18, until such time as a final disposition is approved.

The EDMAPS system may also contain certain records that the Department considers, on a case-by-case basis and with the approval of the Agency Records Officer, to be covered by General Records Schedule 5.2, ''Transitory and Intermediary Records.''

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users of the system will have a unique user ID with password. In addition to the user ID and password, users must authenticate their Personal Identity Verification (PIV) card to access the system, from within either the Department's Network, the Department's Global Protect Virtual Private Network (VPN), or the Department's vendor's AnyConnect Cisco VPN. Users are required to change their password at least every 60 days in accordance with the Department's information technology standards. All physical access to the information housed in the EDMAPS system locations is controlled and monitored by

security personnel who check each individual entering the building for their employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention with firewalls, encryption, and password protection. This security system limits data access to Department and Department contractor staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All interactions by users of the system are recorded. Users of the EDMAPS system do not see personally identifiable information (PII), even when looking at individual records. EDMAPS tokenizes PII, meaning that PII are swapped out for non-sensitive random values. This does not prevent users of EDMAPS from joining tables containing the same PII data element, because tokenization ensures that the same non-sensitive value is swapped out in every table that has that particular data element, for example SSN or date of birth.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in this system of records, contact the system manager at the address listed above. You must provide the system manager with the necessary particulars such as your full, legal name, date of birth, address, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Requesters must also reasonably specify the record contents sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of your personal record within the system of records, contact the system manager at the address listed above and provide your full, legal name, date of birth, and SSN. Identify the specific items to be changed and provide a written justification for the change. Requests to amend a record must meet the requirements in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars such as your full, legal name, date of birth, address, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Requests must meet the requirements in 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2022–19886 Filed 9–12–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Collection, Transportation, Sorting, Processing and Second Life Applications for End-of-Life Lithium Ion Batteries

AGENCY: Office of Manufacturing and Energy Supply Chains; Office of Energy Efficiency and Renewable Energy; Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its request for information (RFI) number DE–FOA–DE–FOA–0002833 to help inform DOE's implementation of the lithium-ion battery recycling programs funded by the Infrastructure Investment and Jobs Act, also commonly known as the Bipartisan Infrastructure Law (BIL). This RFI covers the lithium-ion battery recycling programs described in BIL. Specifically, this RFI seeks input on how federal investments can help accelerate the collection, transportation, processing, and recycling of batteries and scrap materials; enable second-life applications of lithium-ion batteries previously used to power electric vehicles; support high-quality jobs for American worker; s and how the Program can most impactfully support equity, environmental, and energy justice principles and priorities.

DATES: Responses to the RFI must be received by October 14, 2022 by 5 p.m. eastern.

ADDRESSES: Comments to the RFI must be provided in writing. Interested parties are to submit their written comments electronically to *BIL-Batterymanufacturing@hq.doe.gov* and include ''BIL-Battery Recycling RFI'' in the subject line of the email. Email attachments can be provided as a Microsoft Word (.docx) file or an Adobe PDF (.pdf) file, prepared in accordance with the detailed instructions in the RFI. Documents submitted electronically should clearly indicate which topic areas and specific questions are being addressed and should be limited to no more than 25 MB in size. The complete RFI [DE–FOA–0002833] document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Samuel Gillard, (202) 586–8055, *BIL-Batterymanufacturing@hq.doe.gov.* Further instructions can be found in the RFI document [DE–FOA–0002833] posted on EERE Exchange at *https://eere-exchange.energy.gov/.*

SUPPLEMENTARY INFORMATION: The BIL invests $335 million over the five-year period (Fiscal Years 2022–2026) in the lithium ion battery recycling programs outlined in Sections 40207 (e), 40207 (f)(2), (f)(3), (f)(4) and 40208. The purpose of this RFI is to solicit feedback from industry, manufacturers, minority-owned businesses, academia, research laboratories, institutes, government agencies, State and local officials, labor unions, Tribes, community-based organizations (CBOs), environmental justice organizations, retailers and other stakeholders on issues related to design and implementation of the Battery Recycling Provisions.

- Section 40207(e) titled *Lithium-Ion Battery Recycling Prize* covers the continuation of the Lithium-Ion Battery Recycling Prize Competition for additional rounds after completion of the current round.
- Section (f)(2) titled *Battery Recycling Research, Development, and*

Demonstration Grants will total $60M for FY2022 to FY2026. DOE shall award multiyear grants to anticipated eligible entities for research, development, and demonstration projects to create innovative and practical approaches to increase the reuse and recycling of batteries.

• Section (f)(3) titled *State and Local Programs* will total $50M for the period of FY2022 to FY2026. It is anticipated that DOE shall establish a program which will award grants, on a competitive basis, to the following anticipated entities of States and units of local government to assist in the establishment or enhancement of State battery collection, recycling, and reprocessing programs.

• Section (f)(4) titled *Retailers As Collection Points* will total $15M for the period of FY2022 to FY2026. DOE shall award grants, on a competitive basis. It is anticipated that these grants will be restricted to retailers that sell covered batteries or covered battery-containing products to establish and implement a system for the acceptance and collection of covered batteries and covered battery-containing products, as applicable, for reuse, recycling, or proper disposal.

• Section 40208 titled *Electric Drive Vehicle Battery Recycling and Second-Life Program* will total $200M for the period of FY2022 to FY2026. The DOE shall carry out a program of research, development, and demonstration of second-life applications for electric drive vehicle batteries that have been used to power electric drive vehicles; technologies and processes for final recycling and disposal of the [electric drive vehicle batteries] Specific questions can be found in the RFI. The RFI [DE–FOA–0002833] is available at: *https://eere-exchange.energy.gov/.*

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Further instructions and disclaimers related to the disclosure, identification, and handling of proprietary or otherwise confidential business information, as well as the full Freedom of Information Act disclosure, can be found in the RFI [DE–FOA–0002833], available at *https://eere-exchange.energy.gov/.*

To the extent that the **Federal Register** Notice conflicts with or otherwise contradicts the guidelines set forth in the RFI, the language in the RFI is controlling and should be followed

Signing Authority: This document of the Department of Energy was signed on August 31, 2022, by David Howell, Acting Director and Principal Deputy Director of the Office of Manufacturing and Energy Supply Chains and Director of the Vehicle Technologies Office, Office of 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 September 8, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–19762 Filed 9–12–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting: correction.

SUMMARY: On September 2, 2022, the Department of Energy published a notice of open meeting announcing a meeting in the **Federal Register** on September 26–27, 2022, of the Environmental Management Site-Specific Advisory Board, Savannah River Site. This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120.

Corrections

In the **Federal Register** of September 2, 2022, in FR Doc. 2022–18969, on page 54209, please make the following correction:

In that notice under **ADDRESSES**, third column, third paragraph, the meeting address has been changed. The original address was Holiday Inn & Suites, 2225 Boundary Street, Beaufort, SC 29902. The new address is Embassy Suites, 605 W Oglethorpe Avenue, Savannah, GA 31401. The reason for the correction is the original venue can no longer host the meeting.

Signing Authority

This document of the Department of Energy was signed on September 7, 2022, by Shena Kennerly, Acting Committee Management Officer, 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 September 8, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–19761 Filed 9–12–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–379–004.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing—Revisions to Implement ELCC Methodology to be effective 2/15/2022.

Filed Date: 9/6/22.

Accession Number: 20220906–5141.

Comment Date: 5 p.m. ET 9/27/22.

Docket Numbers: ER22–1698–000.

Applicants: EDF Spring Field WPC, LLC.

Description: Refund Report: Report to 1 to be effective N/A.
Filed Date: 9/6/22.
Accession Number: 20220906–5137.
Comment Date: 5 p.m. ET 9/27/22.
Docket Numbers: ER22–2369–001.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2022–09–07_SA 3862 Ameren-ComEd Sub As Available Agreement to be effective 9/12/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5067.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2516–000.
Applicants: Chaves County Solar II, LLC.
Description: Supplement to July 28, 2022 Request for Limited Waiver, et al. of Chaves County Solar II, LLC.
Filed Date: 9/2/22.
Accession Number: 20220902–5157.
Comment Date: 5 p.m. ET 9/12/22.
Docket Numbers: ER22–2787–000.
Applicants: Liberty Power District of Columbia LLC.
Description: Notice of Cancellation of Market Based Rate Tariff of Liberty Power District of Columbia, LLC.
Filed Date: 9/2/22.
Accession Number: 20220902–5088.
Comment Date: 5 p.m. ET 9/23/22.
Docket Numbers: ER22–2788–000.
Applicants: Liberty Power Holdings LLC.
Description: Notice of Cancellation of Market Based Rate Tariff of Liberty Power Holdings, LLC.
Filed Date: 9/2/22.
Accession Number: 20220902–5138.
Comment Date: 5 p.m. ET 9/23/22.
Docket Numbers: ER22–2789–000.
Applicants: Liberty Power Maryland LLC.
Description: Notice of Cancellation of Market Based Rate Tariff of Liberty Power Maryland, LLC.
Filed Date: 9/2/22.
Accession Number: 20220902–5139.
Comment Date: 5 p.m. ET 9/23/22.
Docket Numbers: ER22–2795–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: WAPA Herdlyn IA (RS 228) to be effective 8/1/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5000.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2796–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 317 to be effective 11/7/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5026.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2797–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 5735; Queue No. AF2–281 to be effective 7/20/2020.
Filed Date: 9/7/22.
Accession Number: 20220907–5027.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2798–000.
Applicants: Invenergy Nelson Expansion LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 11/7/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5029.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2799–000.
Applicants: VESI 21 LLC.
Description: Baseline eTariff Filing: Petition for Approval of Initial Market-Based Rate Tariff to be effective 10/1/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5043.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2800–000.
Applicants: VESI 24 LLC.
Description: Baseline eTariff Filing: Petition for Approval of Initial Market-Based Rate Tariff to be effective 10/1/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5044.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2801–000.
Applicants: VESI 25 LLC.
Description: Baseline eTariff Filing: Petition for Approval of Initial Market-Based Rate Tariff to be effective 10/1/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5045.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2802–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: 2022–09–07 GSEC–RBEC–IA–1st St NDP–743–0.0.0 to be effective 11/6/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5046.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2803–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 217 Exhibit B Revision to be effective 11/11/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5052.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2804–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5535; Queue No. AB2–179 (amend) to be effective 11/19/2019.
Filed Date: 9/7/22.
Accession Number: 20220907–5070.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2805–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6604; Queue No. AE2–224 to be effective 8/8/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5072.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2806–000.
Applicants: American Electric Power Service Corporation, Appalachian Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits amended ILDSA, SA No. 1252 to be effective 9/1/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5073.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2807–000.
Applicants: NextEra Energy Seabrook, LLC.
Description: § 205(d) Rate Filing: A&R E&P Agreement between NextEra Energy Seabrook and NECEC Transmission to be effective 9/8/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5075.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2808–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Southwest Texas EC-Golden Spread EC 6th A&R IA to be effective 8/16/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5076.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2809–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–BT Cantwell Solar (Arroyo Projects) 2nd A&R GIA to be effective 8/10/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5079.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2810–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF–TECO Concurrence (Recker-

Osprey) RS No. 385 to be effective 10/24/2022.

Filed Date: 9/7/22.

Accession Number: 20220907–5090.

Comment Date: 5 p.m. ET 9/28/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19727 Filed 9–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP18–75–007.

Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing: AGT FRQ Settlement Extension 2022 to be effective N/A.

Filed Date: 9/2/22.

Accession Number: 20220902–5129.

Comment Date: 5 p.m. ET 9/14/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP22–1204–000.

Applicants: Carolina Gas Transmission, LLC.

Description: § 4(d) Rate Filing: CGT—September 7, 2022 Negotiated Rate Agreement to be effective 10/1/2022.

Filed Date: 9/7/22.

Accession Number: 20220907–5019.

Comment Date: 5 p.m. ET 9/19/22.

Docket Numbers: RP22–1205–000.

Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) Rate Filing: Updates to Negotiated Rate Authority and Website Links to be effective 10/7/2022.

Filed Date: 9/7/22.

Accession Number: 20220907–5033.

Comment Date: 5 p.m. ET 9/19/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19726 Filed 9–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14513–003]

Idaho Irrigation District; New Sweden Irrigation District; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for original license for the County Line Road Hydroelectric Project, located on the Snake River in Bonneville and Jefferson Counties, Idaho, and has prepared a Draft Environmental Assessment (DEA) for the project. No federal land would be occupied by project works or located within the proposed project boundary.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The number of pages in the DEA exceeds the page limits set forth in the Council on Environmental Quality's July 16, 2020 final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (85 FR 43304). Noting the scope and complexity of the proposed action and action alternatives, the Director of the Office of Energy Projects, as our senior agency official, has authorized this page limit exceedance for the DEA.

The Commission provides all interested persons with an opportunity to view and/or print the DEA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing

should include docket number P–14513–003.

For further information, contact Matt Cutlip at (503) 552–2762.

Dated: September 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19719 Filed 9–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–94–000]

Transcontinental Gas Pipe Line Company, LLC; Notice Granting Interventions

On April 9, 2021, the Commission issued notice of Transcontinental Gas Pipe Line Company, LLC's (Transco) application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate the Regional Energy Access Expansion Project. The notice established April 30, 2021, as the deadline for filing motions to intervene.

On March 2, 2022, the Commission issued the *Notice of Availability of the Draft Environmental Impact Statement* for the project and opened a new intervention and comment period ending on April 25, 2022. Pursuant to the Commission's regulations, any person may file to intervene on environmental grounds based on the draft EIS and such intervention will be deemed timely if filed within the draft EIS comment period.[1]

On April 25, 2022, the New Jersey League of Conservation Voters filed timely, doc-less motions to intervene noting multiple environmental concerns regarding the project. On April 25, 2022, the New Jersey Conservation Foundation filed a timely motion to intervene environmental concerns regarding the project's GHG emissions and proximity to environmental justice communities. Transco opposes these motions for failing to show ''good cause'' by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent.[2]

Pursuant to Rule 214(c)(2) of the Commission's Rules of Practice and Procedure,[3] if an answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party only when the motion is expressly granted. Because both New Jersey League of Conservation Voters and the New Jersey Conservation Foundation demonstrated that they represent interests that may be affected by the outcome of this proceeding and identified environmental grounds for their interventions, their motions to intervene are granted.

Dated: September 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19722 Filed 9–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4334–017]

EONY Generation Limited; Notice of Waiver Period for Water Quality Certification Application

On August 29, 2022, EONY Generation Limited submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify the New York DEC of the following:

Date of Receipt of the Certification Request: August 26, 2022.

Reasonable Period of Time to Act on the Certification Request: One year (August 26, 2023).

If New York DEC fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: September 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19721 Filed 9–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings: Filings Instituting Proceedings

Docket Numbers: RP22–1206–000.

Applicants: Texas Gas Transmission, LLC.

Description: Petition for Limited Waiver of Tariff Provision of Texas Gas Transmission, LLC.

Filed Date: 9/7/22.

Accession Number: 20220907–5094.

Comment Date: 5 p.m. ET 9/9/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19728 Filed 9–12–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–493–000]

Tennessee Gas Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Cumberland Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental

[1] 18 CFR 157.10(a)(2) (2021) (providing that ''any person may file to intervene on environmental grounds based on the draft environmental impact''); *id.* at § 380.10(a)(1)(i) (allowing any person to file a motion to intervene on the basis of a draft environmental impact statement).

[2] Transco May 10, 2022 Answer Opposing Motions to Intervene in Docket No. CP21–94.

[3] 18 CFR 385.214(c)(2) (2021).

[1] 18 CFR 4.34(b)(5).

impacts of the Cumberland Project (Project) involving construction and operation of facilities by Tennessee Gas Pipeline Company, LLC (Tennessee Gas) in Dickson, Houston, and Stewart County, Tennessee. The Commission will use the EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the Schedule for Environmental Review section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on March 2, 2022, in Docket No. PF22–2–000, the Commission opened a scoping period during Tennessee Gas' planning process for the Project and prior to filing a formal application with the Commission, a process referred to as ''pre-filing.'' Tennessee Gas has now filed an application with the Commission, and staff intends to prepare an EIS that will address the concerns raised during the pre-filing scoping process and comments received in response to this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on October 7, 2022. Further details on how to submit comments are provided in the Public Participation section of this notice.

As mentioned above, during the pre-filing process the Commission opened a scoping period which expired on April 4, 2022; however, Commission staff continued to accept comments during the entire pre-filing process. All substantive written and oral comments provided during pre-filing will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the pre-filing process in Docket No. PF22–02–000 you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Tennessee Gas provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–493–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Tennessee Gas requests authorization to construct, own, operate, and maintain 32 miles of new 30-inch-diameter natural gas pipeline (Cumberland Pipeline) from its existing Lines 100–3 and 100–4 to the Tennessee Valley Authority's (TVA) existing Cumberland Fossil Plant, which is currently coal-fired. TVA is evaluating options to replace the coal-fired capability of the Cumberland Fossil Plant; including the option of constructing a new natural-gas-fired power plant at the same site.[1] The Cumberland Pipeline would be in Dickson, Houston, and Steward counties, Tennessee; and it would provide about 245,000 dekatherms per day of natural gas per day to TVA.

The Cumberland Project would consist of the following facilities:

- Approximately 32 miles of new 30-inch-diameter natural gas lateral pipeline, as described above.
- New Pressure Regulation Station comprised of bi-directional back pressure regulation facilities (including a new Mainline Valve on each of TGP's Lines 100–3 and 100–4 at the origin of the newly planned Cumberland Pipeline in Dickson County, Tennessee.
- New Cumberland Meter Station at the terminus of the planned Cumberland Pipeline within TVA's

[1] In its draft environmental impact statement (87 **Federal Register** 25485; April 29, 2022), TVA identifies constructing a new natural gas-fired combined cycle power plant at its Cumberland Fossil Plant Reservation and associated Cumberland Pipeline (the subject of Tennessee Gas' proposal with FERC as described in this Notice) as its preferred alternative to replace part of the retired generation.

newly proposed power plant in Steward County, Tennessee.

- New in-line inspection traps at each end of the planned Cumberland Pipeline.
- New Mainline Valve located at an intermediate location along the planned Cumberland Pipeline.

The general location of the project facilities is shown in appendix 1.[2]

Based on environmental information provided by Tennessee Gas, construction of the proposed facilities would disturb about 507.6 acres of land for the pipeline and the aboveground facilities. Following construction, Tennessee Gas would maintain about 193.5 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

Based on an initial review of Tennessee Gas' proposal and public comments received during the pre-filing process, Commission staff have identified several expected impacts that deserve attention in the EIS. These include: impacts on air quality (greenhouse gases), alternatives, environmental justice, wildlife habitat, streams, and wetlands.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- greenhouse gas and climate;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. The U.S. Army Corps of Engineers (Nashville District) is a cooperating agency in the preparation of the EIS.[3] Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[4] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[5] Alternatives currently under consideration include:

- the no-action alternative, meaning the Project is not implemented; and
- a system alternative evaluating whether the Project purpose could be met by use of an existing pipeline system.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on March 3, 2022, with the Tennessee State Historic Preservation Office, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the project's potential effects on historic properties.[6] This notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On July 29, 2022, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in February 2023.

Issuance of Notice of Availability of the final EIS,—June 30, 2023

90-day Federal Authorization Decision Deadline,[7]—September 28, 2023

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Permit	Agency
CWA Section 404 Discharges to Waters of the United States.	U.S. Army Corps of Engineers.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40 Code of Federal Regulations (CFR), Section 1501.8.

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] 40 CFR 1508.1(z).

[6] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[7] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Permit	Agency
CWA Section 402 Stormwater and Construction Dewatering Permits.	Tennessee Department of Environment and Conservation.
NHPA Section 106 Consultation.	Tennessee State Historic Preservation Office.
ESA Section 7 Consultation.	U.S. Fish and Wildlife Service.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–493–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–493). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Any planned public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: September 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19720 Filed 9–12–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10194–01–OA]

National Environmental Justice Advisory Council Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), the National Environmental Justice Advisory Council (NEJAC) is necessary and in the public interest in connection with the performance of duties imposed on the agency by law. Accordingly, NEJAC will be renewed for an additional two-year period. The purpose of the NEJAC is to provide advice and recommendations to the Administrator about issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Paula Flores-Gregg, NEJAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue NW (Mail Code 2202A), Washington, DC 20460; by telephone at (214) 665–8123; via email at *nejac@epa.gov.*

Matthew Tejada,

Director for the Office of Environmental Justice.

[FR Doc. 2022–19668 Filed 9–12–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0542; FRL–9985–01–OCSPP]

Pesticides; Proposed Removal of PFAS Chemicals From Approved Inert Ingredient List for Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is proposing to remove twelve chemicals from the current list of inert ingredients approved for use in pesticide products because these inert ingredients have been identified as per- and polyfluoroalkyl substances (PFAS) and they are no longer used in any registered pesticide product.

DATES: Comments must be received on or before October 13, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0542, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you engage in activities related to the registration of pesticide products, including but not limited to, the use of approved inert ingredients

used in registered pesticide products. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Entities engaging in the formulation and preparation of agricultural and household pest control chemicals or pesticide and other agricultural and household pest control chemicals or inert manufacturers and those who make proprietary inert ingredient formulations or pesticide and other agricultural chemical manufacturing generally (NAICS code 325320).

If you have any questions regarding the applicability of this action to a particular entity, consult either person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y.

C. What action is the Agency taking?

EPA is proposing to remove the following twelve chemicals from the current list of inert ingredients approved for use in pesticide products:

- 2-Chloro-1,1,1,2-tetrafluoroethane (CAS Reg. No. 2837–89–0)
- α-(Cyclohexylmethyl)-ω-hydropoly(difluoromethylene) (CAS Reg. No. 65530–85–0)
- Dichlorotetrafluoroethane (CAS Reg. No. 1320–37–2)
- Ethane, 1,1,1,2,2-pentafluoro- (CAS Reg. No. 354–33–6)
- Hexafluoropropene, polymer with tetrafluoroethylene (CAS Reg. No. 25067–11–2)
- Montmorillonite-type clay treated with polytetrafluoroethylene (No CAS Reg. No.)
- Poly(difluoromethylene), α-chloro-ω-(1-chloro-1-fluoroethyl) (CAS Reg. No. 131324–06–6)
- Poly(difluoromethylene), α-chloro-ω-(2,2-dichloro-1,1,2-trifluoroethyl)- (CAS Reg. No. 79070–11–4)
- Poly(difluoromethylene), α-(2,2-dichloro-2-fluoroethyl)-, ω-hydro- (CAS No. 163440–89–9)
- Poly(difluoromethylene), α-fluoro-ω-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]- (CAS Reg. No. 65530–66–7)
- Poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, ether with α-fluoro-ω-(2-hydroxyethyl)poly(difluoromethylene) (1:1) (CAS Reg. No. 65545–80–4); and
- Propane, 1,1,1,2,3,3,3-heptafluoro- (CAS Reg. No. 431–89–0).

None of these twelve chemicals are currently being used as an inert ingredient in a pesticide product. EPA believes it is appropriate to remove these chemicals from the inert ingredient list in order to prevent the introduction of these PFAS into pesticide formulations without additional EPA review.

Once an inert ingredient is removed from the list, any proposed future use of the inert ingredient would need to be supported by data provided to and reviewed by the EPA as part of a new inert ingredient submission request. The type of data needed to evaluate a new inert ingredient may include, among others, studies to evaluate potential carcinogenicity, adverse reproductive effects, developmental toxicity, genotoxicity as well as environmental effects associated with any chemical substance that is persistent or bioaccumulative. Information regarding the inert ingredient approval process may be found at *https://www.epa.gov/pesticide-registration/inert-ingredients-regulation.*

EPA suggests that pesticide registrants review their records to ensure that the chemical substances, listed by chemical name and Chemical Abstracts Service Registry Number (CAS Reg. No.), listed in the docket for this action are, in fact, no longer used as inert ingredients in their registered pesticide products. While EPA has endeavored to prepare an accurate list, if a pesticide registrant is aware of a registered product containing any of the twelve chemical substances, that registrant should contact the Agency directly, using the contact listed under **FOR FURTHER INFORMATION CONTACT**.

Similarly, producers of proprietary mixtures currently approved for use as inert ingredients in pesticide products should also review their records to ensure that the chemical substances listed in the docket for this action are, in fact, not currently used in their proprietary mixtures.

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

A. What are inert ingredients?

Most pesticide products contain substances in addition to the active ingredient(s) that are referred to as inert ingredients or sometimes as ''other ingredients.'' An inert ingredient generally is any substance (or group of similar substances) other than an active ingredient that is intentionally included in a pesticide product. Examples of inert ingredients include emulsifiers, solvents, carriers, aerosol propellants, fragrances, and dyes. Additional information about inert ingredients, including requirements, guidance and the InertFinder tool, can be accessed at *https://www.epa.gov/pesticide-registration/inert-ingredients-regulation.*

B. Why is EPA taking this action?

PFAS are synthetic organic compounds that do not occur naturally in the environment but have widespread use in commerce. The strong carbon-fluorine bonds of PFAS make some of them resistant to degradation and thus highly persistent in the environment. Some PFAS have been detected in wildlife and in humans, indicating that at least some PFAS have the ability to bioaccumulate. Thus, exposure to PFAS is an urgent public health and environmental issue in the United States. As part of its strategic roadmap to address risks posed by PFAS (*https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf*), EPA identified some specific actions to further the Agency's directives to research, restrict, and remediate PFAS.

EPA maintains a list of chemical substances that have been approved for use as inert ingredients in pesticide products. Inert ingredients on this list do not need further approval prior to inclusion in a pesticide formulation for a non-food use. These individual formulations are subject to data requirements in 40 CFR part 158, regardless of whether the inert ingredient is on the approved list. If an application for registration of a pesticide product includes inert ingredients not on the approved list, the inert ingredient will need approval and require payment

of a fee in accordance with section 33 of FIFRA, 7 U.S.C. 136w–8.

As part of the ''whole-of-agency'' approach to reduce PFAS use and releases, EPA has reviewed the Agency's list of chemical substances that have been approved for use as inert ingredients in pesticide products to determine whether any of these inert ingredients are PFAS. Based on that review, EPA is proposing the removal of twelve chemicals from the current list of inert ingredients approved for use in pesticide products (given in Unit I.C.) that have been identified as PFAS and for which there are no uses as inert ingredient in any currently registered pesticide products.

After the close of the comment period, EPA will consider all comments received and determine appropriate action.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 29, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–19008 Filed 9–12–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Payment Systems Surveys (OMB No. 7100–0332).

DATES: Comments must be submitted on or before November 14, 2022.

ADDRESSES: You may submit comments, identified by FR 3054, by any of the following methods:

- Agency Website: *https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

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.

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. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the 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 versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Payment Systems Surveys.

Collection identifier: FR 3054.

OMB control number: 7100–0332.

Frequency: FR 3054a, five times per year; FR 3054b, annually; FR 3054c, semi-annually; FR 3054d, five times per year; and FR 3054e, ten times per year.

Respondents: The FR 3054 panel comprises financial institutions (including depository institutions), law enforcement, nonfinancial businesses (retailers, banknote equipment manufacturers, or global wholesale bank note dealers), and individuals within the general public.

Estimated number of respondents: FR 3054a, 4,000; FR 3054b, 500; FR 3054c, 25; FR 3054d, 250; and FR 3054e, 250.

Estimated average hours per response: FR 3054a, 0.75; FR 3054b, 0.50; FR 3054c, 30; FR 3054d, 2.5; and FR 3054e, 0.50.

Estimated annual burden hours: FR 3054a, 15,000; FR 3054b, 250; FR 3054c, 1,500; FR 3054d, 3,125; and FR 3054e, 1,250.

General description of collection: The Payment Systems Surveys are used to

obtain information specifically tailored to the Federal Reserve's operational and fiscal agency responsibilities. The Payment Systems Surveys family of surveys is currently comprised of the following: Ad Hoc Payment Systems Surveys (FR 3054a), Currency Quality Sampling Survey (FR 3054b), Currency Quality Survey (FR 3054c), Currency Functionality and Perception Survey (FR 3054d), and Currency Education Usability Survey (FR 3045e).

Proposed revisions: The Board proposes to increase the estimated respondents for the FR 3054b from 300 to 500, increase the estimated frequency for the FR 3054d from four times a year to five times a year, and increase the estimated frequency from five times a year to ten times a year and decrease the estimated number of respondents from 500 to 250 for the FR 3054e. The increase in the frequency of surveys allows the Federal Reserve System flexibility to respond to diverse needs for data by surveying groups of respondents multiple times throughout a year. Increasing the number of estimated respondents of the FR 3054b will help ensure statistical significance of the sample pool and decreasing the estimated number of respondents while increasing the frequency of the FR 3054e will facilitate more survey agility. Additionally, the FR 3054c has not changed since 2018 and no changes are anticipated during the current clearance cycle. The FR 3054c is therefore being transitioned from an ad hoc to an established collection.

Legal authorization and confidentiality: Section 11(d) [1] of the Federal Reserve Act (''FRA'') authorizes the Board to ''supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be delivered by the Secretary of the Treasury to the Federal reserve agents applying therefor.'' Section 11A [2] of the FRA requires the Board to put into effect a schedule of fees for Federal Reserve bank services to depository institutions based on specified principles, including that such fees be based on the direct and indirect costs actually incurred in providing these services. Section 13 [3] of the FRA authorizes, among other things, Federal Reserve Banks to provide a variety of payments services. Section 16 [4] of the FRA authorizes the Board to take a variety of actions related to the issuance and management of Federal Reserve notes. The information obtained from the FR 3054 may be used in support of the Board's role in overseeing the Federal Reserve Banks' provision of financial services to depository institutions; developing policies and regulations to foster the efficiency and integrity of the U.S. payment system; working with other central banks and international organizations to improve the payment system more broadly; conducting research on payments issues; and working with other federal agencies on currency design, quality issues, and to educate the global public on the security features of Federal Reserve notes. Therefore, the FR 3054 is authorized pursuant to the Board's authority under Sections 11(d), 11A, 13, and 16 of the FRA. The FR 3054 is voluntary.

The questions asked on each survey would vary, so the ability of the Board to maintain the confidentiality of information collected would be determined on a case-by-case basis. To the extent a respondent submits nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA).[5] In circumstances where the Board collects information related to individuals, exemption 6 to the FOIA would protect information ''the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'' [6] To the extent the information collected relates to examination, operating, or condition reports prepared for the use of an agency supervising financial institutions, such information may be kept confidential under exemption 8 to the FOIA.

Consultation outside the agency: The Board may consult with, collaborate with, or jointly conduct surveys with other agencies within the U.S. Currency Program to include the System banks, the United States Secret Service, Department of Treasury, and Treasury's Bureau of Engraving and Printing.

[1] 12 U.S.C. 248(d).

[2] 12 U.S.C. 248a.

[3] 12 U.S.C. 342.

[4] 12 U.S.C. 411, 412, 413, 414, 415, 416, 417, 420, 422.

[5] 5 U.S.C. 552(b)(4).

[6] 5 U.S.C. 552(b)(6).

Board of Governors of the Federal Reserve System, September 8, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–19781 Filed 9–12–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Performance Review Board Membership

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Each agency is required to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) Performance Review Boards (PRBs). The PRB shall review and evaluate the initial summary rating of a senior executive's performance, the executive's response, and any higher-level review's comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

FOR FURTHER INFORMATION CONTACT: Kathy Vaughn, 410–786–1050 or *katherine.vaughn@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(4) requires the appointment of board members to be published in the **Federal Register**. The following persons comprise a standing roster to serve as members of the SES PRB for the Centers for Medicare & Medicaid Services:

Jonathan Blum, Principal Deputy Administrator and Chief Operating Officer (serves as the Chair)
Tia Butler, Director, Office of Human Capital (serves as the Co-chair)
Elizabeth Fowler, Deputy Administrator and Director, Center of Medicare
Arielle Woronoff, Director, Office of Legislation
Karen Jackson, Deputy Chief Operating Officer
Elizabeth Richter, Deputy Center Director, Center for Medicare
Arrah Tabe-Bedward, Deputy Director, Center for Medicare and Medicaid Innovation
Jeffrey Wu, Deputy Director for Operations, Center for Consumer Information and Insurance Oversight

The Principal Deputy Administrator and Chief Operating Officer of the Centers for Medicare & Medicaid

Services (CMS), Jonathan Blum, having reviewed and approved this document, authorizes Evell Barco Holland, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Evell Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–19716 Filed 9–12–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Annual Report on State Maintenance-of-Effort (MOE) Programs—ACF–204 (Annual MOE Report) (Office of Management and Budget #: 0970–0248)

AGENCY: Office of Family Assistance, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the ACF–204 (Annual MOE Report; OMB #0970–0248, expiration November 30, 2022). There are no changes requested to this information collection.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Annual MOE Report is used to collect descriptive program characteristics information on the programs operated by states and territories in association with their Temporary Assistance for Needy Families (TANF) programs. All state and territory expenditures claimed toward states and territories MOE requirements must be appropriate, *i.e.,* meet all applicable MOE requirements. The Annual MOE Report provides the ability to learn about and to monitor the nature of state and territory expenditures used to meet states and territories MOE requirements, and it is an important source of information about the different ways that states and territories are using their resources to help families attain and maintain self-sufficiency. In addition, the report is used to obtain state and territory program characteristics for ACFs annual report to Congress, and the report serves as a useful resource to use in Congressional hearings about how TANF programs are evolving, in assessing state and the territory MOE expenditures, and in assessing the need for legislative changes.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents per year	Total number of annual responses per respondent	Average burden hours per response	Annual burden hours
ACF–204; Annual MOE Report	54	1	118	6,372

Estimated Total Annual Burden Hours: 6,372.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 402 of the Social Security Act (42 U.S.C. 602), as amended by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–19774 Filed 9–12–22; 8:45 am]

BILLING CODE 4184–82–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children & Families

Privacy Act of 1974; System of Records

AGENCY: Administration for Children & Families, Department of Health and Human Services.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying an existing system of records maintained by the Administration for Children & Families (ACF), Office of Child Support Enforcement (OCSE): System No. 09–80–0385, ''OCSE Federal Case Registry of Child Support Orders, HHS/ACF/OCSE.'' Elsewhere in this issue of the **Federal Register**, HHS/ACF has published a Notice of Proposed Rulemaking (NPRM) proposing to exempt certain records in the system of records from the accounting, access, and amendment requirements of the Privacy Act.

DATES: Comment on this modified System of Records Notice (SORN) should be submitted on or before November 14, 2022.

ADDRESSES: The public should address written comments by mail or email to: Anita Alford, Senior Official for Privacy, Administration for Children & Families, 330 C St. SW, Washington, DC 20201, or *anita.alford@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions about these systems of records should be submitted by mail or email to Linda Boyer, Deputy Commissioner, Office of Child Support

Enforcement, at 330 C St. SW, 5th Floor, Washington, DC 20201, or *linda.boyer@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Changes to System of Records 09–80–0385

This system of records covers records about individuals involved in child support cases as provided by state child support registries. This information is regularly compared (matched) to records in the National Directory of New Hires and other federal agencies' databases to assist state child support agencies or other authorized persons in enforcing child support obligations. The following modifications have been made:

- Address information in the System Location and System Manager sections has been updated.
- The Authorities section has been updated to include 42 U.S.C. 652(n), 653(a)(2), 653(c)(5), and 659a(c)(2).
- The Routine Uses section has been updated as follows:
  - The opening paragraph, and routine uses 11 and 13, have been revised to remove an unnecessary statement that disclosures must be compatible with the purpose for which the records were collected (the statement is redundant, because this is how a routine use is defined in 5 U.S.C. 552a(a)(7)).
  - Routine use 10 has been revised to include foreign treaty countries as disclosure recipients, pursuant to 42 U.S.C. 652(n) and 653(c)(5).
  - Routine use 12 has been revised to require that the constituent request, which is the subject of the disclosure, must be a ''written'' request.
  - The security breach-related routine use which was previously numbered as routine use 15, and which was revised February 14, 2018 (see 83 FR 6591), is now numbered as routine use 15(a); and a second security breach-related routine use which was added in that same notice on February 14, 2018, is now numbered as routine use 15(b).
- The Disclosure to Consumer Reporting Agencies section has been removed (it merely confirmed that such disclosures are not made from this system of records).
- The Policies and Practices for Retention and Disposal of Records section has been updated to identify the applicable NARA-approved disposition schedule, N–1–292–10–3.
- The Administrative, Technical, and Physical Safeguards section has been updated to include information about the use of cloud service providers.
- The procedures for making access, amendment, and notification requests now state that verification of identity ''is'' (instead of ''may be'') required; explain how to provide verification of identity (instead of merely referring individuals to HHS' Privacy Act regulations); and list date of birth and social security number (SSN) as examples of identifying particulars to include for the purpose of distinguishing between records on individuals with the same name.
- The Exemptions Promulgated for the System section has been clarified and corrected to state that the agency is promulgating a regulation to exempt case files marked with the Family Violence Indicator (FVI) from the Privacy Act's accounting, access, and amendment requirements, under subsection ''(k)(2)'' (not (k)(5)) of the Privacy Act. The section now explains that the exemption, as to case files marked with the FVI, is intended to be consistent with the disclosure prohibition in 42 U.S.C. 653(b)(2), which prohibits disclosure of such records to anyone other than a court or an agent of the court (instead of stating that such files are ''de facto exempt'' from the Privacy Act's notification, access, and accounting requirements by virtue of that statute). The section also now also includes a reference to 45 CFR 303.21(e), which implements the statutory prohibition in 42 U.S.C. 653(b)(2).

The modified SORN will be applicable when the proposed exemptions are made effective by publication of a final rule, which will not occur until after the 60-day comment period ends and any comments received on the NPRM (or on this SORN) have been addressed. If no comments result in changes to the SORN, the SORN will not be published a second time.

January Contreras,

Assistant Secretary, Administration for Children & Families.

SYSTEM NAME AND NUMBER:

OCSE Federal Case Registry of Child Support Orders (FCR), HHS/ACF/OCSE, 09–80–0385.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Office of Child Support Enforcement, Administration for Children & Families, 330 C St. SW, 5th Floor, Washington, DC 20201.

SYSTEM MANAGER(S):

Deputy Commissioner, Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 330 C St. SW, 5th Floor, Washington, DC 20201, or *linda.boyer@acf.hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652(a)(7) and (9), 652(n), 653(a)(1) and (2), 653(c)(5), 653(h), 653(j)(3), and 659a(c)(2).

PURPOSE(S) OF THE SYSTEM:

The Office of Child Support Enforcement (OCSE) uses the FCR primarily to assist states in administering programs under 42 U.S.C. 651 to 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) and programs funded under 42 U.S.C. 601 to 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families). Additional purposes are specified in sections 453 and 463 of the Social Security Act. (42 U.S.C. 653, 663).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in child support cases in which services are being provided by the state IV–D child support agencies, and/or individuals who are subject to child support orders established or modified on or after October 1, 1998, and the children of such individuals. Individuals whose information is collected and/or disseminated through the system, as part of authorized technical assistance or matching, including but not limited to individuals involved in a child and family services' program provided by the state IV–B agency, and individuals involved in a state IV–E foster care and adoption assistance program and programs administered by other authorized agencies and entities specified in the routine uses of records maintained in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The FCR maintains, collects, and disseminates several categories of records. The FCR collects and maintains records provided by state child support registries. These records include abstracts of support orders and information from child support cases.

The records may include the following information: Name, Social Security number (SSN), state case identification number, state Federal Information Processing Standard (FIPS) code, county code, case type (cases in which services are being provided by the state child support agencies under Title IV–D of the Social Security Act and those cases in which services are not being provided by the state child support agencies), sex, date of birth, mother's maiden name, father's name, participant type (custodial party, non-

custodial parent, putative father, child), family violence indicator (domestic violence or child abuse), order indicator, locate request type, and requested locate source. These records are maintained within the FCR and are regularly compared (matched) to the National Directory of New Hires (NDNH) and other federal agencies' databases to locate information for the state child support agencies or other authorized persons.

State child support agencies and other authorized persons can directly request information (referred to as locate requests) from the Federal Parent Locator Service (FPLS), which includes the FCR system of records, and the NDNH system of records. The FPLS must seek the requested information from other federal agencies. When state child support agencies or other authorized persons request information from the FPLS, the request is transmitted to the FPLS via the FCR. Upon receipt of such requests, or as a result of the regular comparisons of the FCR with the NDNH and other agencies' databases, the records located pertaining to the requests are disseminated to the requestor via the FCR. The records collected and disseminated, depending upon the requestor's specific authority, may include information retrieved from the FCR, from the NDNH, or from other federal or state agencies. Records from the NDNH and other agencies disseminated through the FCR may include categories of information such as name, SSN (or TIN), address, phone number, employer, employment status and wages, retirement status and pay, assets, military status and pay, federal benefits status and amount, representative payees, unemployment status and amount, children's health insurance, incarceration status, financial institution accounts, assets, and date of death. The FCR also contains information related to those categories of records; for example, the date of receipt of federal benefits.

Additional categories of information include those contained in the following documents: judicial or administrative orders pertaining to child support and medical support; an administrative subpoena; an affidavit in support of establishing paternity; a financial statement; a medical support notice; a notice of a lien; and an income withholding notice. The FCR also maintains: (1) Records (logs) of transactions involving the receipt of requests and the dissemination of requested information; (2) copies of the disseminated information for audit purposes; and (3) copies of certain disseminated information for the purpose of electronically filtering and suppressing the transmission of redundant information.

RECORD SOURCE CATEGORIES:

Records maintained within the FCR are furnished by state child support enforcement agencies. Records disseminated from the FCR for the purpose of providing locate information from the NDNH and other federal agencies are furnished by departments, agencies, or instrumentalities of the United States or any state, employers, financial institutions, and insurers or their agents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These routine uses specify circumstances under which ACF may disclose information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible. If any record contains a ''family violence indicator'' associated to the record by state child support agencies, if there is reasonable evidence of domestic violence or child abuse and disclosure could be harmful to the party or the child, the record may only be disclosed as determined by a court as provided in 42 U.S.C. 653(b)(2).

Any information defined as ''return'' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS regulations.

(1) Disclosure for Child Support Purposes.

Pursuant to 42 U.S.C. 653(a)(2), 653(b)(1)(A), and 653(c), information about the location of an individual or information that would facilitate the discovery of the location of an individual may be disclosed, upon request filed in accordance with law, to an ''authorized person,'' as defined in 42 U.S.C. 653(c), for the purpose of establishing parentage or establishing, setting the amount of, modifying or enforcing child support obligations. Information disclosed may include information about an individual's wages (or other income) from, and benefits of, employment, and information on the type, status, location, and amount of any assets of, or debts owed by or to, the individual.

(2) Disclosure to any Department, Agency, or Instrumentality of the United States or of any State to Locate an Individual or Information Pertaining to an Individual.

Pursuant to 42 U.S.C. 653(e)(1), information from the FCR (names and SSNs) may be disclosed to any department, agency, or instrumentality of the United States or of any state in order to obtain information for an ''authorized person'' as defined in 42 U.S.C. 653(c) which pertains to an individual's location, wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); or the type, status, location, and amount of any assets of, or debts owed by or to, the individual.

(3) Disclosure for Purposes Related to the Unlawful Taking or Restraint of a Child or Child Custody or Visitation.

Pursuant to 42 U.S.C. 653(b)(1)(A), upon request of an ''authorized person,'' as defined in 42 U.S.C. 663(d)(2), or upon request of the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, pursuant to 42 U.S.C. 663(f), information as to the most recent address and place of employment of a parent or child may be disclosed for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination.

(4) Disclosure to the Social Security Administration for Verification.

Pursuant to 42 U.S.C. 653(j)(1), the names, SSNs, and birth dates of individuals about who information is maintained may be disclosed to the Social Security Administration to the extent necessary for verification of the information by the Social Security Administration.

(5) Disclosure for Locating an Individual for Paternity Establishment or in Connection with a Support Order.

Pursuant to 42 U.S.C. 653(j)(2)(B), the results of a comparison between records in this system and the NDNH may be disclosed to the state IV–D child support enforcement agency responsible for the case for the purpose of locating an individual in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order.

(6) Disclosure to State Agencies Operating Specified Programs.

Pursuant to 42 U.S.C. 653(j)(3), information may be disclosed to a state to the extent and with the frequency that the Secretary determines to be effective in assisting the state to carry out its responsibilities under child support programs operated under 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity), child and family services programs operated under 42 U.S.C. 621 through 629m

(Title IV–B of the Social Security Act), Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (Title IV–E of the Social Security Act) and assistance programs funded under 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

(7) Disclosure to Department of State under International Child Abduction Remedies Act.

Pursuant to 42 U.S.C. 653(b)(1) and 663(e), the most recent address and place of employment of a parent or child may be disclosed upon request to the Department of State, in its capacity as the Central Authority designated in accordance with section 7 of the International Child Abduction Remedies Act, 42 U.S.C. 11601 *et seq.,* for the purpose of locating the parent or child on behalf of an applicant.

(8) Disclosure to Secretary of the Treasury for Certain Tax Purposes.

Pursuant to 42 U.S.C. 653(h)(3), information may be disclosed to the Secretary of Treasury for the purpose of administering sections of the Internal Revenue Code which grant tax benefits based on support or residence of children.

(9) Disclosure for Authorized Research Purposes.

Pursuant to 42 U.S.C. 653(j)(5), data in the FCR may be disclosed, without personal identifiers, for research purposes found by the Secretary to be likely to contribute to achieving the purposes of 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity) and 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

(10) Disclosure to a Foreign Reciprocating Country and Foreign Treaty Country for Child Support Purposes.

Pursuant to 42 U.S.C. 652(n), 653(a)(2), 653(c)(5), and 659a(c)(2), information on the state of residence of an individual sought for support enforcement purposes in cases involving residents of the United States and residents of foreign treaty countries or foreign countries that are the subject of a declaration under 42 U.S.C. 659a may be disclosed to the foreign country.

(11) Disclosure for Law Enforcement Purpose.

Information may be disclosed to the appropriate federal, state, local, Tribal, or foreign agency responsible for identifying, investigating, and prosecuting noncustodial parents who knowingly fail to pay their support obligations and meet the criteria for federal prosecution under 18 U.S.C. 228. The information must be relevant to the violation of criminal nonsupport, as stated in the Deadbeat Parents Punishment Act, 18 U.S.C. 228.

(12) Disclosure to Congressional Office.

Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the written request of the individual.

(13) Disclosure to Department of Justice or in Proceedings.

Information may be disclosed to support the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the court or adjudicative body is deemed by HHS to be relevant and necessary to the litigation.

(14) Disclosure to Contractor to Perform Duties.

Information may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

(15) Disclosure in the Event of a Security Breach.

(a) Information may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (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 HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(b) Information may be disclosed to another federal agency or federal entity, when HHS 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically at the Social Security Administration's National Support Center and the OCSE Data Center. Historical logs and system backups are stored offsite at an alternate location.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by an identification number assigned to a child support case by the state child support enforcement agency, an SSN or TIN of an individual, a transaction serial number, or by a name and date of birth of an individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

FCR records are retained and disposed of in accordance with the applicable NARA-approved disposition schedule, N1–292–10–3.

(1) Records provided from state child support agencies:

(a) Electronic records furnished by the state child support agency containing child support case and order information (input files) are retained for 60 days and then deleted.

(b) State agency records (as posted to the FCR) remain within the FCR until removed, upon notification by the state agency that the case is closed, provided that, upon request, a sample may be retained for research purposes found by OCSE to be likely to contribute to achieving the purposes of child support programs or the TANF program, but without personal identifiers.

(c) Records pertaining to closed cases are archived on the fiscal year basis and retained for two years. Family violence indicators are removed from the individual's record, upon request by the state that initiated the indicator.

(2) Locate requests and match results:

(a) Locate requests submitted by state child support agencies and other authorized persons and match results are retained for 60 days and are then deleted.

(b) Audit trail records of locate requests and disclosures of match results pursuant to those requests, which include indications of which federal agencies were contacted for

locate information, whether information was located, and the type(s) of information returned to the requesting entity, are archived once a year based on the fiscal year. The records are retained for two completed fiscal years and then destroyed. These records indicate the type of information located for the authorized user, not the information itself.

(3) Match results generated as a result of FCR-to-FCR comparisons which locate individuals who are participants in child support cases or orders in more than one state are transmitted to the relevant states. Copies of FCR-to-FCR match results are retained for 60 days and then deleted.

(4) Any record relating or potentially relating to a fraud or abuse investigation or a pending or ongoing legal action, including a class action, is retained until conclusion of the investigation or legal action.

(5) Copies of the FCR records transmitted to the Secretary of the Treasury for the purpose of administering sections of the Internal Revenue Code which grant tax benefits based on support or residence of children (routine use 8) are retained for one year and then deleted.

(6) Records collected or disseminated for technical assistance to child support agencies or other authorized agencies or entities are retained for 60 days to five years, and audit data is retained for a period of up to two years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system leverages cloud service providers that maintain an authority to operate in accordance with applicable laws, rules, and policies, including Federal Risk and Authorization Management Program (FedRAMP) requirements. Specific administrative, technical, and physical controls are in place to ensure that the records collected and maintained in the FCR are secure from unauthorized access. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter. Logical access controls are in place to limit access to the records to authorized personnel and to prevent browsing. The records are processed and stored in a secure environment. All records are stored in an area that is physically safe from access by unauthorized persons at all times.

Safeguards conform to the HHS Information Security and Privacy Program, which may be found at *https://www.hhs.gov/ocio/securityprivacy/index.html.*

RECORD ACCESS PROCEDURES:

To request access to a record about you, submit a written request to the System Manager, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request should include your name, telephone number and/or email address, current address, and signature, and sufficient particulars (such as, date of birth or SSN) to enable the System Manager to distinguish between records on subject individuals with the same name. To verify your identity, your signature must be notarized or your request must include your signed, written certification that you are the individual who you claim to be and that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000.

CONTESTING RECORD PROCEDURES:

To request correction of a record about you in this system of records, submit a written amendment request to the System Manager, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the same information required for an access request and include verification of your identity in the same manner required for an access request. In addition, the request must reasonably identify the record and specify the information contested; the corrective action sought; and the reasons for requesting the correction; and should include supporting justification or documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

To find out if this system of records contains a record about you, submit a written notification request to the System Manager, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must identify this system of records, contain the same information required for an access request, and include verification of your identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

A notice of proposed rulemaking has been published to add this system of records to the list of exempt systems of records in HHS regulations implementing the Privacy Act (45 CFR 5b, at 5b.11), and that exemption will be effective upon publication of a Final Rule. The Final Rule will, pursuant to 5 U.S.C. 552a(k)(2), exempt case files marked with the Family Violence Indicator (FVI), which constitute investigatory material compiled for law enforcement purposes, from the accounting, access, and amendment requirements in subsections (c)(3) and (d)(1) through (4) of the Privacy Act (5 U.S.C. 552a(c)(3) and (d)(1) through (4)), subject to the limitation set forth in subsection (k)(2).

With respect to case files marked ''FVI,'' the exemption is intended to be consistent with the disclosure prohibition in section 453(b)(2) of the Social Security Act (42 U.S.C. 653(b)(2)) which prohibits disclosure of case records containing reasonable evidence of domestic violence or child abuse, disclosure of which could be harmful to the custodial parent or the child of such parent, to anyone other than a court or an agent of the court. See also 45 CFR 303.21(e) (describing safeguarding requirements for records marked with the FVI).

HISTORY:

80 FR 17912 (Apr. 2, 2015), updated 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2022–19851 Filed 9–12–22; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0795]

Computer Software Assurance for Production and Quality System Software; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Computer Software Assurance for Production and Quality System Software.'' FDA is issuing this draft guidance to provide recommendations on computer software assurance for computers and automated data processing systems used as part of medical device production or the quality system. FDA believes that these recommendations will help foster the

adoption and use of innovative technologies that promote patient access to high-quality medical devices and help manufacturers to keep pace with the dynamic, rapidly changing technology landscape, while promoting compliance with laws and regulations implemented by FDA. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 14, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–0795 for ''Computer Software Assurance for Production and Quality System Software.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Computer Software Assurance for Production and Quality System Software'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Francisco Vicenty, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1534, Silver Spring, MD 20993–0002, 301–796–5577; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA envisions a future state where the medical device ecosystem is inherently focused on device features and manufacturing practices that promote product quality and patient safety. FDA has sought to identify and promote successful manufacturing practices and help device manufacturers raise their manufacturing quality level. In doing so, one goal is to help manufacturers produce high-quality medical devices that align with the laws and regulations implemented by FDA. Compliance with the Quality System regulation, 21 CFR part 820, is required for manufacturers of finished medical devices to the extent they engage in operations to which part 820 applies. Recommending best practices should promote product quality and patient safety, and correlate to higher-quality outcomes. This draft guidance addresses practices relating to computers and automated data processing systems used as part of production or the quality system.

FDA recognizes the potential for advances in manufacturing technologies, including the adoption of automation, robotics, simulation, and other digital capabilities, to provide significant benefits for enhancing the quality, availability, and safety of medical devices. FDA has engaged with stakeholders to keep abreast of the latest technologies and to better understand stakeholders' challenges and opportunities for further advancement.

As part of these ongoing efforts, medical device manufacturers have expressed a desire for greater clarity regarding the Agency's expectations for software validation for computers and automated data processing systems used as part of production or the quality system. Given the rapidly changing nature of software, manufacturers have also expressed a desire for a more iterative, agile approach for validation of computer software used as part of production or the quality system.

Traditionally, software validation has often been accomplished via software testing and other verification activities conducted at each stage of the software development lifecycle. However, software testing alone is often insufficient to establish confidence that the software is fit for its intended use. FDA believes that applying a risk-based approach to computer software used as part of production or the quality system would better focus manufacturers' assurance activities to help ensure product quality while helping to fulfill the validation requirements of § 820.70(i). For these reasons, FDA is providing recommendations on computer software assurance for computers and automated data processing systems used as part of medical device production or the quality system. FDA believes that these recommendations will help foster the adoption and use of innovative technologies that promote patient access to high-quality medical devices and help manufacturers to keep pace with the dynamic, rapidly changing technology landscape, while promoting compliance with laws and regulations implemented by FDA. FDA invites comments on the computer software assurance framework outlined in this guidance, including any comments or questions regarding the application of 21 CFR part 11 to requirements arising under § 820.70(i) with respect to computers or automated data processing systems used as part of production or the quality system.

When final, this guidance will supplement FDA's guidance, ''General Principles of Software Validation'' (''Software Validation guidance'') (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/general-principles-software-validation*), except this guidance will supersede Section 6 (''Validation of Automated Process Equipment and Quality System Software'') of the Software Validation guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Computer Software Assurance for Production and Quality System Software. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products*. This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics*. Persons unable to download an electronic copy of ''Computer Software Assurance for Production and Quality System Software'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17045 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
11	Electronic records; Electronic signatures	0910–0303
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: September 8, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19763 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1999]

Merck Sharp & Dohme Corp.; Withdrawal of Approval of New Drug Applications for VIOXX (Rofecoxib) Tablets and Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of the new drug applications (NDAs) for VIOXX (rofecoxib) Tablets, 12.5 milligrams (mg), 25 mg, and 50 mg, and VIOXX (rofecoxib) Suspension, 12.5 mg/5 milliliter (mL) and 25 mg/5 mL, held by Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., P.O. Box 100, 1 Merck Dr., Whitehouse Station, NJ 08889 (Merck). Merck has voluntarily requested that FDA withdraw approval of these applications and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of September 13, 2022.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and

Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA approved VIOXX (rofecoxib) Tablets (NDA 21042 and NDA 21647) and VIOXX (rofecoxib) Suspension (NDA 21052) for the following indications:

- For relief of the signs and symptoms of osteoarthritis.
- For relief of the signs and symptoms of rheumatoid arthritis in adults.
- For relief of the signs and symptoms of pauciarticular or polyarticular course juvenile rheumatoid arthritis in patients 2 years and older and who weigh 10 kg (22 lbs) or more.
- For the management of acute pain in adults.
- For the treatment of primary dysmenorrhea.
- For the acute treatment of migraine attacks with or without aura in adults.

On September 27, 2004, Merck informed the Agency it had halted the Adenomatous Polyp Prevention on VIOXX (APPROVe) trial due to an increased relative risk for confirmed cardiovascular events, such as heart attack and stroke, beginning after 18 months of treatment in patients taking VIOXX (rofecoxib) compared to those taking placebo. On September 30, 2004, Merck voluntarily withdrew VIOXX from the U.S. market. In early 2005, FDA conducted a comprehensive review of the approved cyclooxygenase-2 (COX–2) selective and non-selective non-steroidal anti-inflammatory drugs (NSAIDs) and the risk of adverse cardiovascular events. On April 6, 2005, after holding a joint meeting of the Arthritis and Drug Safety and Risk Management Advisory Committees, FDA issued a decisional memorandum summarizing the Agency's analysis and recommendations regarding the NSAIDs that were the subject of the review (*https://www.fda.gov/media/74279/download*). In that report, FDA made various recommendations, including modifications to the safety information in the labeling of approved COX–2 selective NSAIDs, including VIOXX. On June 3, 2005, Merck subsequently requested FDA's input on the content of potential supplemental NDAs to support labeling changes, in the event that Merck decided to bring the drug back to the U.S. market. On December 12, 2005, FDA identified certain safety analyses and other information that would be required in support of such supplemental NDAs.

In Merck's letter requesting withdrawal of VIOXX, Merck summarized its views of the reasons for withdrawal of approval as follows. Merck ultimately made a business decision not to recommence distribution of VIOXX in the United States and, therefore, did not conduct the additional analyses or submit supplemental NDAs supporting the reintroduction of VIOXX. In light of the company's commercial decision not to reintroduce VIOXX to the U.S. market, Merck has requested that FDA withdraw approval of NDA 21042, NDA 21052, and NDA 21647 for VIOXX tablets and suspension.

FDA has determined that withdrawal of these NDAs under § 314.150(d) (21 CFR 314.150(d)) is appropriate, because Merck did not provide the additional information necessary to reintroduce VIOXX (rofecoxib) to the U.S. market that FDA requested in its December 12, 2005, correspondence. On October 7, 2021, Merck requested that FDA withdraw approval of NDA 21042, NDA 21052, and NDA 21647 for VIOXX (rofecoxib) under § 314.150(d) and waived its opportunity for a hearing.

For the reasons discussed above, and in accordance with the applicant's request, approval of NDA 21042 and NDA 21647 for VIOXX (rofecoxib) Tablets, 12.5 mg, 25 mg, and 50 mg, and NDA 21052 for VIOXX (rofecoxib) Suspension, 12.5 mg/5 mL and 25 mg/5 mL, and all amendments and supplements thereto, are withdrawn under § 314.150(d). Distribution of VIOXX (rofecoxib) Tablets, 12.5 mg, 25 mg, and 50 mg, and VIOXX (rofecoxib) Suspension, 12.5 mg/5 mL and 25 mg/5 mL, into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)).

Dated: September 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19740 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2255; FDA–2020–E–2256; and FDA–2020–E–2254]

Determination of Regulatory Review Period for Purposes of Patent Extension; BULKAMID URETHRAL BULKING SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BULKAMID URETHRAL BULKING SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 14, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 13, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 14, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2020–E–2255; FDA–2020–E–2256; and FDA–2020–E–2254 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BULKAMID URETHRAL BULKING SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device BULKAMID URETHRAL BULKING SYSTEM. The BULKAMID URETHRAL BULKING SYSTEM is indicated for urethral injection for the treatment of stress urinary incontinence (SUI) due to intrinsic sphincter deficiency in adult women who have SUI or stress predominant mixed incontinence. Subsequent to this approval, the USPTO received patent term restoration applications for BULKAMID URETHRAL BULKING SYSTEM (U.S. Patent Nos. 7,678,146; 7,758,497; and 7,780,958) from Contura A/S, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 1, 2021, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of the BULKAMID URETHRAL BULKING SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for the BULKAMID URETHRAL BULKING SYSTEM is 4,529 days. Of this time, 3,617 days occurred during the testing phase of the regulatory review period, while 912 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* September 6, 2007. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on January 18, 2008. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on September 6, 2007, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* July 31, 2017. FDA has verified the applicant's claim that the premarket approval application

(PMA) for BULKAMID URETHRAL BULKING SYSTEM (PMA P170023) was initially submitted July 31, 2017.

3. *The date the application was approved:* January 28, 2020. FDA has verified the applicant's claim that PMA P170023 was approved on January 28, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19723 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–1908]

Policy for Monkeypox Tests To Address the Public Health Emergency; Guidance for Laboratories, Commercial Manufacturers, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Policy for Monkeypox Tests To Address the Public Health Emergency.'' On August 4, 2022, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency related to monkeypox. Monkeypox virus is a zoonotic infection (a virus transmitted to humans from animals), caused by *Orthopoxvirus* genus of the *Poxviridae* family similar to variola virus (the causative agent of smallpox), and can spread to humans. Since early May 2022, cases of monkeypox have been reported from countries where the disease is not endemic and continue to be reported in several endemic countries. Rapid detection of monkeypox cases in the United States requires wide availability of diagnostic testing to control the emergence of this contagious infection. This guidance describes FDA's review priorities of emergency use authorization (EUA) requests for monkeypox diagnostic tests, as well as FDA's enforcement policies for various monkeypox tests. The guidance document has been implemented without prior comment, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on September 13, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–1908 for ''Policy for Monkeypox Tests To Address the Public Health Emergency.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Policy for Monkeypox Tests To Address the Public Health Emergency'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Amy Zale, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3423A, Silver Spring, MD 20993–0002, 301–796–0869.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Policy for Monkeypox Tests To Address the Public Health Emergency.'' On August 4, 2022, the Secretary of HHS determined that there is a public health emergency related to monkeypox.[1] On August 9, 2022, the Secretary of HHS determined [2] under section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb–3) that there is a public health emergency, or 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 that involves monkeypox virus. On September 7, 2022, the Secretary of HHS determined that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus*.[3]

Rapid detection of monkeypox cases in the United States requires wide availability of diagnostic testing to help control the emergence of this contagious infection. This guidance describes FDA's review priorities of EUA requests for monkeypox diagnostic tests, describes FDA's enforcement policies for certain diagnostic tests that are developed by and performed in a laboratory certified under the Clinical Laboratory Improvement Amendments that meets the requirements to perform tests of high complexity, describes FDA's enforcement policies for FDA-cleared or authorized monkeypox diagnostic tests that are modified, describes FDA's enforcement policies for certain serology tests, and provides recommendations for diagnostic test validation.

In light of this public health emergency, FDA has determined that prior public participation for this guidance is not feasible or appropriate and is issuing this guidance without prior public comment (see section 701(h)(1)(C)(i) of the FD&C Act (21 U.S.C. 371(h)(1)(C)(i)) and § 10.115(g)(2)). Although this guidance has been implemented without prior comment, FDA will consider all comments received and revise the guidance document as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on ''Policy for Monkeypox Tests To Address the Public Health Emergency.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Policy for Monkeypox Tests To Address the Public Health Emergency'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 22003 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

The guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations and guidances have been approved by OMB as listed in the table below. The guidance also contains a new collection of information not approved under a current collection. These new collections of information were granted a public health emergency (PHE) waiver from the PRA by HHS on August 19, 2022, under section 319(f) of the Public Health Service Act (42 U.S.C. 247d(f)). Information concerning the PHE PRA waiver can be found on the HHS website at *https://aspe.hhs.gov/public-health-emergency-declaration-pra-waivers.*

[1] *See* HHS Secretary Section 319 Declaration (August 4, 2022), available at *https://aspr.hhs.gov/legal/PHE/Pages/monkeypox-4Aug22.aspx.*

[2] *See* HHS Secretary Section 564 Determination (August 9, 2022), available at *https://aspr.hhs.gov/legal/Section564/Pages/Monkeypox-9Aug22.aspx.*

[3] *See* HHS Secretary Section 564 Determination (September 7, 2022), available at *https://aspr.hhs.gov/legal/Section564/Pages/InVitro-Diagnostics-Monkeypox-7Sept22.aspx.*

Guidance title	CFR cite referenced in guidance	Another guidance referenced in guidance	OMB control No(s).	New collection covered by PHE PRA waiver
Policy for Monkeypox Tests to Address the Public Health Emergency.	.....	Emergency Use Authorization of Medical Products and Related Authorities; Guidance for Industry and Other Stakeholders.	0910–0595	
		Administrative Procedures for Clinical Laboratory Improvement Amendments of 1988 Categorization.	0910–0607	
	803	.....	0910–0437	
	806	.....	0910–0359	
	807, subpart E	.....	0910–0120	
				FDA Notification of Laboratory Development and Validation of Monkeypox Test (including notification template).
				Statements on patient test reports.
				Commercial Manufacturer Test for Monkeypox—EUA Test Summary Information.
				EUA templates for monkeypox tests.

Dated: September 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19709 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2065]

Alternative or Streamlined Mechanisms for Complying With the Current Good Manufacturing Practice Requirements for Combination Products; List Under the 21st Century Cures Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: As required by the 21st Century Cures Act (Cures Act), the Food and Drug Administration (FDA, Agency, or we) is finalizing a list of alternative or streamlined mechanisms for complying with the current good manufacturing practice (CGMP) requirements for combination products. A combination product is a product composed of any combination of a drug, a device, and/or a biological product.

DATES: This notice is published in the **Federal Register** on September 13, 2022.

ADDRESSES: For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5130, Silver Spring, MD 20993, 301–796–8930, *john.weiner@fda.hhs.gov* or *combination@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 2013, FDA issued a final rule on CGMP requirements for combination products (see 78 FR 4307 and part 4, subpart A (21 CFR part 4, subpart A)) (CGMP Rule). The drugs, devices, and biological products included in combination products are referred to as ''constituent parts'' of the combination product. Combination products include ''single-entity'' combination products, the constituent parts of which are physically, chemically, or otherwise combined or mixed and produced as a single entity (see § 3.2(e)(1) (21 CFR 3.2(e)(1))) (*e.g.,* prefilled syringes and drug-eluting stents), and ''co-packaged'' combination products where the constituent parts are packaged together in a single package or as a unit (see § 3.2(e)(2)) (*e.g.,* a surgical or first-aid kit).[1] Section 4.4 (21 CFR 4.4) outlines how manufacturers of single-entity and co-packaged combination products (hereafter ''CP manufacturers'') can demonstrate compliance with applicable CGMP requirements, including through implementation of a streamlined approach to meet the requirements of both the drug CGMP and the device quality system (QS) regulations.

In December 2016, the Cures Act (Pub. L. 114–255) was signed into law. Section 3038(c) of the Cures Act mandated that FDA publish in the **Federal Register** a list identifying types of combination products and manufacturing processes for which ''good manufacturing processes'' may be adopted that vary from the requirements set forth in § 4.4, or that FDA proposes can satisfy the requirements in § 4.4 through ''alternative or streamlined mechanisms,'' and to review this list periodically. In accordance with this statutory mandate, FDA published a proposed list on June 13, 2018 (83 FR 27609).

FDA received six comments on this proposed list, has considered them, and is now publishing a list after such consideration (see section II of this document). In response to the comments, FDA added and refined examples and provided additional clarity regarding FDA's expectations for CP manufacturers when applying mechanisms presented in this list. FDA also added reference to a guidance on how to request FDA feedback on combination products, which provides additional detail on interacting with

[1] There are also ''cross-labeled'' combination products (§ 3.2(e)(3) and (4)). See Ref. 1 for additional information regarding CGMP requirements for them, as well as use of the ''streamlined approach'' if a device and drug or biological product constituent part of a cross-labeled combination product are manufactured at the same facility.

FDA, including with respect to CGMP issues addressed in this list.

While FDA has provided examples in this notice of the types of mechanisms that may be appropriate, CP manufacturers should consider the suitability of an approach in the context of their product and manufacturing process. For these examples, we have recommended engaging the Agency before adoption of some, whereas others may be evaluated on inspection as appropriate. Additional approaches may be permissible as well for evaluation on a case-by-case basis for a particular product and CP manufacturer. FDA continues to apply a risk-based approach to evaluating alternative or streamlined mechanisms for ensuring the quality of combination products, and as FDA and CP manufacturers develop additional data and rationales, this list may be expanded, including to provide additional examples or to identify types of combination products for which alternative or streamlined mechanisms may be applicable.

II. List of Mechanisms for Complying With § 4.4 CGMP Requirements for Combination Products

A. Introduction

Sections II.B and II.C present mechanisms for demonstrating compliance with relevant combination product CGMP requirements. Where applicable, reference is made to sections of the ''Guidance for Industry and FDA Staff: Current Good Manufacturing Practice Requirements for Combination Products'' for additional information (Ref. 1). FDA will continue to evaluate this list in light of Agency experience and stakeholder input. CP manufacturers are welcome to propose other approaches not described, including approaches to other requirements set forth in § 4.4 for which FDA is not currently describing mechanisms for demonstrating compliance in the sections below.

For each mechanism described below, CP manufacturers should consider what documentation would be sufficient to support that the mechanism, including the specific approach for implementing it, assures appropriate control of the manufacture of the combination product to ensure safety and effectiveness of the product. Appropriate evidence and an explanation of the rationale to support the approach should be accessible at the manufacturing facility for review during facility inspections regardless of whether the approach has been discussed with FDA.

In some cases, CP manufacturers may need to interact with FDA to gain approval or otherwise notify FDA of a manufacturing change (see section III.A). For example, if a CP manufacturer utilizes a bracketing/matrixing design for stability studies, this approach should be submitted to FDA either as a proposal at the time of premarket review or as a postmarket change.

For additional discussion on how to interact with FDA regarding the mechanisms described below, see section III.

B. Mechanisms for Complying With Drug CGMP Requirements (Part 211) Specified in § 4.4[2]

FDA interprets the mechanisms identified in the sections below as means to demonstrate compliance with the following part 211 (21 CFR part 211) requirements specified in § 4.4:

1. Section 211.165 Testing and Release for Distribution

Use of samples that are not finished combination products, but that are representative of the finished combination product with respect to the characteristics and attributes being tested, when performing testing required by § 211.165 (21 CFR 211.165) to determine whether the drug constituent part, and thus the combination product, meets relevant final specifications. To meet the requirements of § 211.165, the CP manufacturer using this mechanism would need to establish, including where appropriate through bridging studies and other quantitative means, that any differences in the manufacturing process for the representative samples as compared to the finished combination product do not affect the drug constituent part (*i.e.,* to establish that there is no difference in the quality attributes related to the drug constituent part in the representative sample as compared to the attributes related to the drug constituent part in the finished combination product). For example, as part of product release testing, drug-eluting lead CP manufacturers could perform release testing for identity, potency, or other quality attributes on a representative lead tip assembly that contains the drug constituent part, rather than on the finished combination product containing the full electronic and mechanical assembly, so long as they can establish that the representative lead tip assemblies meet the relevant acceptance criteria and there are no statistically significant differences in the test results for the representative lead tip assemblies compared to the finished combination product.

(See also section IV.B.5 of Ref. 1 for additional information on testing and release for combination products.)

2. Section 211.166 Stability Testing

Use of bracketing and matrixing approaches to stability studies for combination products. Principles for bracketing and matrixing approaches to meet the requirements of § 211.166 (21 CFR 211.166) have already been addressed by the Agency, including in The International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) guidelines with regard to drug products (Refs. 2 and 3), and such principles can also be applied to combination products. CP manufacturers could utilize a bracketing/matrixing design, if appropriate, for stability studies. For example, when assessing stability for a prefilled syringe that is marketed in various fill volumes, one of the approaches that a CP manufacturer could utilize, if appropriate, is bracketing based on the smallest and the largest fill volume of product configurations. In determining the extremes for a bracketing approach and/or when justifying the use of a matrix design for single-entity combination products, it is important that the drug-device interactions and variations in the manufacturing processes are considered. For co-packaged combination products, such approaches can only be applied to the drug constituent part of the product.

Leveraging stability data for an already marketed combination product. Mechanisms that use prior stability knowledge, data, or information for an existing product to support stability assessment for a modification to that product may be appropriate when a new combination product is a modification of an already marketed product and the modification does not have the potential to impact the stability of the drug constituent part. For example, when developing new lengths of a drug-coated catheter product for which the catheter materials, drug coating, manufacturing process, and packaging configurations are largely unchanged from existing marketed sizes, the CP manufacturer would generally be able to leverage existing stability data to establish initial product shelf life or to support reduced stability data requirements, so long as characteristics of the product that could impact stability (*e.g.,* materials, packaging configuration) remain the same. However, if the device constituent

[2] Several drug CGMP mechanisms included in this list depend upon use of a more broadly defined batch. FDA notes that approaches that depend upon broadly defined batches may increase the number of distributed products implicated when corrective actions are necessary to address postmarket issues.

part of a drug-coated catheter includes a new material that is in contact with the drug coating or is a new design with a different drug-coated area or geometry, for example, new stability studies would generally be needed under § 211.166.

(See also section IV.B.6 of Ref. 1 for additional information on stability requirements for combination products.)

3. Section 211.167 Special Testing Requirements

Defining ''batch'' based on the drug constituent part rather than the finished combination product for purposes of special testing requirements for pyrogens and endotoxins. For example, a CP manufacturer of a combination product consisting of a device that is coated with a drug, where a larger batch of coating is used to manufacture several ''batches'' or ''lots'' of the overall combination product, may be able to define a batch for purposes of pyrogen and endotoxin testing as a set of combination products that were all manufactured using the same coating batch for purposes of meeting the requirements of § 211.167 (21 CFR 211.167). As with the other mechanisms described in this list, this mechanism would only potentially be available if there would be no impact on the endotoxin or pyrogen levels for the finished combination product from subsequent manufacturing processes, including when the constituent parts are combined to produce the final combination product (*e.g.,* there are no statistically significant differences in pyrogen or endotoxin test results for the combination product immediately following the coating process step as compared to the finished combination product). When defining the batch, CP manufacturers should consider whether such risks may be introduced later in the production process.

(See also section IV.B.7 of Ref. 1 for additional information on special testing requirements for combination products.)

4. Section 211.170 Reserve Samples

Keeping reserve samples that are representative of the finished combination product. CP manufacturers may use validated surrogates as representative samples to meet the requirements of § 211.170 (21 CFR 211.170), provided the surrogate is appropriate, both in terms of the manufacturing process and the characteristics of the container closure. For example, it may be permissible to maintain as a reserve sample only the drug-containing subassembly of a single-entity combination product, such as only the distal tip subassembly (with drug-containing collar) of a pacemaker lead without the associated internal electronic components, or the drug constituent part of a co-packaged combination product, such as the prefilled cartridge of a combination product that is distributed as a prefilled cartridge with an injector system. Such approaches would generally be permissible under the regulation when: (1) all subsequent manufacturing process steps to produce the final combination product are shown not to affect the drug constituent part, (2) the immediate container closure has essentially the same characteristics as that for the drug constituent part as packaged in the combination product for distribution, and (3) the representative samples are suitable for all required testing of the drug constituent part for which the reserve samples are being kept.

Using samples from representative lots of a larger batch for retention of reserve samples. To meet the requirements of § 211.170, CP manufacturers may be able to use bracketing and matrixing approaches to retain reserve samples from certain lots to adequately represent the broadly defined batch of the combination product. For example, where relevant lot-release tests, analytical procedures, and acceptance criteria are the same for the product matrix and the relevant aspects of the manufacturing process are the same, CP manufacturers might be able to retain reserve samples of appropriately varied sizes of a drug-coated combination product from across that matrix.

(See also section IV.B.8 of Ref. 1 for additional information on reserve sample requirements for combination products.)

C. Mechanisms for Complying With Device Quality System Requirements (Part 820) Specified in § 4.4

FDA interprets the mechanisms identified in the sections below as means to demonstrate compliance with the following part 820 (21 CFR part 820) requirements specified in § 4.4:

1. Section 820.30 Design Controls

Using existing pharmaceutical development practices and documentation that align with the design control principles and requirements of § 820.30 (21 CFR 820.30). Robust pharmaceutical development practices would address many design control requirements to assure compliance with § 820.30 where applicable (Ref. 4). CP manufacturers need to demonstrate how development processes, procedures, and terminology align with design control principles and requirements in § 820.30, when applicable, including developing additional design control elements, if necessary. When evaluating the adequacy of existing pharmaceutical development processes and related documentation, particular attention should be given to postmarket management of design changes to the combination product and the alignment of change control practices with the principles and requirements of § 820.30, as applicable.

(See also section IV.A.2 of Ref. 1 for additional information on the requirements of § 820.30 as they apply to combination products.)

2. Exemption of Combination Products From Device QS Regulation

Exemption of the combination product from provisions of the device QS regulation (part 820) if the device constituent part of the combination product is itself exempt from the device QS requirements specified in § 4.4(b)(1) (i.e., the intended use of the device as a constituent part falls within the scope of the relevant exemption). Some devices are exempt from certain provisions of the device QS regulation (see, for example, liquid medication dispensers such as cups and droppers that fall within the scope of § 880.6430 (21 CFR 880.6430); see also, for example, limitations to device exemptions under 21 CFR 880.9). Accordingly, a combination product is exempt from the associated provisions of the device QS regulation specified in § 4.4(b)(1) if the device constituent part falls within the scope of the relevant exemption; *i.e.,* if the intended use of the device in the combination product is not a new intended use and does not otherwise raise different safety and effectiveness questions for the device. This circumstance will most frequently apply to co-packaged combination products. For example, an oral dosing syringe (a liquid medication dispenser under § 880.6430) that is co-packaged with a drug may be exempt from all provisions of the device QS regulation except for 21 CFR 820.180 (general requirements concerning records) and 21 CFR 820.198 (requirements concerning complaint files) when marketed as a stand-alone device (and hence the combination product may also be exempt from such provisions). Accordingly, if the CP manufacturer for the co-packaged combination product is using a streamlined approach based on drug CGMP requirements (see § 4.4(b)(1)), the CP manufacturer does not need to demonstrate compliance

with the device QS requirements because the product is exempt from all device QS requirements specified in § 4.4(b)(1) and, therefore, must only be compliant with the drug CGMP requirements. However, incorporating such a dispenser into a primary container closure system or co-packaging of such a dispenser with a drug with a narrow therapeutic index, for example, each may constitute a new intended use for the dispenser or raise different safety and effectiveness questions related to performance of the dispenser, such that the relevant exemption would not apply.

(See also section III.C.3 of Ref. 1 for additional information on the exemption from provisions of the device QS regulation for combination products.)

III. Interacting With FDA on Mechanisms for Complying With CGMP for Combination Products

A. Process for Interacting With FDA

In some cases, CP manufacturers may need to interact with FDA to gain approval or otherwise notify FDA of a manufacturing change. In other cases, although a submission or notification is not required, CP manufacturers may want to discuss potential use of CGMP mechanisms with FDA. CP manufacturers are encouraged to interact early with FDA on any such contemplated use of alternative or streamlined CGMP mechanisms for combination products (see also Ref. 5 regarding interactions with FDA on combination products).

- *Pre-Submissions and Meeting Requests.* CP manufacturers who want to obtain FDA feedback prior to making a premarket submission or submitting a postmarket supplement or who otherwise want to obtain feedback on their CGMP approach, may interact with FDA via the processes available for such questions at the lead Center [3] for the combination product (see Ref. 5). For combination products reviewed under a new drug application (NDA) or a biologics license application (BLA), such interactions will generally be through Type C meetings (Ref. 6). For combination products reviewed under an abbreviated new drug application (ANDA), such interactions will generally be through the pre-ANDA program or controlled correspondence for a premarket application (Refs. 7 and 8). For combination products reviewed under a device premarket submission (*e.g.,* a premarket approval application (PMA), de novo classification, or premarket notification (510(k)), these interactions will generally be via the pre-submission process (Ref. 9). Regardless of the type of submission or meeting, such interactions should be focused on a general discussion of the CGMP approach the CP manufacturer wishes to pursue and associated justification to support the approach.[4] Only representative data is typically appropriate in these interactions; complete data should be included in the subsequent premarket submission or postmarket supplement and/or be maintained at the manufacturing facility, as appropriate.
- *Premarket Review.* CP manufacturers should include in their original submission for NDAs, BLAs, ANDAs, and PMAs information on any alternative or streamlined mechanisms for complying with combination product CGMP requirements. For PMAs, this information should be included in the manufacturing section of the PMA. For information regarding where to place information in NDAs, BLAs, or ANDAs, refer to ''eCTD Technical Conformance Guide'' (Ref. 10).
- *Postmarket Supplements or Notifications to FDA.* Postmarket changes to implement a combination product CGMP mechanism for NDAs, ANDAs, BLAs, and PMAs may require submission of a supplement or notification to FDA.[5] CP manufacturers should consult related guidances relevant to the type of constituent part(s) included in the combination product (*e.g.,* Refs. 11 to 13, as appropriate). If a CP manufacturer has questions on the appropriate submission type or the need for a submission, they can contact the lead Center for assistance.

B. Submission Content

When submitting information on a CGMP mechanism, CP manufacturers should refer to applicable guidance (see section V below) as the primary reference regarding what information to provide. Along with other information indicated in relevant guidance (see section V), the following content should be included:

- *Applicable CGMP Regulation.* Identify the applicable CGMP regulation to which the described mechanism relates. For example, if a submission includes a mechanism related to stability testing, indicate that § 211.166 is the applicable CGMP requirement.
- *Applicable Products.* If the mechanism is to be applied to multiple products and/or product configurations, list all related sizes, strengths, etc., as well as all related application numbers.
- *Prior, Related Interactions with FDA.* If the CP manufacturer has had previous interactions with FDA relevant to the proposed mechanism, either for the product addressed in the submission or for related products, the CP manufacturer should provide reference to those interactions. Where applicable, the CP manufacturer may cross-reference previously submitted information.
- *Justification and Scientific Data.* Include a justification to support that the proposed mechanism assures adequate manufacturing control to ensure product safety and effectiveness. When describing a CGMP alternative or streamlined mechanism in a premarket or postmarket submission, the description should be accompanied by such data as may be necessary to support the approach. When proposing a change from a CGMP approach that was reviewed previously by FDA, such justification should include analysis of how the proposed approach compares to the previously reviewed approach as an effective manufacturing control, including representative data, as appropriate, to substantiate the analysis.
- *Exemption from Part 820.* For interactions with FDA regarding whether a combination product is exempt from the provisions of part 820 specified in § 4.4(b)(1), the submission should include a description of the device constituent part and justification

[3] A combination product is assigned to an Agency center (Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, or Center for Devices and Radiological Health) that will have primary jurisdiction (*i.e.,* be the ''lead Center'') for that combination product's review and regulation. Assignment of a combination product to a lead Center is based on a determination of which constituent part provides the primary mode of action of the combination product (21 U.S.C. 353(g)). Manufacturers who are unsure of the lead Center for their combination product or of whether their product is a combination product, should contact the Office of Combination Products.

[4] Note that to discuss a mechanism for complying with CGMP requirements for which the CP manufacturer is referencing information in a master file, the CP manufacturer must have the appropriate authorization from the master file holder (see, *e.g.,* 21 CFR 314.420 and 814.20(c)). The authorization should clearly identify the specific information within the master file that is being made available to reference. For more information on biologics, device, and drug master files, see CBER's master files for CBER-Regulated Products web page (available at *https://www.fda.gov/vaccines-blood-biologics/development-approval-process-cber/master-files-cber-regulated-products*), CDRH's master files web page (available at *https://www.fda.gov/medical-devices/premarket-approval-pma/master-files*), and CDER's drug master files web page (available at *https://www.fda.gov/drugs/forms-submission-requirements/drug-master-files-dmfs*), respectively.

[5] Requirements for postmarket supplements are contained, for example, in 21 CFR 314.70 and 314.97 (NDAs and ANDAs), 21 CFR 601.12 (BLAs), and 21 CFR 814.39 (PMAs). Any questions on whether FDA review is required for a postmarket CGMP mechanism should generally be directed to the lead Center.

that: (1) the intended use of the device in the combination product is consistent with the intended use of a separately marketed device that has been exempted from the requirements of part 820 specified in § 4.4(b)(1), and (2) the use of the device constituent part in the combination product does not raise any different device performance-related safety and effectiveness questions as compared to a separately marketed device.

C. FDA Engagement

CP manufacturers are encouraged to discuss combination product CGMP mechanisms with FDA. In some cases, CP manufacturers may need to interact with FDA to gain approval or otherwise notify FDA of a manufacturing change (see III.A above). Any questions on how to engage FDA in such discussions should generally be directed to the lead Center for the product (see Ref. 5). The lead Center will engage appropriate expertise from within the lead Center and from other FDA Centers and the Office of Combination Products, as needed, to support review (see Ref. 14), and FDA will provide appropriate feedback (see section III.D below).

D. FDA Review

FDA may review information from a CP manufacturer related to alternative or streamlined mechanisms in pre-submissions and meetings, premarket applications, postmarket supplements or notifications, and during facility inspections. FDA may determine whether the data and rationale presented by a CP manufacturer for a particular mechanism are sufficient to demonstrate that the mechanism, as proposed or implemented, is acceptable. In such cases, FDA generally will notify the CP manufacturer and/or applicant regarding acceptability of the mechanism, consistent with existing policies and practices for the submission type and, if the Agency finds the approach insufficient, FDA intends to provide the scientific and/or regulatory basis for this determination.

IV. Paperwork Reduction Act

This notice refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). We note that the information collected under the underlying CGMP regulations for drugs, devices, and biological products, including current good tissue practices for human cells, tissues, and cellular and tissue-based products, found in parts 211, 820, 600 through 680, and 1271 (21 CFR parts 211, 820, 600 through 680, and 1271), have already been approved and are in effect. The provisions of part 211 are approved under the OMB control number 0910–0139. The provisions of part 820 are approved under OMB control number 0910–0073. The provisions of parts 606 and 640 are approved under OMB control number 0910–0116. The provisions of part 610 are approved under OMB control number 0910–0116 and OMB control number 0910–0338 (also for part 680). The provisions of part 1271, subparts C and D, are approved under OMB control number 0910–0543.

We note that the information collected under the related submission types have already been approved and are in effect. The collections of information regarding formal meetings with sponsors and applicants are approved under OMB control number 0910–0429. The collections of information regarding NDA and ANDA are approved under OMB control number 0910–0001. The collections of information regarding the pre-ANDA program and controlled correspondence are approved under OMB control number 0910–0797. The collections of information regarding pre-submissions are approved under OMB control number 0910–0756. The collections of information regarding PMAs are approved under OMB control number 0910–0231. The collections of information for premarket notification (510(k)) are approved under OMB control number 0910–0120. The collections of information for the de novo classification process are approved under OMB control number 0910–0844. The collections of information regarding BLAs are approved under OMB control number 0910–0338. The collections of information regarding combination product agreement meetings are approved under OMB control number 0910–0523.

V. References

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

1. ''Guidance for Industry and FDA Staff: Current Good Manufacturing Practice Requirements for Combination Products,'' January 2017. *https://www.fda.gov/media/90425/download.*
2. ''Guidance for Industry Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products,'' January 2003. *https://www.fda.gov/media/71720/download.*
3. ''Guidance for Industry Quality of Biotechnological Products: Stability Testing of Biotechnological/Biological Products'' Q5C, July 1996. *https://www.fda.gov/media/71441/download.*
4. ''Guidance for Industry Q8(R2) Pharmaceutical Development,'' November 2009. *https://www.fda.gov/media/71535/download.*
5. ''Guidance for Industry and FDA Staff: Requesting FDA Feedback on Combination Products,'' December 2020. *https://www.fda.gov/media/133768/download.*
6. ''Draft Guidance for Industry Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products,'' December 2017. *https://www.fda.gov/media/109951/download.*
7. ''Guidance for Industry Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA,'' November 2020. *https://www.fda.gov/media/107626/download.*
8. ''Guidance for Industry Controlled Correspondence Related to Generic Drug Development,'' December 2020. *https://www.fda.gov/media/109232/download.*
9. ''Guidance for Industry and FDA Staff Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program,'' January 2021. *https://www.fda.gov/media/114034/download.*
10. ''eCTD Technical Conformance Guide,'' March 2022. *https://www.fda.gov/media/93818/download.*
11. ''Guidance for Industry Changes to an Approved NDA or ANDA,'' April 2004. *https://www.fda.gov/media/71846/download.*
12. ''Guidance for Industry Chemistry, Manufacturing, and Controls Changes to an Approved Application: Certain Biological Products,'' June 2021. *https://www.fda.gov/media/109615/download.*
13. ''Guidance for Industry and FDA Staff: 30-Day Notices, 135-Day Premarket Approval (PMA) Supplements and 75-Day Humanitarian Device Exemption (HDE) Supplements for Manufacturing Method or Process Changes,'' December 2019. *https://www.fda.gov/media/72663/download.*
14. FDA Staff Manual Guide SMG 4101 ''Inter-Center Consult Request Process,'' June 2018. *https://www.fda.gov/media/81927/download.*

Dated: September 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19713 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1959]

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Obstetrics, Reproductive and Urologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Nonprescription Drugs Advisory Committee and the Obstetrics, Reproductive and Urologic Drugs Advisory Committee. The general function of the committees is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on November 18, 2022, from 9 a.m. to 5:30 p.m. eastern time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–1959. The docket will close on November 17, 2022. Either electronic or written comments on this public meeting must be submitted by November 17, 2022. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. eastern time at the end of November 17, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before November 3, 2022, will be provided to the committees. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–1959 for ''Joint Meeting of the Nonprescription Drugs Advisory Committee and the Obstetrics, Reproductive and Urologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2894, *NDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the

FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committees will discuss supplemental new drug application 017031/S–041 for OPILL (norgestrel) Tablet, 0.075 mg, submitted by Laboratoire HRA Pharma. OPILL is proposed for nonprescription use as a once-daily oral contraceptive to prevent pregnancy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before November 3, 2022, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 2:15 p.m. and 3:30 p.m. eastern time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 26, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 27, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Choi (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 6, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19718 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2258]

Determination of Regulatory Review Period for Purposes of Patent Extension; REYVOW

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for REYVOW and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by November 14, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 13, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 14, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2020–E–2258 for ''Determination of Regulatory Review Period for Purposes

of Patent Extension; REYVOW.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product REYVOW (lasmiditan). REYVOW is indicated for the acute treatment of migraine with or without aura in adults. Subsequent to this approval, the USPTO received a patent term restoration application for REYVOW (U.S. Patent No. 7,423,050) from Eli Lilly and Company, and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated April 5, 2021, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of REYVOW represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for REYVOW is 3,097 days. Of this time, 2,619 days occurred during the testing phase of the regulatory review period, while 478 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* August 11, 2011. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 11, 2011.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 11, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for REYVOW (NDA 211280) was initially submitted on October 11, 2018.

3. *The date the application was approved or the date of issuance of the interim final rule controlling the drug under section 201(j) of the Controlled Substances Act:* January 31, 2020. FDA has verified the applicant's claim that NDA 211280 was approved on October 11, 2019, and that the Drug Enforcement Administration issued an interim final rule controlling the product on January 31, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,786 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19714 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1349]

Mikart, LLC, et al.; Withdrawal of Approval of 31 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on July 12, 2022. The document announced the withdrawal of approval (as of August 11, 2022) of 31 abbreviated new drug applications (ANDAs) from multiple applicants. The document indicated that FDA was withdrawing approval of the following ANDAs after receiving withdrawal requests from USpharma Windlas, LLC, 115 Blue Jay Dr., Suite 101, Liberty, MO 64068: ANDA 204180, Amiloride Hydrochloride Tablets, 5 milligrams (mg); and ANDA 205790, Prasugrel Tablets, Equivalent to (EQ) 5 mg base and EQ 10 mg base. Before FDA withdrew the approval of these ANDAs, USpharma Windlas, LLC, informed FDA that it did not want the approval of the ANDAs withdrawn. Because USpharma Windlas, LLC, timely requested that approval of ANDAs 204180 and 205790 not be withdrawn, the approvals are still in effect.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, July 12, 2022 (87 FR 41322), in FR Doc. 2022–14798, the following correction is made:

On page 41322, in the table, the entries for ANDAs 204180 and 205790 are removed.

Dated: September 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19715 Filed 9–12–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 8¾%, as fixed by the Secretary of the Treasury, is certified for the quarter ended June 30, 2022. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

David C. Horn,

Director, Office of Financial Policy and Reporting, (202) 260–9658.

[FR Doc. 2022–19780 Filed 9–12–22; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Declaration That Circumstances Exist Justifying Authorizations Pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (Monkeypox)

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to the Federal Food, Drug, and Cosmetic (FD&C) Act. On August 9, 2022, the Secretary determined pursuant to his authority under the FD&C Act 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 United States citizens living abroad that involves monkeypox virus.

On the basis of this determination, he declared on September 7, 2022 that circumstances exist justifying authorizations of emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus,* pursuant to the FD&C Act.

DATES: The determination was effective August 9, 2022 and the declaration is effective September 7, 2022.

FOR FURTHER INFORMATION CONTACT: Dawn O'Connell, Assistant Secretary for Preparedness and Response, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 564 of the FD&C Act, 21 U.S.C. 360bbb–3, the Commissioner of Food and Drugs of the U.S. Food and Drug Administration (FDA), acting under delegated authority from the Secretary of HHS, may issue an Emergency Use Authorization (EUA) authorizing: (1) the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product; or (2) an unapproved use of an approved drug, approved or cleared device, or licensed biological product. Before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of four

determinations: (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, chemical, biological, radiological, or nuclear (''CBRN'') agent or agents; (2) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act [1] sufficient to affect national security or the health and security of United States citizens living abroad; (3) 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 United States military forces, including personnel operating under the authority of title 10 or title 50, of attack with (i) a biological, chemical, radiological, or nuclear agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to United States military forces; or (4) a determination by the Secretary 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 United States citizens living abroad, and that involves a CBRN agent or agents, or a disease or condition that may be attributable to such agent or agents.[2]

Based on any of these four determinations, the Secretary of HHS may then declare that circumstances exist that justify the EUA, at which point the Commissioner of Food and Drugs may issue an EUA if the criteria for issuance of an authorization under section 564 of the FD&C Act are met.

The ASPR requested that the Secretary issue the declaration to allow the Department to take measures based on information currently available about monkeypox virus. The determination of a public health emergency or a significant potential for a public health emergency, and the declaration that circumstances exist justifying emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus* by the Secretary of HHS, as described below, enable the Commissioner of Food and Drugs to issue EUAs for in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus* for emergency use under section 564 of the FD&C Act.

II. Determination by the Secretary of Health and Human Services

On August 9, 2022, pursuant to section 564 of the FD&C Act, I determined 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 United States citizens living abroad that involves monkeypox virus.

III. Declaration of the Secretary of Health and Human Services

On September 7, 2022, on the basis of my August 9, 2022 determination 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 United States citizens living abroad and that involves monkeypox virus, I declared that circumstances exist justifying authorizations of emergency use of in vitro diagnostics for detection and/or diagnosis of infection with the monkeypox virus, including in vitro diagnostics that detect and/or diagnose infection with non-variola *Orthopoxvirus,* pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section.

Notice of the EUAs issued by the Commissioner of Food and Drugs pursuant to this determination and declaration will be provided promptly in the **Federal Register** as required under section 564 of the FD&C Act.

Xavier Becerra,

Secretary, U.S. Department of Health and Human Services.

Footnotes

1. 42 U.S.C. 247d–6b.
2. As amended by the Pandemic and All-Hazards Preparedness Reauthorization Act, Public Law 113–5, the Secretary may make a determination of a public health emergency, or a significant potential for a public health emergency, under section 564 of the FD&C Act. The Secretary is no longer required to make a determination of a public health emergency in accordance with section 319 of the PHS Act, 42 U.S.C. 247d to support a determination or declaration made under section 564 of the FD&C Act.

[FR Doc. 2022–19752 Filed 9–12–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

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 October 13, 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: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041. When submitting comments or requesting information, please include the document identifier 0990-New-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: Evaluation of the Extension of the Certified Community Behavioral Health Clinic (CCBHC) Demonstration Program.

Type of Collection: New.

OMB No.: 0990–NEW—Office of the Assistant Secretary for Planning and Evaluation.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the U.S. Department of Health and Human Services (HHS) is requesting Office of Management and Budget (OMB) approval for new data collection activities to support its

evaluation of the extension of the Certified Community Behavioral Health Clinic (CCBHC) demonstration program.

Section 223 of the Protecting Access to Medicare Act (Pub. L. 113–93; PAMA) authorized the CCBHC demonstration to allow states to test a new strategy for delivering and reimbursing a comprehensive array of services provided in community behavioral health clinics. The demonstration aims to improve the availability, quality, and outcomes of outpatient services provided in these clinics by establishing a standard definition for CCBHCs and develops a new Medicaid prospective payment system (PPS) in each state that accounts for the total cost of providing nine types of services to all people who seek care. The PPS in each state is designed to provide CCBHCs with the financial support and stability necessary to deliver these required services. The demonstration also aims to incentivize quality through quality bonus payments to clinics and requires CCBHCs to report quality measures and costs.

Need and Proposed Use of the Information: PAMA mandates that HHS submit reports to Congress about the Section 223 demonstration that assess (1) access to community-based mental health services under Medicaid in the area or areas of a state targeted by a demonstration program as compared to other areas of the state, (2) the quality and scope of services provided by certified community behavioral health clinics as compared to community-based mental health services provided in states not participating in a demonstration program and in areas of a demonstration state that are not participating in the demonstration, and (3) the impact of the demonstration on the federal and state costs of a full range of mental health services (including inpatient, emergency, and ambulatory services). The ability of ASPE to provide this information to Congress requires a rigorously designed and independent evaluation of the CCBHC demonstration. The information collected under this submission will help ASPE address research questions for the evaluation and inform required reports to Congress. ASPE is requesting approval of this information collection for a three-year period. Information will be collected from individuals (CCBHC clients), businesses (CCBHC staff) and from state governments.

The total annual burden hours estimated for this information collection request are summarized in the table below.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
State official interviews	27	1	1	27
CCBHC leadership interviews	10	1	1	10
CCBHC client focus groups	14	1	1	14
CCBHC survey	50	1	3	150
Total	101	.....	.....	201

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–19757 Filed 9–12–22; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; DSR Member Conflict.

Date: October 14, 2022.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiwu Cheng, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20892, *Aiwu.cheng@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Clinical Studies.

Date: October 27, 2022.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite #670, Bethesda, MD 20892, (301) 827–4639, *yun.mei@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; In Utero Treatments of Congenital Dental and Craniofacial Disorders Using Precision Medicine Approaches.

Date: October 28, 2022.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiwu Cheng, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20892, *Aiwu.cheng@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS.)

Dated: September 8, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19730 Filed 9–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Career Development (Ks) and Conference support (R13) Review.

Date: October 25, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tianhong Wang, Ph.D., MD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 435–1189, *wangt3@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: September 7, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19674 Filed 9–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: September 28, 2022.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: Welcome and Chairwoman's Remarks, NCI Acting Director's Update, NCI Updates and Legislative Update.

Place: National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amy Williams, Acting Director, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 9000 Rockville Pike, Building 31, Room 10A28, Bethesda, MD 20892, (240) 781–3406, *williaam@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 8, 2022.

Melanie J. Pantoja,

Program Analyst, sOffice of Federal Advisory Committee Policy.

[FR Doc. 2022–19729 Filed 9–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Fields to Enhance Diversity.

Date: November 7, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3189, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3189, Bethesda, MD 20892, (301) 435–1580, *mckenneyk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Computational Genomics and Data Science.

Date: November 17, 2022.

Time: 3:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3189, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3189, Bethesda, MD 20892, (301) 435–1580, *mckenneyk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; T32 Genomic Training.

Date: November 18, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3189, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human

Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3189, Bethesda, MD 20892, (301) 435–1580, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 8, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19747 Filed 9–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: Request Human Embryonic Stem Cell Line To Be Approved for Use in NIH Funded Research (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) Office of the Director has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Ellen Gadbois, Office of the Director, NIH, building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free number (301) 496–9838 or email your request, including your address to: *Ellen.gadbois@nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on June 8, 2022, pages 34892–34893 (87 FR 34892) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH Office of the Director may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the OMB a request for review and approval of the information collection listed below.

Proposed Collection: Request for Human Embryonic Stem Cell Line to Be Approved for Use in NIH Funded Research. OMB No. 0925–0601 Extension —Expiration Date 10/31/2022—Office of the Director, NIH.

Need and Use of Information Collection: This form is used by applicants to request that human embryonic stem cell lines be approved for use in NIH funded research. Applicants may submit applications at any time.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 255 per respondent.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH grantees and others with hESC lines	5	3	17	255
Total		15		255

Dated: September 7, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–19775 Filed 9–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry A Study Section.

Date: October 12–13, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anita Szajek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–827–6276, *anita.szajek@nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award A Study Section.

Date: October 12–13, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0510, *mollie.manier@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 13–14, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda Bethesda, MD 20814.

Contact Person: BRITTANY L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594–3163, *masonmahbl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Pathophysiology of Mental Illness.

Date: October 13, 2022.

Time: 5:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda Bethesda, MD 20814.

Contact Person: BRITTANY L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594–3163, *masonmahbl@mail.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: October 19–20, 2022.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: October 19–20, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Therapeutic Development and Preclinical Studies Study Section.

Date: October 20–21, 2022.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Richard D. Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: October 20–21, 2022.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20782, 301–402–4788, *sarita.sastry@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

Date: October 20–21, 2022.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: E. Bryan Crenshaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–7129, *bryan.crenshaw@nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cellular Immunotherapy of Cancer Study Section.

Date: October 20–21, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shahana Majid, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *shahana.majid@nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive and Nutrient Physiology and Diseases Study Section.

Date: October 20–21, 2022.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aster Juan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–435–5000, *juana2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19734 Filed 9–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Drug Abuse Initial Review Group; Career Development Education and Training Study Section.

Date: October 19–20, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 7, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19672 Filed 9–12–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7062–N–16]

Privacy Act of 1974; System of Records

AGENCY: Office of Policy Development & Research, HUD.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Office of Policy Development & Research (PD&R) is issuing a public notice of its intent to establish a Privacy Act system of records titled the Stepped and Tiered Rent Demonstration Evaluation data files. The purpose of the Stepped and Tiered Rent Demonstration Evaluation data files system is to serve as a repository to store, maintain, and statistically analyze all data collected through the evaluation of the Stepped and Tiered Rent Demonstration.

DATES: Comments will be accepted on or before October 13, 2022. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The Privacy Office; LaDonne White; 451 Seventh Street, SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). Individuals who are hearing- or speech-impaired may access this telephone number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Stepped and Tiered Rent Demonstration (STRD) is an experiment that will be carried out by Public Housing Agencies (PHAs) in the second cohort of the Moving to Work (MTW) Expansion, in which 10 PHAs will test new ways of setting rents in HUD-assisted housing. These new rent policies—stepped rents and tiered rents—will be implemented as a randomized controlled trial (RCT); eligible households will be randomly assigned to continue paying rent under traditional rules or to pay rent under the new rules (the stepped rent or tiered rent). The Stepped and Tiered Rent Demonstration Evaluation Data Files will be a data system established to store the information that is needed to evaluate the impact of the stepped and tiered rent policies. HUD researchers (including MDRC, the contractor currently leading the evaluation) will use this information to examine a broad range of household outcomes related to self-sufficiency and housing subsidies. Researchers will also seek to understand the experience of households participating in the new rent policies and the PHAs that implement the new rent policies. This System of Records will contain data necessary to evaluate the effect of these new rent policies.

SYSTEM NAME AND NUMBER:

Stepped and Tiered Rent Demonstration Evaluation Data Files, PD&R/RRE.04.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Stepped and Tiered Rent Demonstration Evaluation Files are maintained at the following locations: MDRC's FedRAMP-approved cloud storage environment (MDRC offices are at 200 Vesey Street, 23rd Floor, New York, NY 10281–2103); and the U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0001.

SYSTEM MANAGER(S):

Carol Star, Director, Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0001, telephone Number (202) 402–6139.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 501 and 502 of the Housing and Urban Development Act of 1970 (Pub. L. 91–609) (12 U.S.C. 1701z–1; 1701z–2(d) and (g)).

PURPOSE(S) OF THE SYSTEM:

The purpose of the Stepped and Tiered Rent Demonstration Evaluation Data Files will be to store the information that is needed to evaluate the impact of the Stepped and Tiered Rent Demonstration. The information to be maintained in this records system is necessary to identify and track the participating families over the course of the study and determine the effectiveness of the interventions. The data in this system will be analyzed using statistical methods and any results shared with the public or published in anyway will be reported only in the aggregate. Resulting reports will not disclose or identify any individuals or sensitive personal information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families enrolled in the Stepped and Tiered Rent Demonstration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Tenant data: Includes enrollment information, administrative data, and baseline survey responses from tenants, including: head of household's full name, date of birth, social security number, unique study ID, home address, household composition, demographics of household members, educational attainment, employment and income information, housing and housing subsidy information, receipt of non-housing public benefits, and contact information.

RECORD SOURCE CATEGORIES:

Stepped and Tiered Rent Demonstration program participants, HUD PIH Inventory Management System/PIH Information Center, National Directory of New Hires, Homelessness Management Information Systems, Public Housing Agency information systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement, for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in

whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(2)(a) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed there has breached the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (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 with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(3) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and Paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the Name, SSN, unique study ID, home address, telephone number, and personal email address.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Destroy upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For Electronic Records: All personal data will be maintained on a secure workstation or server that is protected by a firewall and complex passwords in a directory that can only be accessed by the network administrators and the analysts actively working on the data; access rights to the data are granted to limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required that individual to fulfill his research role; all systems used to process or store data have Federal security controls applied to them; the data will be backed up on a regular basis to safeguard against system failures or disasters; and, unencrypted data will never be stored on a laptop or on a movable media such as CDs, diskettes, or USB flash drives.

For Paper Records: The site interviewers will securely store any hard copy forms with personal identifiers until they are shipped to the evaluation contractor via commercial mail services; all hard copy forms with personal identifying data (the participant agreement/informed consent form) will be stored securely in a locked cabinet that can only be accessed by authorized individuals working on the data. The locked cabinet will be stored in a locked office in a limited-access building. Additionally, permissions will be defined for each authorized user based on the user's role on the project. For example, the local site interviewer will be able to review data for study participants only for his or her own specific site. Study data will be aggregated or de-identified at the highest level possible for each required, authorized use.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Department of Housing and Urban Development, Attn: FOIA Program Office, 451 7th Street SW, Suite 10139, Washington, DC 20410–0001 or by emailing *foia@hud.gov.* Individuals must furnish the following information for their records to be located:

1. Full name.
2. Signature.
3. The reason why the individual believes this system contains information about him/her.
4. The address to which the information should be sent.

CONTESTING RECORD PROCEDURES:

Same as the Notification Procedures above.

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the System Manager. Such person should provide his or her full name, position title and office location at the time the accommodation was requested, and a mailing address to which a response is to be sent.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

N/A.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2022–19717 Filed 9–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2022–0122; FXES11130400000–223–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from CG Citrus, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and blue-tailed mole skink incidental to the construction of a residential development in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before October 13, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2022–0122; at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2022–0122;
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0122; U.S. Fish and Wildlife

Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**), by telephone at 772–469–4234 or via email at *afredo_begazo@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from CG Citrus, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction and operation of a residential development in Polk County, Florida. We request public comment on the application, which includes the applicant's HCP, and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 4.08 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a residential development on an 80.56-ac parcel in Section 6, Township 30 South, Range 28 East, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 8.16 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project—including the construction of multiple single-family residences, driveways, parking spaces, green areas, stormwater pond, and associated infrastructure (*e.g.,* electric, water, and sewer lines)—would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 0050424 to CG Citrus, LLC.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2022–19711 Filed 9–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2022–0121; FXES11130400000–223–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Polk County, Florida (applicant), for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and blue-tailed mole skink incidental to the construction of roadway improvements at an existing paved-road intersection in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before October 13, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2022–0121 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2022–0121.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0121; U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: John Wrublik, by U.S. mail (see **ADDRESSES**), by telephone at 772–469–4282 or via email at *john_wrublik@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY,

TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Polk County, Florida (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction of improvements at an existing paved-road intersection in Polk County, Florida. We request public comment on the application, which includes the applicant's HCP, and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 2.09 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction of safety improvements at the intersection of County Road 547 and Orchid Drive/Holly Hill Road, within a 2.09-ac parcel at latitude 28.157638°, longitude –81.631621°, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 4.19 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including the installation of turn lanes and traffic signals at an existing paved roadway intersection, would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 0049071 to Polk County, Florida.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2022–19708 Filed 9–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2022–0124; FXES11130400000–223–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Robbins Investment Company, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and blue-tailed mole skink incidental to the construction and operation of a commercial development in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before October 13, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2022–0124, at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2022–0124.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2022–0124; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Alfredo Begazo, by U.S. mail (see **ADDRESSES**), by telephone at 772–469–4234 or via email at *afredo_begazo@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Robbins Investment Company, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C.

1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction and operation of a commercial development in Polk County, Florida. We request public comment on the application, which includes the applicant's HCP, and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 4.47 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction of a commercial development on a 25.76-ac parcel in in Section 32, Township 26 South, Range 27 East, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 9.2 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project—including the construction of multiple commercial buildings, driveway, parking space, green areas, stormwater pond, and associated infrastructure (*e.g.,* electric, water, and sewer lines)—would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 0050427 to Robbins Investment Company, LLC.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2022–19712 Filed 9–12–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Pueblo of Laguna, New Mexico Business Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Pueblo of Laguna Business Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business purpose leases without further BIA approval.

DATES: BIA issued the approval on September 7, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pueblo of Laguna, New Mexico.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by

the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pueblo of Laguna, New Mexico.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–19667 Filed 9–12–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034493; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Huguenot Historical Society, New Paltz, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Huguenot Historical Society has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Huguenot Historical Society. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Huguenot Historical Society at the address in this notice by October 13, 2022.

FOR FURTHER INFORMATION CONTACT: Liselle LaFrance, President, Huguenot Historical Society, 88 Huguenot Street, New Paltz, NY 12561, telephone (845) 255–1660, email *liselle@huguenotstreet.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Huguenot Historical Society, New Paltz, NY. The human remains were removed from New Paltz, Ulster County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National

Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Huguenot Historical Society professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 2005, human remains representing, at minimum, one individual were removed from Historic Huguenot Street in New Paltz, Ulster County, NY, by Jay Cohen of Cultural Resource Consulting as part of an excavation along the northern wall of the Jean Hasbrouck House. This work was done to comply with the New York State Environmental Quality Review Act. In 2021, the human remains were discovered by Huguenot Historical Society staff during a review of recently returned artifact collections. The human remains are comprised of five skeletal fragments. No known individual was identified. No associated funerary objects are present.

In the early 2000s, human remains representing, at minimum, one individual were removed from Historic Huguenot Street in New Paltz, Ulster County, NY, by Dr. Joe Diamond of State University of New York at New Paltz as part of an archeological field school. After a forensic anthropologist identified the remains as human, they were taken to local law enforcement and the fieldwork was halted. Subsequently, the human remains were given to a representative of the Huguenot Historical Society. In May of 2021, the human remains were discovered by Huguenot Historical Society staff during a review of the collection. No known individual was identified. No associated funerary objects are present.

Stockbridge Munsee Community Tribal Historic Preservation representatives reviewed the collection with Huguenot Historical Society staff in May of 2022 and related that, according to Lenape oral tradition, present-day New Paltz lay within the Tribe's territory. The 1677 Huguenot-Lenape land agreement serves as further, documentary evidence of Lenape history in this location. The descendants of these earlier Lenape are The Tribes.

Determinations Made by the Huguenot Historical Society

Officials of the Huguenot Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Liselle LaFrance, President, Huguenot Historical Society, 88 Huguenot Street, New Paltz, NY 12561, telephone (845) 255–1660, email *liselle@huguenotstreet.org,* by October 13, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Huguenot Historical Society is responsible for notifying The Tribes that this notice has been published.

Dated: September 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19783 Filed 9–12–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1328]

Certain Pillows and Seat Cushions, Components Thereof, and Packaging Thereof; Notice of Institution of Investigation

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 August 5, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Purple Innovation, LLC of Lehi, Utah. Supplements to the complaint were filed on August 9, 2022 and August 22, 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 pillows and seat cushions, components thereof, and packaging thereof by reason of the infringement of: (1) certain claims of U.S. Design Patent No. D909,092 (''the '092 patent''); U.S. Patent No. 10,772,445 (''the '445 patent''); and U.S. Patent No. 10,863,837 (''the '837 patent''); (2) U.S. Trademark Registration No. 5,661,556 (''the '556 mark'') and U.S. Trademark Registration No. 6,551,053 (''the '053 mark'') and that an industry in the United States exists as required by the applicable Federal Statute. The complaint further alleges violations of section 337 based upon the importation into the United States, or in the sale of certain pillows and seat cushions, components thereof, and packaging thereof by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited and a general exclusion order, or in the alternative 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 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 6, 2022, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended,

(a) an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States,

or the sale of certain products identified in paragraph (2) by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(b) 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 1–16, 18, 19, 21–33, and 35 of the '445 patent; claims 1–4, 6, 10–12, 19, and 20 of the '837 patent; and the sole claim of the '092 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(c) an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) 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 the '556 mark and the '053 mark, and whether an industry in the United States exists 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 ''certain pillows and seat cushions, and components thereof (pillow cushions inside pillows having provided pillow cases), wherein at least a material portion of the pillow cushions or seat cushions are made of purple elastomer material generally formed in a repetitive grid-like pattern, as well as packaging thereof'';

(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 complainant is:

Purple Innovation, LLC, 4100 North Chapel Ridge Road, Suite 200, Lehi, Utah 84043

(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:

Bedmate-U Co., Ltd., 123, Sindae-gil, Gonjiam-eup, Gwangju-si, Gyeonggi-do, Republic of Korea 12801

Chuang Fan Handicraft Co., Ltd., 598 Zhengsong Avenue, Wanquan, Pingyang Wenzhou, Zhejiang, China 325409

Dongguan Bounce Technology Co., Ltd., No. 10, Development Road, Mowu Village, Qishi Town, Dongguan, Guangdong, China

Dongguan Jingrui Silicone Technology Co., Ltd., 2–5–301, Niushan Ind. Road, Dongcheng Street, Dongguan, Guangdong, China 523128

Foshan Dirani Design Furniture Co., Ltd., RA–3–026A, 3rd Floor, Bldg. A, Jiabocheng No. 189, Middle Foshan Avenue, Foshan, Guangdong, China 528000

Global Ocean Trading Co. Ltd., Room 201, 2nd Floor, No. 1 Renmin North Road, Longjiang Community, Longjiang Town, Shunde, Foshan, Guangdong, China 528318

Guang An Shi Lin Chen Zai Sheng Wuzi Co., Ltd., No. 752, Xianzhu Road, Xianyan Street, Ouhai, Wenzhou, Zhejiang, China 325000

Guang Zhou Wen Jie Shang Mao Youxian Gongsi Co., Ltd., Room 102, No. 15, Lane 111, Yusheng Road, Chenjia, Chongming, Shanghai, China 202162

Guangzhou Epsilon Import and Export Co., Ltd., Room 231, 2/F, Building 10, No. 1, Erheng Road, West District Hebian Tongda Creative Park, Helong Street, Guangzhou, Guangdong, China 510000

Guangzhoushi Baixiangguo Keji Youxian Gongsi Co., Ltd., Fengze Dong Lu 106 Hao, Zi Bian 1 Hao Lou, X1301–B5235, Nansha, Guangzhou, Guangdong, China 511458

Haircrafters LLC, 7022 Shallowford Road, Suite 1, Unit #532, Chattanooga, TN 37421–6714

Hangzhou Lishang Import & Export Co., Ltd., Room 423, South District, Zhejiang Newspaper Printing, No. 38 Xiangyuan Road, Gongshu, Hangzhou, Zhejiang, China 310015

Hangzhou Lydia Sports Goods Co., Ltd., Rooms 201 and 202, Building 1, Jinjishan, Village, Suoqian Town, Xiaoshanm, Hangzhou, Zhejiang, China 312000

Hebei Zeyong Technology Co., Ltd., North End of Fuqiang Road, Dahu Jingguan, Pengdu Township, Binhu New Area, Hengshui, Hebei, China 053000

Henson Holdings, LLC d.b.a. SelectSoma, 112 Tucson Drive, Lafayette, Louisiana 70503

Hetaibao, Hua Ji Zhen, He Lou Xing, Zheng Cun, He, Lou 1–1 Hao, Linquan, Anhui, China 236400

Hubei Sheng Bingyi Dianzi Keji Youxian Gongsi Co. Ltd., Jiuyuhuangcheng, 6 Zhuang, 3 Danyuan, 603 Shi, Xiannvshan Jiedao Tiyuguanlu 288, Hao, Xiaogan, Hanchuan, Hubei, China 431699

Kaifeng Shi Long Ting Qu Chen Yi, Shangmao Youxian Gongsi Co., Ltd., Room 2002, Unit 2, Building 10, Phase 3, Shenghua City, Fuxing Avenue, Longting, Kaifeng, Henan, China 475000

Lankao Junchang Electronic Commerce Co., Ltd., Daonan New Street, Lankao, Kaifeng, Henan, China

Lei Lei Wang, No. 33, Hou Xiegou, Xiegou Administrative Village, Tupi Township, Fuyang, Linquan, Anhui, China 236400

Liu Lin Xian Xu Bin Dian Zi Chan Pin Dian, Pingtou Village, Sanjiao, Luliang, Liulin, Shanxi, China 033300

Nanchang Shirong Bao Er Guanggao Youxian Gongsi Co., Ltd., 3399 Ziyang Avenue, Room 2–035, Underground Commercial Plaza, Building B, Cloud City, Nanchang High-Tech Industrial Development Zone, Nanchang, Jiangxi, China 330096

Ningbo Bolian Import & Export Co., Ltd., 2–3–8, No. 326 Qianhu Avenue, Dongqian Lake Tourist Resort Zone, Ningbo, Zhejiang, China 315121

Ningbo Minzhou Import & Export Co., Ltd., Room 4697, Building No. 3, Lane 3, Xijing Road, Shijingshan District, Airport Road No. 5000, Shiqi Street, Haishu, Beijing, China 100043

Ruian Xiu Yuan Guoji MaoYi Youxian Gongsi Co., Ltd., Luofeng, Bashuicun Kangweilu 2 Hao, Tangxia, Ruian, Wenzhou, Zhejiang, China 325000

Shandong Jiu Hui Xinxi Keji Youxian Gongsi Co., Ltd., 112 Jiefang Road, Chia Tai Times 1204, Lixia, Jinan, Shangdong, China 250000

Shanxi Chao Ma Xun Keji Youxian Gongsi Co., Ltd., Tonggang Road, Chengbei Xinjing, Community Building 1, Building 2, Unit 17B, Xinfu, Xinzhou, Shanxi, China 034000

Shenzhen Baibaikang Technology Co., Ltd., 6B03, West Plant, Floor 6, 2, Guangxian Plot, Bagua 3rd Road, Yuanling Street, Shenzhen, Guangdong, China 518029

Shenzhen Leadfar Industry Co., Ltd., 73–E Shatian North Road, Shatian, Kengzi, Pingshan, Shenzhen, Guangdong, China 518122

Shenzhen Shi Mai Rui Ke Dianzi Shangwu Co. Ltd., Matian Street, Xinzhuang Community, Songbai Road and South Ring Road Intersection, Yitian Holiday House 1, Unit A 1405, Shenzhen, Guangdong, China 518106

Shenzhen Shi Xin Shangpin Dianzi Shangwu Youxian Gongsi Co., Ltd., Mingkang Road, Zhangkeng District 2, 58 Building 1178, Longhua, Shenzhen, Guangdong, China 518131

Shenzhen Shi Yan Huang Chu Hai Keji Youxian Gongsi Co., Ltd., Minzhi

Street, Room 701, Building 25, Shahu Old Village, Longhua, Shenzhen, Guangdong, China 518000
Shenzhen Shi Yuxiang Meirong Yongju, Youxian Gongsi Co. Ltd. 2801 B Zuo, Jingjiyujingyinxiang Er Qi, 5, Hao Niuchanglu, Pinghuan Shequ, Maluan Jiedao, Pingshan, Shenzhen, Guangdong, China 518118
Shenzhen Tianrun Material Co., Ltd., 307, No. 2, Baoyuan 2nd District, Labor Community, Xixiang Street, Shenzhen, Guangdong, China 518000
Wuhan Chenkuxuan Technology Co., Ltd., F6, Building 1, SAGE Jishukaifa Center, 26 Binhu Road, E. Lake Xin Ji Shu Kai Fa Qu, Wuhan, Hubei, China 430040
Xiao Dawei, Room 402, 4th Floor, No.137, Tongan Park, Industrial Concentration Zone, Tong'an, Xiamen, Fujian, China 361199
Xiao Xiao Pi Fa Shang Mao You Xian Ze Ren Gongsi Co., Row 40, Magnetic Kilns, Ningxiang, Zhongyang, Luliang, Shanxi, China 033400
YaRu Wang, No. 3, Southwest Gate Street, Renyan Village, Jicun, Fenyang, Luliang, Shanxi, China 032200
Yiwu Youru E-commerce Co., Ltd., Dong Da Lu 39, Building One, Jubao Road, Choujiang Street, Yiwu, Jinhua, Zhejiang, China 322000
Zhejiang Xinhui Import & Export Co., Ltd., No. 148, Xiazhuangli Bingjiang, Hangzhou, Zhejiang, China 310052
Zhou Meng Bo, 618, Building 380, Shayuanpu Building, Minzhi, Longhua, Shenzhen, Guangdong, China 51831

(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 complainant 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: September 7, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19658 Filed 9–12–22; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Rules of Practice and Procedure; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Committee on Rules of Practice and Procedure; notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a meeting in a hybrid format with remote attendance options on January 4, 2023 in Fort Lauderdale, FL. The meeting is open to the public for observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *https://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: January 4, 2023.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: September 7, 2022.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2022–19664 Filed 9–12–22; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on August 8, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Black Sage Technologies Inc., Boise, ID; Carnegie Robotics LLC, Pittsburgh, PA; Combustion Research & Flow Technology, Inc. (CRAFT Tech), Pipersville, PA; Mid-America Applied Technologies Corporation, Chagrin Falls, OH; Primus Metals, Inc. dba Primus Aerospace, Lakewood, CO; Product Development Associates, Inc., Burnsville, MN; RunSafe Security, Inc., McLean, VA; and WPI Services, LLC dba Systecon North America, Juno Beach, FL, have been added as parties to this venture.

Also, Adsys Controls, Inc., Irvine, CA; ColdQuanta, Inc., Boulder, CO; Del Sigma Technologies LLC, Rockford, MI; Inertialwave, Inc, Manhattan Beach, CA; ITT Enidine, Inc., Orchard Park, NY; KGMade LLC, Norcross, GA; Matrix International Security Training Intelligence Center, Inc., Roswell, NM; Photon Flux LLC, Huntsville, AL; Prasad, Sarita, Albuquerque, NM; Protonex LLC dba PNI Sensor, Santa Rosa, CA; Southern Research Institute, Birmingham, AL; Summit Information Solutions, Inc., Glen Allen, VA; and Syntec Technologies, Inc., Rochester, NY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on May 31, 2022. A

notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 15, 2022 (87 FR 36147).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19657 Filed 9–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—1EdTech Consortium, Inc.

Notice is hereby given that, on August 18, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 1EdTech Consortium, Inc. (''1EdTech Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Better Examinations, Dublin, IRELAND; BPS Bildungsportal Sachsen GmbH, Chemnitz, GERMANY; Coins for College, Antioch, CA; Everyone's Island, Inc., Montgomery, TX; IQ4, Woodcliff Lake, NJ; Madison County Schools, Danielsville, GA; Minnesota State Colleges and University System, St. Paul, MN; The National eLearning Center, Riyadh, SAUDI ARABIA; National Society of Leadership and Success (NSLS), Miami, FL; New Hanover County Schools, Wilmington, NC; Parkway School District, Chesterfield, MO; Perris Union High School District, Perris, CA; Pioneer RESA, Cleveland, GA; Tigard-Tualatin School District, Tigard, OR; Independent School District No. 1 of Tulsa County, Oklahoma AKA Tulsa Public Schools, Tulsa, OK; and Waynesboro Area School District, Waynesboro, PA, have been added as parties to this venture.

Also, VidGrid, Schaumburg, IL; Texas Education Agency, Austin, TX; Early Learning Quick Assessment (ELQA), Moore, OK; Campus EDU, Marion, IN; Follett School Solutions, McHenry, IL; edX, Cambridge, MA; Illuminate Education, Irvine, CA; and ClassGather, La Vergne, TN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 1EdTech Consortium intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, 1EdTech Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on June 1, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 15, 2022 (87 FR 36147).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19661 Filed 9–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on July 15, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical Technology Enterprise Consortium (''MTEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 1Focus LLC, Clearwater, FL; 4M Biotech, Ltd., Victoria, CANADA; Action Medical Technologies LLC, Conshohocken, PA; Advanced Biomimetic Sensors, Inc., Bethesda, MD; Aspen Stem Cell Institute LLC, Basalt, CO; A-Tech LLC dba BlueHalo Labs, Albuquerque, NM; Biomeme, Inc., Philadelphia, PA; BiotechPharma, Corp., Severna Park, MD; Bodies Done Right, Mayfield Village, OH; Cellphire, Inc. dba Cellphire Therapeutics, Inc., Rockville, MD; Collaborative Effort, Inc. dba RAIN Incubator, Tacoma, WA; Cornell University, Ithaca, NY; DeltaStrac LLC, New Windsor, MD; Eagle Global Scientific LLC, San Antonio, TX; Elephant Ventures LLC, New York, NY; Gateway Biotechnology, Inc., St. Louis, MO; HealthTech Connex, Surrey, CAN; Hememics Biotechnologies, Inc., Gaithersburg, MD; Human Systems Integration, Inc., East Walpole, MA; IDION, Inc., Darien, CT; Independent Platform LLC, Salem, OR; International AIDS Vaccine Initiative, New York, NY; Laulima Government Solutions, Orlando, FL; Link to Learn, Denver, CO; Mainstream Engineering Corp., Rockledge, FL; MDB, Inc., Washington, DC; MedCu Technologies Ltd., Herzliya, ISR; Nanobionic Technologies Limited, Nicosia, CYP; Neunos ZRt, Szeged, HUN; Neuro11 Technologies, Inc., Cambridge, MA; NeuroStat Analytical Solutions, Great Falls, VA; Neursantys, Inc., Chicago, IL; OARK ApS, Hammel, DNK; Omnica Corp., Irvine, CA; Oregon Biomedical Engineering Institute, Inc., Wilsonville, OR; Palantir USG, Inc., Palo Alto, CA; PathoGene, Inc., Monrovia, CA; Pixel and Timber LLC, Cincinnati, OH; Polaris Sensor Technologies, Inc., Huntsville, AL; Powerbuilding Holdings Corp., Staten Island, NY; Proxima Clinical Research, Houston, TX; Puerto Rico Science, Technology and Research Trust, San Juan, PRI; Qidni Labs, Inc., Buffalo, NY; Resonantia Diagnostics, New York, NY; Resusitech, Inc., Menlo Park, CA; Rx Bandz, Austin, TX; Senseye, Inc., Austin, TX; Shock Therapeutics Biotechnologies, Inc., Baltimore, MD; Siemens Medical Solutions USA, Inc., Princeton, NJ; Singularity Scitech LLC, Bronxville, NY; SmartHealth Catalyzer, Inc., Riverwoods, IL; Social Science Innovations Corp., New York, NY; Sonogen Medical, Inc., Chevy Chase, MD; Sonosa Medical, Inc., Baltimore, MD; Spectral MD, Inc., Dallas, TX; TensionSquare LLC, Port Charlotte, FL; Terasaki Institute for Biomedical Innovation, Los Angeles, CA; The Mullings Group, Delray Beach, FL; TMG360 Media, Delray Beach, FL; Triple Ring Technologies, Newark, CA; TroutHouseTech LLC, Arlington, VA; University of Alaska Fairbanks, Fairbanks, AK; University of Notre Dame, Notre Dame, IN; UTL, Inc., Carlsbad, CA; Vadum, Inc., Raleigh, NC; Virion Therapeutics LLC, Newark, DE; have been added as parties to this venture.

Also, Abfero Pharmaceuticals, Inc., Boston, MA; Aerpio Pharmaceuticals, Cincinnati, OH; AirSupport LLC, Baltimore, MD; Alertgy, Inc., Melbourne, FL; Aptive Resources LLC, Alexandria, VA; Arteriocyte, Inc. dba Compass Biomedical, Hopkinton, MA; Ashvattha Therapeutics, Inc., Redwood City, CA; Asymmetric Technologies LLC, Columbus, OH; Bettermeant, Inc., Berkeley, CA; Boa Biomedical, Inc., Cambridge, MA; Board of Trustees of

the Leland Stanford Junior University, Palo Alto, CA; Carnegie Mellon University, Pittsburg, PA; Celerens LLC, Clarksville, MD; Data Intelligence Technologies, Inc., Arlington, VA; DataRobot, Inc., Boston, MA; Dawson Technical, Inc., Irvine, CA; Diagnoss, Inc., Pomona, CA; Diomics Corp., Murrieta, CA; DocBox, Inc., Waltham, MA; Embody LLC, Norfolk, VA; Evidence Based Psychology LLC dba Susan David, Newton, MA; FirstString Research, Inc., Mt. Pleasant, SC; Five Vital Signs, Houston, TX; FloTBI, Inc., Cleveland, OH; Friedman Research Corp., Austin, TX; Full Spectrum Omega, Inc., Los Angeles, CA; Fusion Consulting, Inc., Farmers Branch, TX; General Biologics, Inc., Cambridge, MA; Global Institute of Stem Cell Therapy and Research, Inc., San Diego, CA; H&H Medical Corp., Williamsburg, VA; Healing Our Heroes Foundation dba The Mission After, Del Mar, CA; Hybrid Plastics, Inc., Hattiesburg, MS; Iacta Pharmaceuticals, Inc., Irvine, CA; Intelligent Automation, Inc., Rockville, MD; IRegained, Inc., Sudbury, CAN; KMASS Solutions, El Paso, TX; Kopis Mobile LLC, Flowood, MS; L–3 Applied Technologies, Inc., San Diego, CA; Levi Diagnostics, Inc., Fall River, MA; LexisNexis Risk Solutions, Inc., Washington, DC; Life365 Inc., Scottsdale, AZ; luxML LLC, San Antonio, TX; MadApparel Ind. dba Athos, Redwood City, CA; ManTech Advanced Systems International, Inc., Herndon, VA; Medical Center of the Americas Foundation, El Paso, TX; Medical Informatics Corp., Houston, TX; MEDX SpA, Región metropolitana, Santiago de Chile, CHL; Moleculin Biotech, Inc., Houston, TX; Movement Rx Physical Therapy, P.C., San Diego, CA; NanoOxygenic LLC, Dallas, TX; NeurAegis, Inc., Southborough, MA; Neuronasal, Inc., Wexford, PA; Nexsys Electronics Inc. dba Medweb, San Francisco, CA; Nostromo LLC, Kennebunk, ME; Novel Technologies Holdings Limited, Manchester, NH; Noveome Biotherapeutics, Inc., Pittsburg, PA; Obatala Sciences, Inc., New Orleans, LA; Odin Technologies, Charlotte, NC; OLGS, Inc., Imperial, PA; Oregon Health & Science University, Portland, OR; Osteal Therapeutics, Inc., San Clemente, CA; Overseas Strategic Consulting, Ltd, Philadelphia, PA; Oxygenium, Inc., Great Neck, NY; Panakeia LLC, Newport News, VA; PercuSense, Inc., Valencia, CA; Platelet BioGenesis, Inc., Cambridge, MA; Presidio Government Solutions LLC, Reston, VA; Programs Management Analytics & Technologies, Inc., Norfolk, VA; Q30 Sports Science LLC, Westport, CT; QuesGen Systems, Burlingame, CA; Renaissance Biotech LLC, Malibu, CA; Resolys Bio, Inc., Delanson, NY; ServiceNow, Inc., Vienna, VA; SpherIngenics, Inc., Richmond, VA; StataDX, Inc., Cambridge, MA; Synthesis Technologies, Inc., Pasadena, CA; Tanner Research, Inc., Duarte, CA; TeleCommunication Systems, Inc., Annapolis, MD; Through The Cords LLC, Salt Lake City, UT; Traumatic Direct Transfusion Devices LLC, Raleigh, NC; Tunnell Consulting, Inc., Bethesda, MD; University of Connecticut, Storrs, CT; University of Kansas Medical Center Research Institute, Inc., Kansas City, KS; ViiNetwork, Inc ViiMed, Washington, DC; Wearable Artificial Organs, Inc., Beverly Hills, CA; WearOptimo, Woolloongabba, Queensland, AUS; Western Michigan University Homer Stryker M.D. School of Medicine, Kalamazoo, MI; XSurgical, Inc., Ipswich, MA; Zansors LLC, Arlington, VA; have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on April 14, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 2022 (87 FR 29382).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19656 Filed 9–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on August 14, 2022, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PRISM TECH PRIVATE LIMITED, Singapore, SINGAPORE has been added as a party to this venture.

No other changes have been made in either the membership or the planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership. On June 17, 2015, UHD Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on June 7, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 2022 (87 FR 47003).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19663 Filed 9–12–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on August 8, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (''AIM Photonics'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lowell Observatory, Flagstaff, AZ; and Physical Sciences Inc., Andover, MA, have been added as parties to this venture.

Also, Regents of the University of California, Irvine, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIM Photonics intends to file additional written notifications disclosing all changes in membership.

On June 16, 2016, AIM Photonics filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 2016 (81 FR 48450).

The last notification was filed with the Department on April 12, 2022. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2022 (87 FR 29181).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19659 Filed 9–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Grid Alliance, Inc.

Notice is hereby given that, on August 12, 2022, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Grid Alliance, Inc. (''OGA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chooch Intelligence Technologies Co., San Mateo, CA; DartPoints Operating Company, LLC, Greenville, SC; Guavus, Inc.—a Thales Company, San Jose, CA; Hypersive LLC, Wilmington, DE; Terranet Communications, LLC, Lake Forest, CA; and ZEDEDA, Inc., San Jose, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OGA intends to file additional written notifications disclosing all changes in membership.

On March 31, 2022, OGA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 12, 2022 (87 FR 29180).

The last notification was filed with the Department on May 20, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 08, 2022 (87 FR 34905).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19660 Filed 9–12–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0030]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office on Violence Against Women (OVW), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 14, 2022.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Financial Capability Form.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Sponsor: Office on Violence Against Women, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes non-governmental applicants to OVW grant programs that do not currently (or within the last 3 years) receive funding from OVW. In accordance with 2 CFR 200.205, the information requested is required for assessing the financial risk of an applicant's ability to administer federal funds. The form includes a mix of check box and narrative questions related to the organization's financial systems, policies and procedures.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be approximately 40 new (non-governmental) applicants to OVW grant programs that must submit this collection, and it will take each of the 40 respondents approximately 4 hours to complete the online assessment form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 160 hours, that is 40 applicants completing a form once as a new applicant with an estimated time of 4 hours each to complete the form.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: September 8, 2022.

Robert Houser,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2022–19759 Filed 9–12–22; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0019]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of a Currently Approved Collection. Requirement That Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Disability Rights Section (DRS), Civil Rights Division, Department of Justice (the Department), will submit the following information collection extension request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for 30 days until October 13, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated compliance time) or need additional information, please contact: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by mail at 4CON, 950 Pennsylvania Ave. NW, Washington, DC 20530; send an email to *DRS.PRA@usdoj.gov;* or call (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the Division's Information Line). Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*. Include the title of this proposed collection: ''Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description,'' in the subject line of all written comments. You may obtain copies of this notice in an alternative format by calling the Americans with Disabilities Act (ADA) Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Civil Rights Division, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of information collection:* Extension of Currently Approved Collection.

2. *The title of the form/collection:* Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Sponsor: The applicable component within the Department of Justice is the Civil Rights Division.

4. *Affected public who will be required to comply, as well as a brief abstract:*

Affected Public (Primary): Businesses and not-for-profit institutions that own, operate, or lease a movie theater that has one or more auditoriums showing digital movies with closed movie captioning and audio description, and that provide notice of movie showings and times. Under the relevant regulation, ''movie theater'' means a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.

Affected Public (Other): None.

Abstract: The Disability Rights Section (DRS), Civil Rights Division, Department of Justice is seeking to extend its information collection arising from a regulatory provision that requires covered movie theaters to disclose information to the public regarding the availability of closed movie captioning and audio description for movies shown in their auditoriums.

Title III of the Americans with Disabilities Act (ADA), at 42 U.S.C. 12182, prohibits public accommodations from discriminating against individuals with disabilities. The existing ADA title III regulation, at 28 CFR 36.303(a)–(g), requires covered entities to ensure effective communication with individuals with disabilities. The title III regulation clarifies that movie theaters that provide captioning or audio description for digital movies must ensure ''that all notices of movie showings and times at the box office and other ticketing locations, on websites and mobile apps, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description.'' 28 CFR 36.303(g). This requirement does not apply to any third-party providers of films, unless they are part of or subject to the control of the public accommodation. *Id.* Movie theaters' disclosure of this information will enable individuals with hearing and vision disabilities to readily find out where and when they can have access to movies with these features.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Department's initial PRA request for this collection relied on U.S. Census Bureau data from 2012 and estimated that there was a total of 1,876 firms owning one or more movie theaters in the United States that were potentially subject to this disclosure. *See* 81 FR 37643 (June 10, 2016). The most recent U.S. Census Bureau data, from 2019, estimated that there was a total of 1,892 firms owning one or more movie theaters. *See* U.S. Census Bureau, 2019 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, U.S., 6-digit NAICS (512131). As the vast majority of U.S. movie theaters now show digital movies, which typically allow for closed captioning and audio description, to the extent that each of these movie theater firms that shows digital movies provides notices of movie showings and times to the public about those films, they must provide information concerning the availability of closed movie captioning and audio description in their communications.

Estimated average time to respond: The Department acknowledges that the amount of time it will take a respondent to comply with this requirement may vary depending on the number of

movies that the respondent is showing at any given time. Based on information gathered during the initial rulemaking process, the Department estimates that respondents will take an average of up to 10 minutes each week to update existing notices of movie showings and times with closed captioning and audio description information. Therefore, the Department estimates that each firm owning one or more theaters offering digital movies with closed captioning or audio description will spend approximately ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) 8.7 hours each year to comply with this requirement.

The Department anticipates that firms owning one or more movie theaters will likely update their existing listings of movie showings and times to include information concerning the availability of closed movie captioning and audio description on a regular basis. The Department's research suggests that this information would only need to be updated whenever a new movie with these features is added to the schedule. This will vary as some movies stay on the schedule for longer periods of time than others, but the Department estimates that respondent firms will update their listings to include this information weekly. In the future, if all movies are distributed with these accessibility features, specific notice on a movie-by-movie basis may no longer be necessary and firms owning movie theaters may only need to advise the public that they provide closed captioning and audio description for all of their movies.

6. *An estimate of the total annual public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 16,460 hours. The Department estimates that respondents will take an average of 10 minutes each week to update their existing listings of movie showings and times with the required information about closed captions and audio description. If each respondent spends 10 minutes each week to update its notices of moving showings and times to include this information, the average movie theater firm will spend 8.7 hours annually ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) complying with this requirement. The Department expects that the annual public burden hours for disclosing this information will total (1,892 respondents × 8.7 hours/year) 16,460 hours.

If additional information is required, contact: Robert Houser, Assistant Director, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: September 7, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–19710 Filed 9–12–22; 8:45 am]

BILLING CODE 4410–13–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 22–11]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Economic Advisory Council was established as a discretionary advisory committee on October 5, 2018. Its charter was renewed for a second term on October 1, 2020. The MCC Economic Advisory Council serves MCC solely in an advisory capacity and provides advice and guidance to MCC economists, evaluators, leadership of the Department of Policy and Evaluation, and senior MCC leadership regarding relevant trends in development economics, applied economic and evaluation methods, poverty analytics, as well as modeling, measuring, and evaluating development interventions. In doing so, the MCC Economic Advisory Council helps sharpen MCC's analytical methods and capacity in support of the agency's economic development goals. It also serves as a sounding board and reference group for assessing and advising on strategic policy innovations and methodological directions in MCC.

DATES: Friday, September 30, 2022, from 10:00 a.m.–12:30 p.m. ET.

ADDRESSES: The meeting will be held in-person and virtually via WebEx.

FOR FURTHER INFORMATION CONTACT: Mesbah Motamed, 202.521.7874 *MCCEACouncil@mcc.gov* or visit *www.mcc.gov/about/org-unit/economic-advisory-council.*

SUPPLEMENTARY INFORMATION:

Agenda. During this meeting of the MCC Economic Advisory Council, members will receive an overview of MCC's work and the context and function of the MCC Economic Advisory Council within MCC's mission. The MCC Economic Advisory Council will also discuss issues related to MCC's core functions, including a focus on intergenerational transmission of poverty and perspectives on MCC's work as it approaches its 20th year of operations.

Public Participation: The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to participate, please submit your name and affiliation no later than Friday, September 23, 2022 to *MCCEACouncil@mcc.gov* to receive instructions for virtual participation and to be placed on an attendee list.

Authority: Federal Advisory Committee Act, 5 U.S.C. app.

Dated: September 7, 2022.

Thomas G. Hohenthaner,

Acting VP/General Counsel and Corporate Secretary.

[FR Doc. 2022–19692 Filed 9–12–22; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Strategy's Subcommittee on Technology, Innovation and Partnerships hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Thursday, September 15, 2022, from 10:00–11:00 a.m. EDT.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED The agenda is: Subcommittee Chair's Opening Remarks; Approval of August 3, 2022, minutes; Implications of CHIPS and Science Act for the Technology, Innovation, and Partnerships (TIP) directorate priorities, programming, and future budget allocations; and funding considerations for maximizing NSF opportunities under the CHIPS Act.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–19878 Filed 9–9–22; 4:15 pm]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for Review of a Generic Information Collection: Customer Experience Feedback

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a generic clearance to collect qualitative feedback on OPM Healthcare and Insurance programs' service delivery. Approval of this generic collection is necessary to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery.

DATES: Comments are encouraged and will be accepted until November 14, 2022.

ADDRESSES: *Federal Rulemaking Portal: http://www.regulations.gov.*

All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection request, with applicable supporting documentation, may be obtained by contacting OPM/Healthcare and Insurance, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: M. Fatima Moghis or email to *fatima.moghis@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. Comments are particularly invited on:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

3. Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

OPM Healthcare and Insurance contracts with health insurance carriers to provide benefits to Federal employees, annuitants, family members and other eligible groups. The functions are authorized by various statutes and regulations: chapter 89 of Title 5, United States Codes and sections 890 and 892 of Title 5, Code of Federal Regulations.

Improving our programs requires assessment of service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with OPM Healthcare and Insurance programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with products or service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between OPM Healthcare and Insurance and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. If this information is not collected, vital feedback from customers and stakeholders on OPM Healthcare and Insurance services will be unavailable.

OPM Healthcare and Insurance will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current programs and services and make improvements based on feedback. The solicitation of feedback will target areas such as: appropriateness and usefulness of programs, and efficiency of service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to customers and stakeholders. OPM Healthcare and Insurance will collect information electronically and/or use online collaboration tools as appropriate to reduce the burden.

The types of collections that this generic clearance covers include, but are not limited to:

- Small discussion groups;
- Focus Groups of customers, potential customers, delivery partners, or other stakeholders;
- Qualitative customer satisfaction surveys (*e.g.,* post-transaction surveys; opt-out web surveys);
- In-person observation testing (*e.g.,* website or software usability tests).

Without these types of feedback, OPM Healthcare and Insurance will not have timely information to adjust its services to meet customer needs.

Analysis

Agency: U.S. Office of Personnel Management.

Title: OPM Healthcare and Insurance Customer Experience Feedback.

OMB: 3206–NEW.

Frequency: On occasion.

Affected Public: Government employees and individuals.

Number of Respondents: 5,000,000.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 500,000,000 hours.

Office of Personnel Management

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–19787 Filed 9–12–22; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket No. RM2017–1/RM2022–2; Order No. 6269]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is invites comments in this proceeding related to its analysis of subsequent events that impact the findings of a Federal Trade Commission Report. This document informs the public of this proceeding, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 21, 2022.

ADDRESSES: For additional information, Order No. 6269 can be accessed electronically through the Commission's website at *https://www.prc.gov.* Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

As part of its enactment of the Postal Accountability and Enhancement Act (PAEA), Congress sought to determine whether the Postal Service's competitive products enjoyed any legal advantages over private companies providing similar products.[1] Uncodified section 703 of the PAEA directed the Federal Trade Commission (FTC) to prepare a report identifying federal and state laws that apply differently to the Postal Service's competitive products than to similar products offered by private competitors.[2] The FTC was required to include any recommendations concerning how to end any such legal differences that it deemed appropriate and, in the interim, to account for the net economic effect resulting from such differences. PAEA section 703(b). Additionally, section 703 directed the Commission, when revising regulations under 39 U.S.C. 3633, to consider the FTC's recommendations as well as subsequent events that affect the continuing validity of the FTC's net economic effect finding. *Id.* section 703(d).

II. Background

The FTC issued its report in December 2007, which considered both the implicit subsidies enjoyed by, and legal constraints imposed on, the Postal Service's Competitive products due to the Postal Service's unique legal status.[3] In Chapter IV of its report, the FTC completed its net economic effect analysis by specifically identifying those implicit subsides and legal constraints that could be quantified in order to calculate any impact on the Postal Service.[4] The FTC calculated the cost of the quantifiable legal constraints and the value of the implicit subsidies and concluded that the Postal Service's unique legal status placed it at a net competitive disadvantage in offering Competitive products relative to private competitors. *Id.* at 64.

On February 8, 2018, as part of the Commission's second 5-year review of the institutional cost contribution requirement for Competitive products, the Commission issued a Notice of Proposed Rulemaking, proposing revisions to its regulations pursuant to 39 U.S.C. 3633(a)(3) and (b) and completed an analysis pursuant to section 703(d) of the PAEA.[5]

The Commission found that there was only ''one law linked to a separately delineated element within the FTC's calculation that has been amended, thereby constituting an event subsequent to the FTC Report's issuance that affects the validity of the estimate of the net economic effect.'' *Id.* at 63. The identified law was associated with international air transportation rate regulation and had been amended after the original FTC Report's issuance.[6] The Commission removed the cost of the international air transportation rate regulation constraint from the total cost of the legal constraints and updated the FTC's calculation. *See* Order No. 4402 at 64. The Commission found that although the removal of the international air transportation rate regulation constraint altered the overall estimate of the net economic effect, that subsequent event did not undermine the FTC's overall finding of a net economic disadvantage and that the FTC's finding remained valid. *Id.* Additionally, the Commission performed a supplemental analysis by updating the high-end costs associated with both the implicit subsidies and legal constraints based on current competitive product revenue at the time Order No. 4402 was issued.

Subsequently, the United States Court of Appeals for the District of Columbia Circuit remanded Order No. 4963 to the Commission for further consideration of particular issues identified by the court consistent with the opinion issued in *United Parcel Serv., Inc.* v. *Postal Reg. Comm'n,* 955 F.3d 1038 (D.C. Cir. 2020). On November 18, 2021, the Commission issued Order No. 6043, which not only addressed the issues identified by the court, but also initiated the Commission's third 5-year review of the institutional cost contribution requirement for Competitive products.[7] Docket Nos. RM2017–1 and RM2022–2 remain pending before the Commission.

III. Events Subsequent to the FTC Report

After the issuance of Order No. 6043 and the expiration of the comment period established therein, the Postal Service Reform Act of 2022 (PSRA) was enacted on April 6, 2022.[8] Among other things, the PSRA requires Postal Service Health Benefits plans to participate in Medicare Part D, which would allow those plans to receive subsidies related to prescription drugs. *See* 5 U.S.C. 8903c(h). This new requirement is significant because, in its report, the FTC specifically identified and included the Postal Service's inability to access subsidies offered to private employers under the Medicare Part D program in its calculation of the total legal constraints. *See* FTC Report at 38–39, 56. As a result, the Commission finds that there has been one law linked to a separately delineated element within the FTC's calculation that has been amended, thereby constituting an event subsequent to the FTC Report's issuance that affects the validity of the estimate of the net economic effect.[9] The Commission removes the cost of the Medicare Part D constraint from the total cost of the legal constraints and updates the FTC's calculation. Additionally, the Commission performed a supplemental analysis by updating the low-end and high-end costs associated with both the implicit subsidies and legal constraints based on the current appropriates share and competitive product revenue.

[1] *See* Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, title VII, section 703, 120 Stat. 3198, 3244 (2006); *see also* S. Rep. No. 108–318 at 29 (2004).

[2] PAEA section 703(a). Section 703 was not codified and is reproduced in the notes of 39 U.S.C.A. 3633. *See also* Federal Trade Commission, Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors, December 2007 (FTC Report), available at *https://www.ftc.gov/sites/default/files/documents/reports/accounting-laws-apply-differently-united-statespostal-service-and-its-private-competitors-report/080116postal.*

[3] FTC Report at 55–77. In its review of the Postal Service's unique legal status, the FTC analyzed laws applicable to the Postal Service due to its status as a governmental entity as well as those disadvantages imposed on and advantages allowed by the PAEA. *Id.*

[4] *Id.* at 64 n.287. The FTC Report discussed additional implicit subsidies and legal constraints beyond those listed in its net economic effect analysis, but because the additional subsidies and constraints could either not be quantified or the effect on the Postal Service was unclear, the FTC did not include them as part of its final analysis. *See id.* at 1, 50, 54, 56, 64, 89.

[5] *See* Order No. 4402 at 54–68; *see also* Docket No. RM2017–1, Revised Notice of Proposed Rulemaking, August 7, 2018, at 57–58 (Order No. 4742); Docket No. RM2017–1, Order Adopting Final Rules Relating to the Institutional Cost Contribution Requirement for Competitive Products, January 3, 2019, at 170–187 (Order No. 4963).

[6] *Id.* at 63–64. In the FTC Report, the FTC explained that the Department of Transportation's regulation of international mail air transport rates increased Postal Service costs because it was not permitted to independently negotiate the rates on the free market as private companies were. FTC Report at 44, 56. In 2008, Congress eliminated the Department of Transportation's authority to regulate the prices paid by the Postal Service for air transport of international mail. *See* Public Law 110–405, 122 Stat. 4287 (2008); *see also* FTC Report at 44–45.

[7] Supplemental Notice of Proposed Rulemaking and Order Initiating the Third Review of the Institutional Cost Contribution Requirement for Competitive Products, November 18, 2021, at 130 (Order No. 6043).

[8] *See* Postal Service Reform Act of 2022 (PSRA), Public Law 117–108, 136 Stat. 1127 (2022).

[9] The Commission finds no other changes to federal or state law affect the legal constraints estimate.

IV. Invitation for Comments

The Commission invites comment regarding its analysis of the ''subsequent event'' identified and discussed above. The Commission also invites comments on any other changes in law behind the implicit subsidies and legal constraints quantified by the FTC that have changed since March 25, 2022, which was the last opportunity to provide comment in Docket Nos. RM2017–1 and RM2022–2, and whether any of the identified changes affect the continuing validity of the FTC's estimate of the net economic effect of those laws. Comments related to the reconsideration of the FTC's original conclusions as to what implicit subsides and legal constraints should be included in or excluded from the estimate of net economic effect, whether those subsidies or constraints were quantifiable, or whether alternative estimates of the quantified implicit subsides and legal constraints are possible are all beyond the scope of this review.[10]

Comments are due September 21, 2022. Additional information concerning this filing may be accessed via the Commission's website at *http://www.prc.gov.*

Pursuant to 39 U.S.C. 505, Kenneth R. Moeller continues to be designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

V. Ordering Paragraphs

It is ordered:

1. The Commission seeks comment on the matters raised by this Notice.

2. Comments are due no later than September 21, 2022.

3. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller continues to be designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this Notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–19707 Filed 9–12–22; 8:45 am]

BILLING CODE 7710–FW–P

[10] *See* Order No. 4402 at 62–63; Order No. 4963 at 173–87.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–103 and CP2022–107]

New Postal Products

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:* September 15, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

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).:* MC2022–103 and CP2022–107; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 221 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 7, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 15, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–19772 Filed 9–12–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–811, OMB Control No. 3235–0767]

Proposed Collection; Comment Request; Extension: Rule 204–5

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 (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection

[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).

of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is: ''Rule 204–5 under the Investment Advisers Act of 1940.'' Rule 204–5 requires an investment adviser to deliver an electronic or paper version of the relationship summary to each retail investor before or at the time the adviser enters into an investment advisory contract with the retail investor. The purpose of the relationship summary is to assist retail investors in making an informed choice when choosing an investment firm and professional, and type of account. Retail investors can use the information required in the relationship summary to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs.

We estimate the total collection of information burden for rule 204–5 to be 1,137,413 annual aggregate hours per year, or 124 hours per respondent, for a total annual aggregate monetized cost of $77,344,061, or $8,402 per adviser.

The likely respondents to this information collection are approximately 9,205 investment advisers registered with the Commission that are required to deliver a relationship summary to retail investors pursuant to rule 204–5. We also note that these figures include the 325 registered broker-dealers that are dually registered as investment advisers.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number. Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall 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 by November 14, 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: September 7, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19671 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95687; File No. SR–NYSEARCA–2022–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.62P–O(a)(4)

September 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 29, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.62P–O(a)(4) to modify the values used to determine Trading Collars. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.62P–O(a)(4) to modify the values used to determine Trading Collars as set forth below.

The Exchange has in place various price check features that are designed to help maintain a fair and orderly market, including Trade Collar Protection.[4] Trading Collars mitigate the risks associated with orders sweeping through multiple price points (including during extreme market volatility) and resulting in executions at prices that are potentially erroneous. Specifically, a Market Order or Limit Order to buy (sell) will not trade or route to an Away Market at a price above (below) the Trading Collar assigned to that order.[5] As such, Trading Collars function as a ceiling (for buy orders) or floor (for sell orders) of the price at which such order could be traded, displayed, or routed.

Trading Collars are determined based on the Reference Price, which for an order to buy (sell) is the NBO (NBB).[6] Under the current rule, the Trading Collar for an order to buy (sell) is a specified amount above (below) the Reference Price, as follows: (1) for orders with a Reference Price of $1.00 or lower, $0.25; or (2) for orders with a Reference Price above $1.00, the lower of $2.50 or 25%.[7]

The current Trading Collar functionality (and the method of calculation) was recently implemented in connection with the Exchange's migration to the Pillar trading platform.[8] Consistent with the pre-Pillar functionality (under Rule 6.60–O(a)),

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 6.62P–O(a)(4)(A). Trading Collars assigned to an order are calculated once per trading day and would be updated only if the series is halted. *See id.*

[5] Rule 6.62P–O(a)(1) provides that a Market Order is ''[a]n unpriced order message to buy or sell a stated number of option contracts at the best price obtainable, subject to the Trading Collar assigned to the order. A Market Order may be designated Day or GTC.'' Rule 6.62P–O(a)(2) provides that a Limit Order is ''[a]n order message to buy or sell a stated number of option contracts at a specified price or better, subject to Limit Order Price Protection and the Trading Collar assigned to the order.''

[6] *See* Rule 6.62P–O(a)(4)(B).

[7] *See* Rule 6.62P–O(a)(4)(C).

[8] The Exchange announced the migration of the fifth and final tranche of symbols to the Pillar trading platform, via Trader Update, *available here: https://www.nyse.com/trader-update/history#110000440092.*

the Trading Collar thresholds were designed to be within the current parameters for determining whether a trade is an Obvious Error or Catastrophic Error to protect per Rule 6.87–O (the ''Obvious Error Rule'').[9] While the Exchange believes that these recent changes have been generally successful in protecting market participants against bad executions, the Exchange has determined that additional modifications would enhance the Trading Collar functionality. The Exchange therefore proposes to modify the Trading Collar thresholds to better align with the thresholds in the Obvious Error Rule. As such, the proposed change is designed to (further) prevent the trading of aggressively-priced interest that, if executed, would qualify to be handled under the procedures set forth in the Obvious Error Rule.

Specifically, the Exchange proposes to amend Rule 6.62P–O(a)(4)(C) to modify the values used to calculate the Trading Collars as follows:

* * * * *

Reference price	Trading collar
$0.00 to $1.00	$0.20.
$1.01 to $2.00	Lesser of $0.20 or 25% of the Reference Price.
$2.01 to $3.00	Lesser of $0.30 or 25% of the Reference Price.
$3.01 to $5.00	Lesser of $0.30 or 25% of the Reference Price.
$5.01 to $7.50	Lesser of $0.40 or 25% of the Reference Price.
$7.51 to $10.00	Lesser of $0.40 or 25% of the Reference Price.
$10.01 to $20.00	Lesser of $0.70 or 25% of the Reference Price.
$20.01 to $50.00	Lesser of $0.90 or 25% of the Reference Price.
$50.01 to $100.00	Lesser of $1.40 or 25% of the Reference Price.
$100.01 and above	Lesser of $1.90 or 25% of the Reference Price.

Consistent with current Rule 6.62P–O(a)(4)(C)(i), if the calculation of a Trading Collar would not be in the Minimum Price Variation or MPV for the series, such calculation would be rounded down to the nearest price within the applicable MPV.

In addition, the Exchange proposes that the amounts in the proposed table above would apply, ''[u]nless announced otherwise by Trader Update,'' which discretion is consistent with the implementation of Trading Collars on other option exchanges.[10]

The Exchange believes that the proposed modifications would enhance the efficacy of the price protection afforded by Trading Collars and the proposed values for determining such collars would better align with the current parameters for determining whether a trade is an Obvious Error or Catastrophic Error.

Implementation

The Exchange will announce the implementation of this proposal via Trader Update to be published no later than 60 days following the effectiveness of this this rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Overall, the Exchange believes the proposed change is consistent with the protection of investors and the investing public and would promote a fair and orderly market because it would enhance the (recently revised) operation of the Trading Collar functionality and would continue to protect investors from receiving bad executions away from prevailing market prices. Further, the Exchange believes that the proposed modification would promote just and equitable principles of trade as the proposed values for determining Trading Collars would better align with the current parameters for determining whether a trade is an Obvious Error or Catastrophic Error.[13]

In addition, the Exchange believes that its proposal to retain discretion to modify the values used to determine the Trading Collar would promote just and equitable principles of trade because it would allow the Exchange to respond to certain market conditions as necessary, which discretion is consistent with the implementation of Trading Collars on other option exchanges.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes the proposal would enhance the operation of the Trading Collars that provide market participants with protection from anomalous executions. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative

[9] *See* Rules 6.87–O(c)(1) (thresholds for Obvious Errors) and 6.87–O(d)(1) (thresholds for Catastrophic Errors).

[10] *See, e.g.,* NYSE American Rule 967NY(a)(2) (providing that the values set forth in paragraphs (A)(i)–(v) of Rule 967NY(a)(2) apply ''unless announced otherwise via Trader Update. . .''). The Exchange notes that, when migrating to Pillar, it inadvertently failed to include this language affording the Exchange discretion to modify the Trading Collars. *See, e.g.,* Rule 6.60–O(a)(2) (providing that the values set forth in paragraphs (A)(i)–(v) of Rule 6.60–O(a)(2) apply ''unless announced otherwise via Trader Update. . .'').

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See, e.g.,* Rules 6.87–O(c)(1) (thresholds for Obvious Errors) and 6.87–O(d)(1) (thresholds for Catastrophic Errors).

[14] *See, e.g.,* NYSE American Rule 967NY(a)(2).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b-4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to provide, without delay, further protections against potentially erroneous executions. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2022–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2022–57 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19680 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95691; File No. SR–NYSE–2022–32]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Amend NYSE Rule 7.35B Relating to the Closing Auction and Make Certain Conforming and Non-Substantive Changes to NYSE Rules 7.31, 7.35, 7.35B and 104

September 7, 2022.

I. Introduction

On July 13, 2022, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction, and make certain conforming and non-substantive changes to NYSE Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B, and NYSE Rule 104 (Dealings and Responsibilities of DMMs). The proposed rule change was published for comment in the **Federal Register** on July 28, 2022.[3] The Commission has received no comment letters on the proposed rule change. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend NYSE Rule 7.35B to add price parameters within which Designated Market Makers (''DMMs'') must select a Closing Auction Price when facilitation the Closing Auctions in their assigned securities. As described below, the Closing Auction Price determined by the DMM must be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price. Further, the Exchange proposes to modify how the DMM would participate in the Closing Auction by canceling any resting DMM Orders at the end of Core Trading Hours. The Exchange also proposes to make conforming changes to other affected rules.

The Exchange states that the proposed changes would make the Closing Auction more transparent and deterministic while retaining the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95354 (July 22, 2022), 87 FR 45382 (July 28, 2022) (''Notice'').

DMMs' unique obligation to facilitate the Closing Auction.

Overview of Current Closing Auction Process [4]

Pursuant to NYSE Rule 104(a)(3), DMMs have the responsibility to facilitate the close of trading for each of the securities in which the DMM is registered, which may include supplying liquidity as needed.[5] NYSE Rule 104(a)(3) further provides that DMMs and DMM unit algorithms will have access to aggregate order information in order to comply with their requirement to facilitate the close of trading for each of the securities in which the DMM is registered. Accordingly, aggregate order information about all orders eligible to participate in the Closing Auction, including the full quantity of Reserve Orders [6] and Market-on-Close and Limit-on-Close Order quantities, is available to DMMs at each price point. This information is available at the point of sale to DMMs, and is also made available to DMM unit algorithms in connection with the electronic message sent to a DMM unit algorithm to close an assigned security electronically, which is sent shortly after the end of Core Trading Hours.

NYSE Rule 7.35B specifies the process for DMM-facilitated Closing Auctions. Pursuant to NYSE Rule 7.35B(a), it is the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible, while at the same time not unduly hasty, particularly when at a price disparity from the Exchange Last Sale Price.[7] As provided for in NYSE Rule 7.35B(a)(2), a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner, and entry of DMM Interest after the end of Core Trading Hours is not subject to Limit Order Price Protection. Pursuant to NYSE Rule 7.35B(c), the DMM may effectuate a Closing Auction manually or electronically. NYSE Rule 7.35B(g) provides that the DMM is responsible for determining the Auction Price for a Closing Auction and that if there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied.[8]

The following interest is eligible to participate in a Closing Auction: unexecuted buy and sell orders resting on the Exchange Book at the end of Core Trading Hours (including DMM Orders); [9] Auction-Only Orders; [10] and DMM Auction Liquidity entered by the DMM in connection with facilitating the Closing Auction.[11]

Beginning 10 minutes before the scheduled end of Core Trading Hours, the Exchange begins disseminating through its proprietary data feed Closing Auction Imbalance Information that is calculated based on the interest eligible to participate in the Closing Auction.[12] The Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.[13] The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bounded by the Exchange Best Bid and Offer.[14] Beginning five minutes before the end of Core Trading Hours, Closing D Orders are included in the Closing Auction Imbalance Information at their undisplayed discretionary price.[15] The Closing Auction Imbalance Information is updated at least every second (unless there is no change to the information) and is disseminated until the Closing Auction begins.[16] In addition, if at the Closing Auction Imbalance Freeze Time [17] the Closing Imbalance [18] is 500 round lots or more, the Exchange will

[4] The following NYSE rules describe the Closing Auction process on the Exchange: NYSE Rule 7.31 (identifying the order types eligible to participate in an Auction); NYSE Rule 7.35 (general rules and definitions applicable to Auctions); NYSE Rule 7.35B (describing the process for DMM-facilitated Closing Auctions); NYSE Rule 7.35C (describing the process for Exchange-facilitated Auctions); and NYSE Rule 104 (establishing DMM obligations with respect to Closing Auctions and trading leading into the Closing Auction).

[5] The Exchange does not propose to change the DMMs' NYSE Rule 104 obligation to facilitate the Closing Auction, including the obligation to supply liquidity as needed.

[6] Reserve Orders, including the non-displayed reserve interest of such orders, are eligible to participate in the Closing Auction. *See* NYSE Rule 7.35B(h)(2)(B) (describing the allocation ranking of at-priced orders ranked Priority 3—Non-Displayed Orders, which refers to the reserve interest of Reserve Orders).

[7] The term ''Exchange Last Sale Price'' is defined in NYSE Rule 7.35(a)(12)(B) to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

[8] NYSE Rule 7.35C specifies the process for Exchange-facilitated Auctions if a DMM cannot facilitate an Auction in one or more securities in which the DMM is registered. DMM Interest does not participate in an Exchange-facilitated Closing Auction trade. *See* NYSE Rule 7.35C(a)(1) (''If the Exchange facilitates an Auction, DMM Interest will not be eligible to participate if such Auction results in a trade, and will be eligible to participate if such Auction results in a quote.'').

[9] NYSE Rule 7.35(a)(9) defines ''DMM Interest'' for purposes of Auctions to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes the following: (i) ''DMM Auction Liquidity,'' which is non-displayed buy and sell interest that is designated for an Auction only (see NYSE Rule 7.35(a)(9)(A)); (ii) ''DMM Orders,'' which are orders, as defined under NYSE Rule 7.31, entered by a DMM unit (*see* NYSE Rule 7.35(a)(9)(B)); and (iii) ''DMM After-Auction Orders,'' which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (*see* NYSE Rule 7.35(a)(9)(C)).

[10] Auction-Only Orders available for the Closing Auction are defined in NYSE Rule 7.31(c)(2)(A)–(D) as the Limit-on-Close Order (''LOC Order''), Market-on-Close Order (''MOC Order''), Closing D Order, and Closing Imbalance Offset Order (''Closing IO Order'').

[11] In 2021, NYSE Rule 7.35B was amended to provide that Floor Broker Interest is no longer eligible to participate in the Closing Auction. *See* Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40886 (July 29, 2021) (SR–NYSE–2020–95) (''Floor Broker Interest Approval Order''). The term ''Floor Broker Interest'' is defined in NYSE Rule 7.35(a)(10) to mean orders represented orally by a Floor broker at the point of sale. The Exchange states that, in light of the Floor Broker Interest Approval Order, it proposes conforming changes to Rules 7.35B(c)(1)(B), NYSE Rule 7.35B(j)(2), and NYSE Rule 7.35B(j)(2)(A)(iii). NYSE Rule 7.35B(c)(1)(B) provides that a DMM may not effect a Closing Auction electronically if, among other things, Floor Broker Interest for the Closing Auction that has been electronically entered or requested to be canceled has not yet been accepted by the DMM. NYSE Rule 7.35B(j)(2) provides that, to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the end of Core Trading Hours, the Exchange may temporarily suspend the requirement to enter all order instructions by the end of Core Trading Hours. The Exchange states that, because it has eliminated Floor Broker Interest at the close, it proposes to delete NYSE Rule 7.35B(c)(1)(B) in its entirety. The remaining subsections of NYSE Rule 7.35B(c)(1) would be renumbered accordingly, and the Exchange proposes conforming changes to NYSE Rule 7.35B(j)(1)(A) and (B) to update the cross references from NYSE Rule 7.35B(c)(1)(G) to NYSE Rule 7.35B(c)(1)(F). The Exchange also proposes, for the same reasons, to delete the phrase ''or represented to a DMM orally'' in NYSE Rule 7.35B(j)(2) and the phrase ''and Floor Broker Interest'' in NYSE Rule 7.35B(j)(2)(A)(iii).

[12] *See* NYSE Rule 7.35B(e)(1)(A). DMM Orders, as defined in NYSE Rule 7.35(d)(9)(B), that have been entered by the DMM in advance of a Closing Auction are currently included in the Closing Auction Imbalance Information.

[13] *See* NYSE Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

[14] *See* NYSE Rule 7.35B(e)(3).

[15] *See* NYSE Rule 7.35(b)(1)(C)(ii).

[16] *See* NYSE Rule 7.35(c)(1) and (2).

[17] *See* NYSE Rule 7.35(a)(8) (defining the ''Closing Auction Imbalance Freeze Time'' to be 10 minutes before the scheduled end of Core Trading Hours).

[18] As defined in NYSE Rule 7.35(a)(4)(A)(ii), a ''Closing Imbalance'' means the Imbalance of MOC and LOC Orders to buy and MOC and LOC Orders to sell. That Rule further defines a ''Regulatory Closing Imbalance'' as a Closing Imbalance disseminated at or after the Closing Auction Imbalance Freeze Time.

disseminate a Regulatory Closing Imbalance to both the securities information processor and proprietary data feeds.[19]

Proposed Changes to the Closing Auction Price

The Exchange proposes to amend NYSE Rule 7.35B(g) to add explicit price parameters to the Closing Auction Price.[20] The Exchange proposes that the Closing Auction Price determined by the DMM must be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price.[21] The Exchange also proposes related clarifying and conforming changes.[22]

The Exchange states that the proposed Closing Auction Price parameter would be consistent with how the Closing Auction Price has been determined for the vast majority of Closing Auctions. For example, the Exchange states, during the period of January 1, 2021, to June 17, 2022, 95.6% of all Closing Auctions were priced at or between the last-published Imbalance Reference Price and the Continuous Book Clearing Price. Similarly, the Exchange states that, during the same period, 94.6% of closing auction volume priced within these parameters. Moreover, according to the Exchange, of the 4.4% of Closing Auctions that did not price within those parameters, 73.6% closed at prices that were only one or two cents away from those boundaries.[23] The Exchange states that more recent Closing Auction data also shows that auctions executing within the proposed range resulted in more representative prices for market participants.[24] The Exchange states that that this proposed change would eliminate any potential for a Closing Auction Price to be lower (higher) than the last-published Imbalance Reference Price in the case of a Buy (Sell) Imbalance. The Exchange believes this this proposed change would promote transparency and determinism with respect to the Closing Auction because the Closing Auction Price would be required to be within a pre-determined range of prices that have been disseminated via the Closing Auction Imbalance Information and that cannot be changed after the end of Core Trading Hours.[25]

Proposed Changes to How DMMs Would Participate in the Closing Auction

The Exchange proposes to change how DMMs would be able to enter buy and sell interest to participate in the Closing Auction by modifying how a DMM could enter or cancel interest after the end of Core Trading Hours.[26] Specifically, the Exchange proposes to amend NYSE Rule 7.35B(a)(2) to provide that, after the end of Core Trading Hours, a DMM may enter DMM Auction Liquidity only in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner.[27] As proposed, a DMM could enter DMM Auction Liquidity after the end of Core Trading Hours only to close a security within the proposed new price parameters, described above.[28] The Exchanges states that, because only DMM Auction Liquidity could be entered after the end of Core Trading Hours, such interest could be either entered electronically in response to the electronic message sent to a DMM unit algorithm to close an assigned security or entered manually.

The Exchange proposes that DMM Orders (*i.e.,* DMM buy and sell orders resting on the Exchange Book) would not be eligible to participate in the Closing Auction.[29] Because DMM Orders would not participate in the Closing Auction, the Exchange further proposes that this interest would not be included in the calculation of the Continuous Book Clearing Price.[30] The Exchange states that, with this proposed change, the Continuous Book Clearing Price would be based on non-DMM interest eligible to participate in the Closing Auction. Finally, the Exchange states that because, as proposed, resting DMM Orders would not participate in the Closing Auction, the Exchange also proposes to cancel DMM Orders at the end of Core Trading Hours.[31]

[19] *See* NYSE Rule 7.35B(d)(1).

[20] The DMM is responsible for determining a Closing Auction Price that is able to satisfy all better-priced orders on the Side of the Imbalance. This requirement would not change.

[21] *See* Proposed NYSE Rule 7.35B(g).

[22] Specifically, the Exchange proposes to amend NYSE Rule 7.35(a)(4) (which provides that if there is no Imbalance of all orders eligible to trade in the Auction, the Continuous Book Clearing Price will be the Imbalance Reference Price) to clarify that if the Imbalance Reference Price is in an increment smaller than the minimum price variation (''MPV'') for the security (*e.g.,* the Exchange Last Sale Price reflects a midpoint execution in a penny-spread security), it will be rounded to the MPV for the security. The Exchange would also make a conforming change to NYSE Rule 7.35B(c)(1)(G) (to be renumbered F), which provides that a DMM may not effect a Closing Auction electronically if the Closing Auction Price will be more than 10% away from Exchange Last Sale Price. The Exchange would replace Exchange Last Sale Price with last-published Imbalance Reference Price.

[23] More specifically, the Exchanges states that 59.6% were one cent away and 14.0% were two cents away.

[24] The Exchange states that, during the last quarter of 2021 and year to date, 95.0% of Closing Auctions occurred within the proposed pricing parameters and that these numbers did not materially change for volatile trading days. For example, the Exchange states that in the December 2021 quarterly rebalance, 96.5% of Closing Auctions occurred within this range, and in the March 2022 quarterly rebalance, 95.6% of Closing Auctions occurred within the range. According to the Exchange, Closing Auctions pricing outside the range were mostly within 2 cents of the range; only 1% of all auctions occurred more than 2 cents outside the range. The Exchange states that, for instance, in the December 2021 quarterly rebalance, just 0.6% of all Closing Auctions occurred more than 2 cents outside the range, and in the more volatile March 2022 rebalance, just 1.2% of Closing Auctions occurred more than 2 cents outside the range. The Exchange states that Closing Auctions executing within the proposed range during the same period (excluding rebalance days) were 11.3% closer to the consolidated two-minute VWAP price benchmark than Closing Auctions that priced outside of the proposed range, *i.e.,* Closing Auctions executing within the proposed range were more in line with the range of continuous trading leading into the close. The Exchange states that this was true for rebalance days as well: During the December 2021 rebalance, Closing Auctions executing within the proposed range were 14% closer to the VWAP benchmark, and during the March 2022 rebalance, Closing Auctions executing within the proposed range were 40% closer to the VWAP benchmark.

[25] The only circumstance when the Continuous Book Clearing Price could change after the end of Core Trading Hours would be if NYSE Rule 7.35B(j)(2)(A), described below, were invoked and the requirement to enter all order instructions by the end of Core Trading Hours were temporarily suspended for a security.

[26] Currently, NYSE Rule 7.35B(a)(2) provides that a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. The Exchange states that, consistent with this current Rule, the Exchange does not systematically block a DMM from entering or canceling DMM Interest after the end of Core Trading Hours. Instead, the Exchange states that the DMM's determination of whether to enter or cancel DMM Interest after the end of Core Trading Hours is subject to the DMM's obligation to maintain a fair and orderly market, as specified in NYSE Rule 104.

[27] *See* Proposed NYSE Rule 7.35B(a)(2).

[28] For example, the Exchange states that, if there is an Imbalance to buy, the Imbalance Reference Price is $10.00, and the Continuous Book Clearing Price is $10.10, the DMM could enter DMM Auction Liquidity to sell only at prices ranging from $10.00 to $10.10. The Exchange states it does not propose to systematically prescribe whether such interest must be offsetting to the last-published Imbalance because DMM same-side interest could result in more orders participating in the Closing Auction. For example, the Exchange states that DMM Auction Liquidity entered on the same side of the Imbalance could result in greater liquidity being supplied by the DMM to trade with at-priced orders, which are not included in the calculation of the Imbalance. The Exchange states that, in such a scenario, even though the DMM may be participating on the same-side of the imbalance, such interest would not move the Closing Price outside the Continuous Book Clearing Price.

[29] *See* Proposed NYSE Rule 7.35B(a)(2). The Exchange also proposes to amend NYSE Rule 7.35B(j)(2)(A)(iii) to provide that DMM Orders would be rejected if entered after the end of Core Trading Hours (*i.e.,* during the ''Solicitation Period'') to offset an extreme order imbalance at or near the close.

[30] *See* Proposed NYSE Rule 7.35B(a)(2).

[31] *See* Proposed NYSE Rule 7.35B(a)(2).The Exchange states that, as it understands, it is current practice for DMMs to cancel their DMM Orders at

Continued

The Exchange states that, in connection with the Closing Auction, with this proposed change to NYSE Rule 7.35B(a)(2), DMMs would still be required, consistent with their obligations under NYSE Rule 104, to contribute their own capital to supply liquidity as needed to assist in the maintenance of a fair and orderly market. DMMs would also continue to have an obligation with respect to determining a Closing Auction Price that satisfies all better-priced orders on the Side of the Imbalance.

Proposed Conforming and Non-Substantive Amendments

The Exchange proposes to amend NYSE Rule 104 to eliminate obsolete rule text and update rule references, and to make other conforming changes to NYSE Rules 7.31 and 104 as follows.

- The Exchange proposes to amend NYSE Rule 104(a)(2) to update the cross reference from NYSE Rule 123D to NYSE Rule 7.35A and to use the Pillar terms of ''Core Open Auctions and Trading Halt Auctions'' instead of referring to ''openings.'' The Exchange also proposes to delete, as obsolete, the reference to NYSE Rule 13 and Reserve Order interest procedures at the opening. Finally, the Exchange proposes to delete the reference to Supplementary Material .05 to NYSE Rule 104 with respect to odd-lot order information to the DMM unit algorithm, as the Exchange states this is also obsolete now that the Exchange trades on Pillar.
- The Exchange proposes to amend NYSE Rule 104(a)(3) to update the cross reference from NYSE Rule 123C to NYSE Rule 7.35B and to use the Pillar term of ''Closing Auctions'' instead of ''closes.'' The Exchange also proposes to delete, as obsolete, the reference to NYSE Rule 13 and Reserve Order interest procedures at the close.
- The Exchange proposes to amend NYSE Rule 104(b) by deleting subparagraphs (2) and (6) and replacing the text for NYSE Rule 104(b)(2) with the following: ''Unless otherwise specified in NYSE Rule 7.31, DMM unit algorithms may use the orders and modifiers set forth in NYSE Rule 7.31.'' [32]
- The Exchange proposes to amend NYSE Rule 7.31(a)(3) to reflect that Inside Limit Orders are not available to DMMs,[33] because all of the orders and modifiers set forth in NYSE Rule 104(b)(6) that are unavailable to DMMs are reflected in NYSE Rule 7.31 except for Inside Limit Orders, which limitation was added only to NYSE Rule 104(b)(6).[34]
- The Exchange proposes to amend NYSE Rule 104(b)(3) to delete references to ''Floor broker agency interest files or reserve interest,'' as the Exchange states that these references are now obsolete.[35]
- The Exchange proposes to amend NYSE Rule 104(b) by deleting subparagraph (4).[36] The Exchanges states that, with the transition to Pillar, the Exchange has replaced the ''Capital Commitment Schedule'' with Capital Commitment Orders, as described in NYSE Rule 7.31(d)(5), and has deleted NYSE Rule 1000. The Exchange states that, accordingly, this current rule is obsolete. The Exchange proposes a non-substantive amendment to renumber NYSE Rule 104(b)(5) as NYSE Rule 104(b)(4).
- The Exchange proposes to delete the text accompanying current Rules 104(c), (d), and (e) as obsolete now that the Exchange trades on Pillar.[37] With these proposed deletions, the Exchange proposes non-substantive amendments to renumber Rules 104(f), (g), (h), (i), and (j) as Rules 104(c), (d), (e), (f), and (g) and to update cross-references in proposed NYSE Rule 104(e)(iii) from subparagraph (h)(ii) and (iii) to (e)(ii) and (iii).
- The Exchange proposes to amend current NYSE Rule 104(h)(ii) (proposed NYSE Rule 104(e)(ii)) to delete reference to information that is no longer available to a DMM at the post.[38]

The Exchange proposes that the non-substantive amendments to NYSE Rule 104 would be operative immediately upon approval of this proposed rule change. The Exchange states, that, because of the technology changes associated with the proposed changes to NYSE Rule 7.35B, it proposes that, subject to approval of the proposed rule change, the Exchange will announce the implementation date of the remaining proposed rule changes by Trader Update.[39]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

the end of Core Trading Hours. The Exchange also proposes a related amendment to delete as moot the phrase ''or cancel'' in the first sentence of NYSE Rule 7.35B(a)(2).

[32] NYSE Rule 104(b)(2) currently provides that ''Exchange systems shall enforce the proper sequencing of incoming orders and algorithmically-generated messages and will prevent incoming DMM interest from trading with resting DMM interest. If the incoming DMM interest would trade with resting DMM interest only, the incoming DMM interest will be cancelled. If the incoming DMM interest would trade with interest other than DMM interest, the resting DMM interest will be cancelled.'' The Exchange states that, since the Exchange transitioned to Pillar, the Exchange no longer enforces self-trade prevention on behalf of DMMs. Instead, DMMs may use one of the Self-Trade Prevention Modifiers (''STP'') described in NYSE Rule 7.31(i)(2). In addition, NYSE Rule 104(b)(6) currently provides that ''DMM Units may not enter the following orders and modifiers: Market Orders, Inside Limit Orders, MOO Orders, CO Orders, MOC Orders, LOC Orders, or Last Sale Peg Orders.'' The Exchange states that because in the Pillar rules NYSE Rule 7.31 sets forth which orders and modifiers are not available to DMMs, NYSE Rule 104(b)(6) is therefore obsolete.

[33] The Exchange states that the proposed new text for NYSE Rule 104(b)(2) would provide transparency that NYSE Rule 7.31 would describe which orders and modifiers would be available to DMMs, including STP modifiers.

[34] *See* Securities Exchange Act Release No. 94030 (January 24, 2022), 87 FR 4695, 4696 (Jan. 28, 2022) (SR–NYSE–2022–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NYSE Rule 7.31 To Provide for Inside Limit Orders and Make Other Conforming Changes).

[35] The Exchange states that it no longer uses ''Floor broker agency interest files'' and no longer provides Floor brokers with reserve interest functionality that differs from the Reserve Orders available to all member organizations, as described in NYSE Rule 7.31.

[36] NYSE Rule 104(b)(4) currently provides that ''[t]he DMM unit's algorithm may place within Exchange systems trading interest to be known as a 'Capital Commitment Schedule'. (See NYSE Rule 1000 concerning the operation of the Capital Commitment Schedule).''

[37] NYSE Rule 104(c) currently provides: ''A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.'' The Exchange states that NYSE Rule 7.31 now describes how Reserve Orders function. NYSE Rule 104(d) currently provides: ''A DMM unit may provide algorithmically-generated price improvement to all or part of an incoming order that can be executed at or within the Exchange BBO through the use of Capital Commitment Schedule interest (see [NYSE] Rule 1000).'' The Exchange states that any orders eligible for execution in Exchange systems at the price of the DMM unit's interest will trade on parity with such interest, as will any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit's interest. The Exchange states that, as described above, with Pillar, the Exchange has deleted NYSE Rule 1000 and no longer offers the Capital Commitment Schedule to DMMs. NYSE Rule 104(e) currently provides: ''DMM units shall provide contra side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening and closing transactions but remain unpaired after the DMM has paired all other eligible round lot sized interest.'' The Exchange states that this requirement is obsolete.

[38] Specifically, the Exchange states that it no longer provides DMMs at the post with the following information: ''the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display shall exclude any order or portion thereof that a market participant has elected not to display to a DMM.'' Accordingly, the Exchange proposes to amend NYSE Rule 104(e)(ii) to delete this rule text.

[39] Subject to approval of this proposed rule change, the Exchange states that it anticipates that these changes will be implemented in the fourth quarter of 2022. *See* Notice, *supra* note 3, 87 FR at 45386.

securities exchange.[40] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[41] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and that the rules of a national securities exchange are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the DMM is responsible for determining the Auction Price for the Closing Auctions in its assigned securities, and if there is an Imbalance of any size, the DMM must select an Auction Price that is able to satisfy all better-priced orders on the Side of the Imbalance. The Exchange proposes to add that the Closing Auction Price determined by the DMM must also be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price. The Exchange has included statistics in its proposal showing that the proposed Closing Auction Price parameters are, for the vast majority of Closing Auctions, consistent with how the Closing Auction Price has been determined under the current rules.[42] The Exchange has also included statistics in its proposal showing that, as to more recent Closing Auction data, auctions executing within the proposed range resulted in more representative prices for market participants.[43]

The Exchange also proposes that DMM Orders would not participate in the Closing Auction or factor into the calculation of the Continuous Book Clearing Price and that, after the end of Core Trading Hours, a DMM would be able to enter DMM Auction Liquidity only in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner within the proposed pricing parameters.

The Commission finds that the proposed pricing parameters for determining the Closing Auction Price, as well as the proposed limitation on the entry of DMM interest (specifically, DMM Auction Liquidity) after the close of regular trading, are reasonably designed to (1) limit the price range within which a DMM can facilitate the Closing Auction in its assigned securities to a price range that reflects the natural forces of supply and demand for a security in the Closing Auction; and (2) enhance transparency and certainty for market participants with respect to the Closing Auction. The proposed price parameters and limitation on DMM Auction Liquidity are therefore reasonably designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Moreover, by providing that DMM Orders will neither participate in the Closing Auction nor figure into the calculation of the Continuous Book Clearing Price—one of the proposed pricing parameters for the Closing Auction—the Exchange's proposal would limit the extent to which a DMM could influence the price parameters for the Closing Auction Price, which is reasonably designed to prevent fraudulent and manipulative acts and practices. The Commission further finds that the other conforming and non-substantive changes proposed by the Exchange are consistent with the substantive changes discussed above and do not raise any regulatory issues.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NYSE–2022–32) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19682 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[40] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78f(b)(5).

[42] *See* Section II *supra.*

[43] The Exchange also included statistics in its proposal showing that during the last quarter of 2021 and year to date, 95.0% of Closing Auctions occurred within the proposed pricing parameters, and that these numbers did not materially change for volatile trading days.

[44] *Id.*

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95694; File No. SR–NYSEAMER–2022–39]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

September 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 31, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding credits for certain Qualified Contingent Cross (''QCC'') transactions and to make an administrative change. The Exchange proposes to implement the fee change effective September 1, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing to amend the Fee Schedule to (1) modify Floor Broker credits for QCC transactions,[4] and (2) make an administrative change to the table setting forth fees for Premium Products to reflect a ticker symbol change. The Exchange proposes to implement the rule change on September 1, 2022.

Floor Broker QCC Credits

The Exchange proposes to modify the credits available to Floor Brokers on QCC orders. Currently, Floor Brokers earn a credit for executed QCC orders of ($0.07) per contract for the first 300,000 contracts or ($0.10) per contract in excess of 300,000.[5] The Exchange currently limits the maximum Floor Broker credit to $525,000 per month per Floor Broker firm.[6] QCC executions in which a Customer or Professional Customer, or both, is on both sides of the QCC trade are not eligible for the Floor Broker credit, and the Floor Broker credit is paid only on volume within the applicable tier and is not retroactive to the first contract traded.[7]

The Exchange now proposes to increase the amount of the credits available to Floor Brokers for executed QCC orders. Specifically, the Exchange proposes that Floor Brokers may earn a credit of ($0.08) per contract for the first 300,000 contracts and a credit of ($0.11) per contract on all contracts above 300,000 in a month.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their QCC volume, the proposed change is intended to continue to incent additional QCC executions by Floor Brokers by increasing the credits available on such orders, and all Floor Brokers are eligible to qualify for the proposed credits.

Ticker Symbol Change

The Exchange proposes to make an administrative change to Section III.D. of the Fee Schedule to reflect a ticker symbol change. Section III.D., NYSE American Options Market Maker Monthly Premium Product Fee, sets forth the monthly fee assessed to NYSE American Options Market Makers that transact in certain Premium Products set forth in a table (the ''Premium Products Table'') in this section of the Fee Schedule. One such product, Meta Platforms, Inc., changed its trading symbol from FB to META effective June 9, 2022. Accordingly, the Exchange proposes to update the Premium Products Table to replace ''FB'' with ''META.'' The Exchange believes this proposed change would improve the clarity and accuracy of the Fee Schedule by ensuring that the Premium Products Table reflects the current ticker symbol for all Premium Products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[11] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[12]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

To respond to this competitive marketplace, the Exchange has established incentives to assist Floor Brokers in attracting more business to the Exchange—including credits on QCC transactions—as such participants serve an important function in facilitating the execution of orders on the Exchange (including via open outcry), thereby promoting price discovery on the public markets.

The Exchange believes that the proposed modification of the credits offered to Floor Brokers on QCC transactions is reasonable because it is designed to continue to incent Floor Brokers to increase the number of QCC transactions sent to the Exchange. To the extent that the proposed change attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In

[4] A QCC is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-options contracts, that is identified as being part of a qualified contingent trade (as such term is defined in Commentary .01 to Rule 900.3NY), coupled with a contra side order or orders totaling an equal number of contracts. *See* Rule 900.3NY(y).

[5] *See* Fee Schedule, Section I.F., QCC Fees & Credits, *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf. See id.,* Section I.F., Footnote 1.

[6] *See id.,* Section I.F. Footnote 1.

[7] *See id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[11] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[12] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 7.53% for the month of July 2021 and 7.26% for the month of July 2022.

addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC orders.[13] Thus, Floor Brokers have a choice of where they direct their order flow, including their QCC transactions. The proposed rule change is designed to continue to incent Floor Brokers to direct liquidity to the Exchange and, in particular, QCC orders, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for market participants, particularly to the extent Floor Brokers are incentivized to aggregate their trading activity at the Exchange.

The Exchange believes that the proposed administrative change with respect to the Premium Products Table is reasonable because it would update the table to reflect the current ticker symbols for all Premium Products, thereby ensuring that the Fee Schedule clearly and accurately sets forth the products subject to the fees in Section III.D.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed modification of QCC credits is based on the amount and type of business transacted on the Exchange, and Floor Brokers can attempt to trade QCC orders to earn the increased credits or not. In addition, the proposed credits are available to all Floor Brokers equally. The Exchange also believes that the proposed credits are an equitable allocation of fees and credits because they would encourage and support Floor Brokers' role in facilitating the execution of orders on the Exchange, and to the extent the proposed credits incent Floor Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

Moreover, the proposed credits are designed to incent Floor Brokers to encourage OTP Holders to aggregate their executions—particularly QCC transactions—at the Exchange as a primary execution venue. To the extent that the proposed changes attract more QCC volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Exchange also believes that the proposed change relating to the Premium Products Table is equitable because it would ensure that the table accurately reflects the ticker symbol for all Premium Products, to the benefit of all OTP Holders.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the credits offered to Floor Brokers on QCC orders because the proposed credits would be available to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed credits are also not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange (including via open outcry), which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute QCC orders. Rather, the proposal is designed to encourage Floor Brokers to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously) and increase QCC volume sent to the Exchange. To the extent that the proposed change attracts more QCC orders to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange also believes that the proposed change to modify the Premium Products Table is not unfairly discriminatory because it is designed to update the table to include the current ticker symbol for all Premium Products, to the benefit of all OTP Holders.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [14]

Intramarket Competition. The proposed increased credits are designed to attract additional order flow to the Exchange (particularly in Floor Brokers' QCC transactions), which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all

[13] *See, e.g.,* EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.A. (QCC and Solicitation Rebate) (offering rebates on QCC transactions of up to ($0.11) on 1,000,000 or more contract sides in a month).

[14] *See* Reg NMS Adopting Release, *supra* note 10, at 37499.

market participants on the Exchange, and increased QCC transactions would increase opportunities for execution of other trading interest. The proposed credits would be available to all similarly-situated Floor Brokers that execute QCC trades, and to the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders (including via open outcry) and price discovery for all market participants.

The Exchange does not believe that the proposed change relating to the Premium Products Table would impose any burden on intramarket competition, as it is merely intended to improve the clarity of the Fee Schedule by ensuring that the table reflects all Premium Products' current ticker symbols.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[16]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent Floor Brokers to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment. The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions, by encouraging additional orders (and, in particular, QCC orders) to be sent to the Exchange for execution.[17]

The Exchange does not believe that the proposed change to update the Premium Products Table would impact intermarket competition because the proposed modification of the table is intended only to ensure that it reflects the accurate ticker symbol for all Premium Products, thereby improving the clarity and accuracy of the Fee Schedule, reducing burdens on the marketplace, and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[18] of the Act and subparagraph (f)(2) of Rule 19b–4[19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2022–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–39, and should be submitted on or before October 4, 2022.

[15] *See* note 11, *supra.*

[16] *See* note 12, *supra.*

[17] *See* note 13, *supra.*

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19683 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95697; File No. SR–NYSECHX–2022–20]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Transfer the Services and Fees Related to Colocation

September 7, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 24, 2022, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) transfer the services and fees related to colocation from its Fee Schedule to the schedule of Wireless Connectivity Fees and Charges, and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) transfer the services and fees related to colocation from the Fee Schedule to the schedule of Wireless Connectivity Fees and Charges (''Connectivity Fee Schedule''), and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' There would be no changes to the existing colocation services and fees as a result of these administrative changes.

Background

The colocation services and related fees offered by the Exchange are currently listed in the Exchange's Fee Schedule. Each of the Exchange's Affiliate SROs[4] similarly includes the colocation services and related fees in its own separate price list or fee schedule.[5] The colocation portions of each of these price lists and fee schedules are substantively identical.

In December 2020, the Exchange and the Affiliate SROs created the Connectivity Fee Schedule to list their wireless connectivity services and related fees. Instead of including the wireless connectivity services and related fees in the seven price lists and fee schedules of the Exchange and the Affiliate SROs, the Connectivity Fee Schedule contains the wireless connectivity services and charges for the Exchange and the Affiliate SROs in one single fee schedule.

In an administrative change, the Exchange now proposes to remove its colocation services and related fees from its Fee Schedule and to move them into the Connectivity Fee Schedule, so that services and fees related to connectivity within, into and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. Each of the Affiliate SROs is contemporaneously making a similar filing.[6] To reflect the fact that the schedule would include services and fees for connectivity with the Mahwah Data Center that are not wireless, the Exchange also proposes to change its name to the ''Connectivity Fee Schedule.''

Proposed Amendments to the Fee Schedule

As shown in the attached Exhibit 5A [sic], the Exchange proposes to delete the entirety of the text in the Exchange's Fee Schedule under the heading ''Co-Location Fees.''

Proposed Amendments to the Connectivity Fee Schedule

As shown in the attached Exhibit 5B [sic], the Exchange proposes to amend the title to the ''Connectivity Fee Schedule.''

The Exchange proposes to insert the entirety of the text currently located in the Exchange's Fee Schedule under the heading ''Co-Location Fees'' into the Connectivity Fee Schedule under the heading ''A. Colocation Fees.'' No changes would be made to any of this text, except for the following clarifying and non-substantive changes:

1. The subheading ''Definitions'' would be amended to ''Colocation Definitions.''

2. The subheading ''General Notes'' would be amended to ''Colocation Notes'' and current General Note 1 would be deleted, as it would no longer be necessary since it would be duplicative of the existing General Note in the Connectivity Fee Schedule. The remainder of the current General Notes 2–8 would be renumbered as Colocation Notes 1–7 and the cross references in current General Note 8 would be updated accordingly.

3. In a conforming change, in the table of services and fees, the note to the Partial Cabinet Solution bundles would be amended to change the cross

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The ''Affiliate SROs'' are the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc.

[5] *See* ''Co-Location Fees'' in ''New York Stock Exchange Price List 2022'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* ''NYSE American Equities Price List'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf;* ''NYSE American Options Fee Schedule'' at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf;* ''NYSE Arca Equities Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* ''NYSE Arca Options Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* ''Fee Schedule of NYSE Chicago, Inc.'' at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf;* and ''NYSE National, Inc. Schedule of Fees and Rebates'' at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[6] Each of the Affiliate SROs has submitted substantially similar rule changes to move their colocation price lists to the Connectivity Fee Schedule. *See* SR–NYSE–2022–40, SR–NYSEAMER–2022–37, SR–NYSEARCA–2022–56, and SR–NYSENAT–2022–16.

reference from ''Note 2 under 'General Notes' '' to ''Note 1 under 'Colocation Notes.' ''

4. In a conforming change, in the table of services and fees, the note to the Data Center Fiber Cross Connect would be amended to change the cross reference from ''General Note 3'' to ''Colocation Note 2.''

5. With the addition of the Colocation Fees at subheading ''A.'' of the Connectivity Fee Schedule, each of the subsequent headings would be renumbered accordingly. Specifically, ''A. Wireless Connectivity'' would become ''B. Wireless Connectivity,'' and ''B. Wireless Connectivity to Market Data'' would become ''C. Wireless Connectivity to Market Data.''

Application and Impact of the Proposed Changes

As noted above, the proposed change is administrative in nature. Any market participant that requests to receive colocation services directly from the Exchange (a ''User'') [7] is currently subject to the described services and fees, none of which are new or novel. Current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title accordingly.

As a result of the proposed change, the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in the same Connectivity Fee Schedule, and market participants would be able to see all such connectivity services and fees in one place.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant, as colocation is available to any market participant that wishes to be a User.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and with Section 6(b)(1) [9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed change furthers the objectives of Section 6(b)(5) of the Act [10] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is a non-substantive change and does not impact the services available to Users or the fees charged for such services. Currently, colocation services and the related fees for the Exchange and its Affiliate SROs are substantively identical yet are located in seven separate price lists and fee schedules and not in the Connectivity Fee Schedule. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because moving the description of the existing colocation services and fees to the Connectivity Fee Schedule and changing the Connectivity Fee Schedule's title would mean that the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in one Connectivity Fee Schedule. All market participants would be able to enjoy the convenience of seeing such connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document. Making the change would therefore contribute to the orderly operation of the Exchange by adding clarity and transparency regarding what connectivity is offered within, into, and from the Mahwah Data Center.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because moving the colocation services and charges from the Exchange's Fee Schedule to the Connectivity Fee Schedule would more accurately reflect the fact that Users are not required to be members of the Exchange or of any of the Affiliate SROs. A User, like any market participant, could more easily navigate, understand, and comply with the list of colocation services and fees, without having to access the price list or fee schedule of an exchange of which it is not a member. The Exchange believes that the proposed change would thereby reduce potential investor or market participant confusion. Similarly, the Exchange believes that the proposed change would reduce potential investor or market participant confusion because market participants would be able to see all connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is ministerial in nature and is not designed to have any competitive impact. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title. As a result of the proposed rule change, the services and fees related to connectivity within, into, and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. All market participants would be able to see the connectivity services and fees within,

[7] *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR–NYSECHX–2019–12).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

into, and from the Mahwah Data Center in one place, alleviating any possible market participant confusion.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(3) [13] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2022–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2022–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2022–20 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19686 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(3).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–359, OMB Control No. 3235–0410]

Submission for OMB Review; Comment Request: Extension; Rules 17h–1T and 17h–2T

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 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rules 17h–1T and 17h–2T (17 CFR 240.17h–1T and 17 CFR 240.17h–2T), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17h–1T requires a covered broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires a covered broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T, collectively referred to as the ''risk assessment rules,'' is necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 235 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 235 respondents are estimated to require 10 hours per year to maintain the records required under Rule 17h–1T, for an aggregate estimated annual burden of 2,350 hours (235 respondents × 10 hours). In addition, each of these 235 respondents must make five annual responses under Rule 17h–2T. These five responses are estimated to require 14 hours per respondent per year for an aggregate estimated annual burden of 3,290 hours (235 respondents × 14 hours).

In addition, new respondents must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the risk assessment rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the risk assessment rules requires three hours. Based on the reduction in the number of filers in recent years, the staff estimates there will be zero new

respondents, and thus, a corresponding estimated burden of zero hours for new respondents. Thus, the total compliance burden per year is approximately 5,640 burden hours (2,350 hours + 3,290 hours).

The retention period for the recordkeeping requirement for the information, reports and records required under Rule 17h–1T is not less than three years. There is no specific retention period or recordkeeping requirement for Rule 17h–2T. The collection of information is mandatory. All information obtained by the Commission pursuant to the provisions of Rules 17h–1T and 17h–2T from a broker or dealer concerning a material associated person is deemed confidential information for the purposes of section 24(b) of the Exchange Act.

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.

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 October 13, 2022. (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* 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.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 7, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19673 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95683; File No. SR–ICEEU–2022–010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Clearing Membership Procedures

September 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to modify its Clearing Membership Procedures (''Clearing Membership Procedures'' or ''Procedures'') to make certain clarifications and updates.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend its Clearing Membership Procedures to make certain clarifications and enhancements to remove certain provisions that are duplicative of the Clearing House's Counterparty Credit Risk Policy and Counterparty Credit Risk Procedures,[3] to more clearly document certain practices and to make certain non-substantive changes to improve clarity and readability.

The section describing the purpose of the Procedures would add a defined term referencing the Clearing House's Clearing Rules. Conforming changes would be made to each reference to the ''Clearing Rules'' appearing in the remainder of the Procedures.

The section describing the application process would update the names of certain departments responsible for reviewing Clearing Membership applications as follows: such applications (i) would be reviewed by the Credit and Clearing Risk department (this change does not represent a change in departments, rather, it is an inclusion of the relevant department names rather than stating ''Risk'' generally) and (ii) are subject to the approval of the Executive Risk Committee (rather than simply the ''Committee''), which would also be known as ''the Committee or ''ERC'' in shorthand in the Procedures. Conforming changes would be made in the remainder of the Procedures.

A paragraph which provided that the Clearing Risk Department would conduct a credit review which may include a credit check and assessments based on the Clearing House's Counterparty Ratings System would be removed as the credit review is covered by the Counterparty Credit Risk Policy and Procedures.

The proposed amendments would provide that the list of Approved Jurisdiction for applicants (those jurisdictions for which additional legal and regulatory analysis is not required) would be maintained by the legal department, rather than in the Clearing Membership Parameters. This change reflects current practice as the list of Approved Jurisdictions is currently maintained by the legal department. Further, in order to consolidate information and because the legal department is placed to provide guidance on Approved Jurisdictions, the Clearing Membership Procedures would reflect that such list would be maintained by the legal department only.

The subsection discussing termination of Clearing Membership by ICE Clear Europe would be updated to remove a sentence which provided that the Board is required to approve the issuance of a Termination Notice against

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Counterparty Credit Risk Policy and Procedures are described in Exchange Act Release No. 34–93880, SR ICEEU–2021–15 (Dec. 30, 2021) 87 FR 513 (Jan. 5, 2022).

a Clearing Member. There is no such requirement under the Rules, and accordingly the amendments would bring the Procedures into line with the Rules and the scope of authority currently delegated by the Board and does not represent a change in existing practice or procedures as they relate to Termination Notices. Action by the Clearing House to terminate a member under Rule 209 would be subject to the existing general governance provisions of the Rules, including Rule 114. Rule 114(a) allows the Clearing House to delegate authority to its Board, Chairman, President or any other Director or employee. Although ICE Clear Europe would expect that a decision to issue a Termination Notice against a Clearing Member would likely be made by the Board, the Clearing House's existing Delegation of Authority to its President implemented pursuant to Rule 114(a) could potentially apply to issuance of a Termination Notice in certain emergency scenarios including situations where time is of the essence for the interests of the Clearing House and its Clearing Members. In such cases and pursuant to the specifications included in the Delegation of Authority, the President may be authorized to issue a Termination Notice. Accordingly, the proposed update will conform the Clearing Membership Procedures to reflect the Clearing House's existing authority under the Rules and Delegation of Authority to issue Termination Notice in respect of Clearing Members.

The subsection discussing the minimum capital requirements that the Clearing House requires of Clearing Members would be updated to remove a reference to data sources used to determine a Clearing Member's Capital. Such matters are addressed in the Counterparty Credit Risk Policy and Procedures and do not need to be addressed in the Clearing Membership Procedures. Additionally, the amendments clarify that certain additional risk-based requirements that may be imposed under the CDS Procedures would apply only to CDS Clearing Members in accordance with the terms of the CDS Procedures. This update does not represent a change to the Clearing Membership Procedures and is intended to reflect that the Clearing Membership Procedures align with the CDS Procedures.

The subsection discussing contributions to the Guaranty Fund for CDS and F&O would be updated to clarify that the Clearing Membership applications would be required to make Guaranty Fund contributions as specified by the F&O Guaranty Fund Policy and Section 5 of the CDS Risk Policy. The change is intended to update references to the correct F&O and CDS policies and does not represent a change in substantive requirements.

A subsection discussing the Clearing House's margin-to-capital ratio requirement would be removed as unnecessary because such requirement is addressed in greater detail in the Clearing House's Counterparty Credit Risk Policy and Procedures.

In the section discussing on-going monitoring of the Clearing Members by the Clearing House, a sentence which cross-referenced the Counterparty Credit Risk Policy would be removed as unnecessary.

The proposed amendments would provide that the Clearing House's periodic counterparty review includes know-your-customer and anti-money laundering assessments. This amendment is intended to reflect current practice.

A subsection referencing the Clearing House's Quarterly Counterparty Rating System Report would be removed as the topic is discussed in greater detail in the Counterparty Credit Risk Policy and Procedures.

A subsection discussing the information the Clearing House requires that Clearing Members provide through the Annual Member Return (AMR) would be updated to expressly include updated Clearing Member information. AMR is an annual process by which ICE Clear Europe requests Clearing Members to provide and confirm certain information related to their clearing membership; AMR is a means for the Clearing House to ensure that it has up-to-date information about Clearing Members. The proposed change is intended to inform Clearing Members that information requested as part of AMR will include updated Clearing Member information, which may include, for example, a change of a Clearing Member's registered or operational address, its legal entity name, etc.

Other non-substantive typographical and similar drafting clarifications and updates would be made throughout the Procedures to improve readability and correct grammatical errors.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Clearing Membership Procedures are consistent with the requirements of Section 17A of the Act[4] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed changes to the Clearing Membership Procedures are intended to update and more clearly document the Clearing House's procedures for reviewing applications for clearing membership, variations of membership permissions and on-going monitoring and termination of membership of ICEU. The amendments remove certain overlapping or duplicative information that is addressed in more detail in the Clearing House's Counterparty Credit Risk Policy and Procedures. In ICE Clear Europe's view the amendments would thus facilitate the clearing membership process, and related risk management by the Clearing House. The amendments would therefore facilitate the prompt and accurate clearing of cleared contracts and protect investors and the public interest in the sound operations of the Clearing House, consistent with the requirement s of Section 17A(b)(3)(F).[6] Further, the amendments will not affect the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible, within the meaning Section 17A(b)(3)(F).[7]

The amendments to the Procedures are also consistent with relevant provisions of Rule 17Ad–22.[8] Rule 17Ad–22(e)(18) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] establish objective, risk-based and publicly disclosed criteria for participation, which permit fair and open access by direct . . . participants . . . require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis''.[9] As set forth above, the amendments to the Clearing Membership Procedures are intended to clarify and enhance the Clearing

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17 Ad–22.

[9] 17 CFR 240.17 Ad–22(e)(18).

House's procedures as they relate to Clearing Membership application and monitoring processes. The amendments do not substantively change the requirements for membership or the related Rules, but rather update the Procedures to reflect the Clearing House's current practices, avoid duplication of other Clearing House policies (specifically the Counterparty Credit Risk Policy and Procedures) and make other updates to improve clarity and readability. The amendments will facilitate the Clearing House's ability to implement and monitor its participation requirements. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(18).[10]

Rule 17Ad–22(e)(2) further provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] provide for governance arrangements that are (i) clear and transparent, (ii) clearly prioritize the safety and efficiency of the covered clearing agency; and (iii) support the public interest requirement in Section 17A of the Act'' [11] among other requirements. As set forth above, the amendments clarify the governance arrangements around the termination of clearing membership status under Rule 209, to remove a requirement that terminations be approved by the Board. Such a requirement is not provided in the Rules, and accordingly the amendments would make the Procedures consistent with the governance procedures of the Rules, including Rule 114. As such, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(2).[12]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the Clearing Membership Procedures, which relates to the Clearing House's internal processes for implementation and ongoing monitoring of its membership requirements. No substantive changes are being made to the membership requirements themselves or the Rules. Accordingly, ICE Clear Europe does not believe the amendments would affect the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change and adoption.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2022–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2022–010 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19676 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95700; File No. SR–NYSE–2022–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Transfer the Services and Fees Related to Colocation

September 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 24, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange

[10] 17 CFR 240.17Ad–22(e)(18).

[11] 17 CFR 240.17Ad–22(e)(2).

[12] 17 CFR 240.17Ad–22(e)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) transfer the services and fees related to colocation from the Exchange's Price List to the schedule of Wireless Connectivity Fees and Charges, and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) transfer the services and fees related to colocation from the Price List to the schedule of Wireless Connectivity Fees and Charges (''Connectivity Fee Schedule''), and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' There would be no changes to the existing colocation services and fees as a result of these administrative changes.

Background

The colocation services and related fees offered by the Exchange are currently listed in the Exchange's Price List. Each of the Exchange's Affiliate SROs[4] similarly includes the colocation services and related fees in its own separate price list or fee schedule.[5] The colocation portions of each of these price lists and fee schedules are substantively identical.

In December 2020, the Exchange and the Affiliate SROs created the Connectivity Fee Schedule to list their wireless connectivity services and related fees. Instead of including the wireless connectivity services and related fees in the seven price lists and fee schedules of the Exchange and the Affiliate SROs, the Connectivity Fee Schedule contains the wireless connectivity services and charges for the Exchange and the Affiliate SROs in one single fee schedule.

In an administrative change, the Exchange now proposes to remove its colocation services and related fees from its Price List and to move them into the Connectivity Fee Schedule, so that services and fees related to connectivity within, into and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. Each of the Affiliate SROs is contemporaneously making a similar filing.[6] To reflect the fact that the schedule would include services and fees for connectivity with the Mahwah Data Center that are not wireless, the Exchange also proposes to change its name to the ''Connectivity Fee Schedule.''

Proposed Amendments to the Price List

As shown in the attached Exhibit 5A [sic], the Exchange proposes to delete the entirety of the text in the Exchange's Price List under the heading ''Co-Location Fees.''

[4] The ''Affiliate SROs'' are the Exchange's affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[5] *See* ''Co-Location Fees'' in ''New York Stock Exchange Price List 2022'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* ''NYSE American Equities Price List'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf;* ''NYSE American Options Fee Schedule'' at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf;* ''NYSE Arca Equities Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* ''NYSE Arca Options Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* ''Fee Schedule of NYSE Chicago, Inc.'' at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf;* and ''NYSE National, Inc. Schedule of Fees and Rebates'' at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[6] Each of the Affiliate SROs has submitted substantially similar rule changes to move their colocation price lists to the Connectivity Fee Schedule. *See* SR–NYSEAMER–2022–37, SR–NYSEARCA–2022–56, SR–NYSECHX–2022–20, and SR–NYSENAT–2022–16.

Proposed Amendments to the Connectivity Fee Schedule

As shown in the attached Exhibit 5B [sic], the Exchange proposes to amend the title to the ''Connectivity Fee Schedule.''

The Exchange proposes to insert the entirety of the text currently located in the Exchange's Price List under the heading ''Co-Location Fees'' into the Connectivity Fee Schedule under the heading ''A. Colocation Fees.'' No changes would be made to any of this text, except for the following clarifying and non-substantive changes:

1. The subheading ''Definitions'' would be amended to ''Colocation Definitions.''

2. The subheading ''General Notes'' would be amended to ''Colocation Notes'' and current General Note 1 would be deleted, as it would no longer be necessary since it would be duplicative of the existing General Note in the Connectivity Fee Schedule. The remainder of the current General Notes 2–8 would be renumbered as Colocation Notes 1–7 and the cross references in current General Note 8 would be updated accordingly.

3. In a conforming change, in the table of services and fees, the note to the Partial Cabinet Solution bundles would be amended to change the cross reference from ''Note 2 under 'General Notes' '' to ''Note 1 under 'Colocation Notes.' ''

4. In a conforming change, in the table of services and fees, the note to the Data Center Fiber Cross Connect would be amended to change the cross reference from ''General Note 3'' to ''Colocation Note 2.''

5. With the addition of the Colocation Fees at subheading ''A.'' of the Connectivity Fee Schedule, each of the subsequent headings would be renumbered accordingly. Specifically, ''A. Wireless Connectivity'' would become ''B. Wireless Connectivity,'' and ''B. Wireless Connectivity to Market Data'' would become ''C. Wireless Connectivity to Market Data.''

Application and Impact of the Proposed Changes

As noted above, the proposed change is administrative in nature. Any market participant that requests to receive colocation services directly from the Exchange (a ''User'')[7] is currently subject to the described services and fees, none of which are new or novel. Current Users would not incur any new fees and the Exchange does not expect

[7] *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

to attract any new Users as a result of the proposed change. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title accordingly.

As a result of the proposed change, the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in the same Connectivity Fee Schedule, and market participants would be able to see all such connectivity services and fees in one place.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant, as colocation is available to any market participant that wishes to be a User.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and with Section 6(b)(1)[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed change furthers the objectives of Section 6(b)(5) of the Act[10] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is a non-substantive change and does not impact the services available to Users or the fees charged for such services. Currently, colocation services and the related fees for the Exchange and its Affiliate SROs are substantively identical yet are located in seven separate price lists and fee schedules and not in the Connectivity Fee Schedule. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because moving the description of the existing colocation services and fees to the Connectivity Fee Schedule and changing the Connectivity Fee Schedule's title would mean that the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in one Connectivity Fee Schedule. All market participants would be able to enjoy the convenience of seeing such connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document. Making the change would therefore contribute to the orderly operation of the Exchange by adding clarity and transparency regarding what connectivity is offered within, into, and from the Mahwah Data Center.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because moving the colocation services and charges from the Exchange's Price List to the Connectivity Fee Schedule would more accurately reflect the fact that Users are not required to be members of the Exchange or of any of the Affiliate SROs. A User, like any market participant, could more easily navigate, understand, and comply with the list of colocation services and fees, without having to access the price list or fee schedule of an exchange of which it is not a member. The Exchange believes that the proposed change would thereby reduce potential investor or market participant confusion. Similarly, the Exchange believes that the proposed change would reduce potential investor or market participant confusion because market participants would be able to see all connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is ministerial in nature and is not designed to have any competitive impact. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title. As a result of the proposed rule change, the services and fees related to connectivity within, into, and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. All market participants would be able to see the connectivity services and fees within, into, and from the Mahwah Data Center in one place, alleviating any possible market participant confusion.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(3)[13] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(3).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–40 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19689 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95698; File No. SR–NYSEARCA–2022–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Transfer the Services and Fees Related to Colocation

September 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 24, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) transfer the services and fees related to colocation from the NYSE Arca Equities Fees and Charges and the NYSE Arca Options Fees and Charges (together, the ''Fee Schedules'') to the schedule of Wireless Connectivity Fees and Charges, and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) transfer the services and fees related to colocation from the Fee Schedules to the schedule of Wireless Connectivity Fees and Charges (''Connectivity Fee Schedule''), and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' There would be no changes to the existing colocation services and fees as a result of these administrative changes.

Background

The colocation services and related fees offered by the Exchange are currently listed in the Exchange's Fee Schedules. Each of the Exchange's Affiliate SROs [4] similarly includes the colocation services and related fees in its own separate price list or fee schedule.[5] The colocation portions of

[4] The ''Affiliate SROs'' are the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc.

[5] *See* ''Co-Location Fees'' in ''New York Stock Exchange Price List 2022'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* ''NYSE American Equities Price List'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf;* ''NYSE American Options Fee Schedule'' at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf;* ''NYSE Arca Equities Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* ''NYSE Arca Options Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* ''Fee Schedule of NYSE Chicago, Inc.'' at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf;* and ''NYSE National, Inc. Schedule of Fees and Rebates'' at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

each of these price lists and fee schedules are substantively identical.

In December 2020, the Exchange and the Affiliate SROs created the Connectivity Fee Schedule to list their wireless connectivity services and related fees. Instead of including the wireless connectivity services and related fees in the seven price lists and fee schedules of the Exchange and the Affiliate SROs, the Connectivity Fee Schedule contains the wireless connectivity services and charges for the Exchange and the Affiliate SROs in one single fee schedule.

In an administrative change, the Exchange now proposes to remove its colocation services and related fees from its Fee Schedules and to move them into the Connectivity Fee Schedule, so that services and fees related to connectivity within, into and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. Each of the Affiliate SROs is contemporaneously making a similar filing.[6] To reflect the fact that the schedule would include services and fees for connectivity with the Mahwah Data Center that are not wireless, the Exchange also proposes to change its name to the ''Connectivity Fee Schedule.''

Proposed Amendments to the Fee Schedules

As shown in the attached Exhibit 5A [sic], the Exchange proposes to delete the entirety of the text in the NYSE Arca Equities Fees and Charges under the heading ''CO–LOCATION FEES'' and the entirety of the text in the NYSE Arca Options Fees and Charges under the heading ''CO–LOCATION FEES.''

Proposed Amendments to the Connectivity Fee Schedule

As shown in the attached Exhibit 5B [sic], the Exchange proposes to amend the title to the ''Connectivity Fee Schedule.''

The Exchange proposes to insert the entirety of the text currently located in the NYSE Arca Equities Fees and Charges under the heading ''CO–LOCATION FEES'' (which is identical to the text in the NYSE Arca Options Fees and Charges under heading ''CO–LOCATION FEES'') into the Connectivity Fee Schedule under the heading ''A. Colocation Fees.'' No changes would be made to any of this text, except for the following clarifying and non-substantive changes:

1. The subheading ''Definitions'' would be amended to ''Colocation Definitions.''

2. The subheading ''General Notes'' would be amended to ''Colocation Notes'' and current General Note 1 would be deleted, as it would no longer be necessary since it would be duplicative of the existing General Note in the Connectivity Fee Schedule. The remainder of the current General Notes 2–8 would be renumbered as Colocation Notes 1–7 and the cross references in current General Note 8 would be updated accordingly.

3. In a conforming change, in the table of services and fees, the note to the Partial Cabinet Solution bundles would be amended to change the cross reference from ''Note 2 under 'General Notes''' to ''Note 1 under 'Colocation Notes.'''

4. In a conforming change, in the table of services and fees, the note to the Data Center Fiber Cross Connect would be amended to change the cross reference from ''General Note 3'' to ''Colocation Note 2.''

5. With the addition of the Colocation Fees at subheading ''A.'' of the Connectivity Fee Schedule, each of the subsequent headings would be renumbered accordingly. Specifically, ''A. Wireless Connectivity'' would become ''B. Wireless Connectivity,'' and ''B. Wireless Connectivity to Market Data'' would become ''C. Wireless Connectivity to Market Data.''

Application and Impact of the Proposed Changes

As noted above, the proposed change is administrative in nature. Any market participant that requests to receive colocation services directly from the Exchange (a ''User'')[7] is currently subject to the described services and fees, none of which are new or novel. Current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title accordingly.

As a result of the proposed change, the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in the same Connectivity Fee Schedule, and market participants would be able to see all such connectivity services and fees in one place.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant, as colocation is available to any market participant that wishes to be a User.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and with Section 6(b)(1)[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed change furthers the objectives of Section 6(b)(5) of the Act[10] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is a non-substantive change and does not impact the services available to Users or the fees charged for such services. Currently, colocation services and the related fees for the Exchange and its Affiliate SROs are substantively identical yet are located in seven separate price lists and fee schedules and not in the Connectivity Fee Schedule. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because moving the

[6] Each of the Affiliate SROs has submitted substantially similar rule changes to move their colocation price lists to the Connectivity Fee Schedule. *See* SR–NYSE–2022–40, SR–NYSEAMER–2022–37, SR–NYSECHX–2022–20, and SR–NYSENAT–2022–16.

[7] *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca-2015–82).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

description of the existing colocation services and fees to the Connectivity Fee Schedule and changing the Connectivity Fee Schedule's title would mean that the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in one Connectivity Fee Schedule. All market participants would be able to enjoy the convenience of seeing such connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document. Making the change would therefore contribute to the orderly operation of the Exchange by adding clarity and transparency regarding what connectivity is offered within, into, and from the Mahwah Data Center.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because moving the colocation services and charges from the Exchange's Fee Schedules to the Connectivity Fee Schedule would more accurately reflect the fact that Users are not required to be members of the Exchange or of any of the Affiliate SROs. A User, like any market participant, could more easily navigate, understand, and comply with the list of colocation services and fees, without having to access the price list or fee schedule of an exchange of which it is not a member. The Exchange believes that the proposed change would thereby reduce potential investor or market participant confusion. Similarly, the Exchange believes that the proposed change would reduce potential investor or market participant confusion because market participants would be able to see all connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is ministerial in nature and is not designed to have any competitive impact. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title. As a result of the proposed rule change, the services and fees related to connectivity within, into, and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. All market participants would be able to see the connectivity services and fees within, into, and from the Mahwah Data Center in one place, alleviating any possible market participant confusion.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b-4(f)(3) [13] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(3).

[14] 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2022–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2022–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2022–56 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19687 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95682; File No. SR–ICEEU–2022–018]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures and the ICE Clear Europe Clearing Procedures

September 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4)(ii) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to amend (i) Parts C, D, F, H, K, L, AA, EE, and HH of its Delivery Procedures (''Delivery Procedures'') and (ii) Part I of its Clearing Procedures (''Clearing Procedures''), in each case to implement the use of Contingent Variation Margin for certain UK and European energy futures contracts.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background

The amendments are intended to extend the Clearing House's use of Contingent Variation Margin (''CVM'') requirements during the tender or delivery period to certain additional UK and European natural gas and electricity futures contracts. Under the existing Rules and Procedures (including paragraph 4.6 of the Clearing Procedures), CVM can be imposed by the Clearing House on specified F&O Contracts to account for the difference, during the delivery period, between the final settlement price for the relevant contract (typically established on the last trading day of the contract, before the commencement of the delivery period) and the price of the relevant contract for the next contract month. CVM is intended to provide additional protection to the Clearing House against potential exposure to Clearing Member default from movements in the market price of the underlying commodity during the delivery period. CVM is collected by the Clearing House from the applicable Clearing Members but not paid out to the opposite Clearing Members, although the opposite Clearing Member may apply the amount as a credit against other margin requirements.

ICE Clear Europe is proposing to amend the Clearing Procedures and the Delivery Procedures chapters for the relevant Contracts in order to implement the extension to specified UK and European energy futures contracts.

Clearing Procedures

Paragraph 4.6 of the Clearing Procedures would be updated to remove the two listed examples of contracts for which CVM would be required. Given the Clearing House's proposed extension of the use of CVM, the examples would be incomplete and are in any event unnecessary. Additionally, the amendments would make a clarification that Clearing Members will not receive payment of CVM in cash (as opposed to referring to repayment) but instead may credit CVM against other margin requirements, as discussed above. Paragraph 4.7, which described a prior contingent credit approach for sellers under natural gas and electricity futures, would be removed as it will be superseded by the extension of CVM to such contracts.

Delivery Procedures

ICE Clear Europe is proposing to amend Parts C, D, F, H, K, L, AA, EE, and HH of its Delivery Procedures to implement CVM for physically-settled monthly European and UK electricity and natural gas futures contracts.

The delivery timetable for routine deliveries of ICE UK Electricity Futures in Part C of the Delivery Procedures would be updated to provide that on the Delivery Day of such contract the Clearing House will apply CVM to the Buyer's and the Seller's remaining units of the underlying to be delivered. The amendments would further provide on the Business Day following the Delivery Day, the Clearing House will continue to apply CVM to the Buyer's and Seller's remaining units of the underlying to be delivered. The same updates would be made to the delivery timetable for routine deliveries of each of (i) ICE Futures UK Natural Gas Futures (Part D of the Delivery Procedures), (ii) ICE Endex TTF Natural Gas Futures (Part F of the Delivery Procedures), (iii) ICE Endex German THE Natural Gas Futures (Part H of the Delivery Procedures), (iv) ICE Endex Dutch Power Futures (Part K of the Delivery Procedures), (v) ICE Endex Belgian Power Base Load Futures (Part L of the Delivery Procedures), and (vi) ICE Endex French PEG Natural Gas Futures (Part HH of the Delivery Procedures). In respect of the delivery timetable for routine delivery of ICE Endex PSV Natural Gas Futures (Part AA of the Delivery Procedures) and ICE Endex VTP Natural Gas Futures (Part EE of the Delivery Procedures), similar updates would be made taking into account the delivery characteristics of those contracts: each such timetable would provide that on the first Business Day immediately preceding the first day of the month in which the Delivery Day specified in the relevant contract commenced, the Clearing House will apply CVM to the Buyer's and the Seller's remaining natural gas units. The amendments would further provide that on the Business Day following the Delivery Day, the Clearing House will continue to apply CVM to the Buyer's and Seller's remaining natural gas units.

The amendments would make certain other clarifications updates to the Delivery Procedures unrelated to the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

implementation of CVM. Specifically, references to ICE Futures UK Natural Gas (EUR/MWh) Futures Contracts in Part D of the Delivery Procedures would be removed as such contracts are no longer traded. In Part F of the Delivery Procedures (ICE Endex TTF Natural Gas Futures), references to weekly contracts (and related defined terms such as ''Delivery Week'' and ''W+'' and ''W−'' would be removed as no such TTF natural gas contracts of this type are traded. The remaining provisions would apply to the continuing monthly contracts (with some references to ''monthly'' removed as no longer necessary to distinguish from weekly contracts). In Part K of the Delivery Procedures (ICE Endex Base Load Futures), references to the ICE Endex Dutch Power Base Load Week Futures and related references to weekly contracts and related defined terms are being removed since such weekly contract will no longer be listed for trading. The remaining provisions would apply to the continuing monthly contracts (with some references to ''monthly'' removed as no longer necessary to distinguish from weekly contracts). In Part HH of the Delivery Procedures (ICE Endex PEG Natural Gas Futures) references to the applicable ICE Endex confirmation reports are being corrected.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures and the Clearing Procedures are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes are intended to apply CVM to certain additional UK and European electricity and natural gas futures contracts to enhance the protections for the Clearing House against the risk of market movements in the underlying commodity during the delivery period. The amendments to the Delivery Procedures are designed to add applicable references to CVM requirements in respect of the routine delivery of certain physically-settled European and UK Natural Gas futures contracts in order to reflect the Clearing House's application of CVM. The changes to the Clearing Procedures are intended to align with such updates to the Delivery Procedures. Certain additional updates and clarifications would be made to the Delivery Procedures. The amendments would not otherwise affect the manner in which such contracts are cleared and settled. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[7]

Rule 17Ad–22(e)(6) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum (i) considers, and produces margin levels commensurate with the risks and particular attributes of each relevant product, portfolio and market. . . .''.[8] As discussed above, ICE Clear Europe has determined to apply CVM to certain additional UK and European natural gas and electricity futures contracts to address the particular risks faced by the Clearing House with respect to such contracts as a result of price movements during the delivery period. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(6).[9]

In addition, Rule 17Ad–22(e)(10) [10] provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.'' The proposed changes to the Delivery Procedures are designed to amend delivery specifications in respect of the routine delivery of certain physically-settled European and UK Natural Gas futures contracts to reflect the application of CVM. Clearance of such contracts would not otherwise be affected. As amended, the Delivery Procedures thus appropriately state the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad–22(e)(10).[11]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments to the Delivery Procedures are intended to implement the Clearing House's application of CVM in respect of certain physically-settled European and UK electricity and natural gas futures contracts. The imposition of CVM may impose certain costs on market participants trading such contracts, as they may be required to provide CVM amounts to the Clearing House during the delivery period. ICE Clear Europe believes that such costs are appropriate, however, to account for the risks to the Clearing House from market movements during the delivery period, and reflect the particular positions of the market participant that have gone to delivery. The CVM requirements will apply in the same way to all similarly situated market participants. ICE Clear Europe does not believe the amendments would otherwise materially affect the cost of clearing, adversely affect competition among Clearing Members, adversely affect access to clearing in the relevant contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(e)(6).

[9] 17 CFR 240.17Ad–22(e)(6).

[10] 17 CFR 240.17Ad–22(e)(10).

[11] 17 CFR 240.17Ad–22(e)(10).

with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2022–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2022–018 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19675 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–793, OMB Control No. 3235–0734]

Proposed Collection; Comment Request; Extension: Rule 22c–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. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22c–1 (17 CFR 270.22c–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or ''Act'') enables a fund to choose to use ''swing pricing'' as a tool to mitigate shareholder dilution. Rule 22c–1 is intended to promote investor protection by providing funds with an additional tool to mitigate the potentially dilutive effects of shareholder purchase or redemption activity and a set of operational standards that allow funds to gain comfort using swing pricing as a means of mitigating potential dilution.

The respondents to amended rule 22c–1 are open-end management investment companies (other than money market funds or exchange-traded funds) that engage in swing pricing. Compliance with rule 22c–1(a)(3) is mandatory for any fund that chooses to use swing pricing to adjust its NAV in reliance on the rule.

While we are not aware of any funds that have engaged in swing pricing,[1] we are estimating for the purpose of this analysis that 5 fund complexes have funds that may adopt swing pricing policies and procedures in the future pursuant to the rule. We estimate that the total burden associated with the preparation and approval of swing pricing policies and procedures by those fund complexes that would use swing pricing will be 280 hours.[2] We also estimate that it will cost a fund complex $48,188 to document, review and initially approve these policies and procedures, for a total cost of $240,940.[3]

Rule 22c–1 requires a fund that uses swing pricing to maintain the fund's swing policies and procedures that are in effect, or at any time within the past six years were in effect, in an easily accessible place.[4] The rule also requires a fund to retain a written copy of the periodic report provided to the board prepared by the swing pricing administrator that describes, among other things, the swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution and any back-testing performed.[5] The retention of these records is necessary to allow the staff during examinations of funds to determine whether a fund is in

[1] No funds have engaged in swing pricing as reported on Form N–CEN as of August 15, 2022.

[2] This estimate is based on the following calculation: (48 + 2 + 6) hours × 5 fund complexes = 280 hours.

[3] These estimates are based on the following calculations: 24 hours × $237 (hourly rate for a senior accountant) = $5,688; 24 hours × $545 (blended hourly rate for assistant general counsel ($510) and chief compliance officer ($580)) = $13,080; 2 hours (for a fund attorney's time to prepare materials for the board's determinations) × $400 (hourly rate for a compliance attorney) = $800; 6 hours × $4,770 (hourly rate for a board of 9 directors) = $28,620; ($5,688 + $13,080 +$800 + $28,620) = $48,188; $48,188 × 5 fund complexes = $240,940. The hourly wages used are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The staff has estimated the average cost of board of director time as $4,770 per hour for the board as a whole, based on information received from funds and their counsel.

[4] *See* rule 22c–1(a)(3)(iii).

[5] *See id.*

compliance with its swing pricing policies and procedures and with rule 22c–1. We estimate a time cost per fund complex of $344.[6] We estimate that the total for recordkeeping related to swing pricing will be 20 hours, at an aggregate cost of $1,720, for all fund complexes that we believe include funds that have adopted swing pricing policies and procedures.[7]

Amortized over a three-year period, we believe that the hour burdens and time costs associated with rule 22c–1, including the burden associated with the requirements that funds adopt policies and procedures, obtain board approval, and periodic review of an annual written report from the swing pricing administrator, and retain certain records and written reports related to swing pricing, will result in an average aggregate annual burden of 113.3 hours, and average aggregate time costs of $82,033.[8] We also estimate that rule 22c–1 imposes a total external cost burden of $2,655 for outside legal services related to compliance with the policies and procedures requirement.[9]

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. This collection of information is necessary to obtain a benefit and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall 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 by November 14, 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, Acting 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: September 7, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19669 Filed 9–12–22; 8:45 am]

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[6] This estimate is based on the following calculations: 2 hours × $68 (hourly rate for a general clerk) = $136; 2 hours × $104 (hourly rate for a senior computer operator) = $208. $136 + $208 = $344.

[7] These estimates are based on the following calculations: 4 hours × 5 fund complexes = 20 hours. 5 fund complexes × $344 = $1,720.

[8] These estimates are based on the following calculations: (280 hours (year 1) + (3 × 20 hours) (years 1, 2 and 3)) ÷ 3 = 113.3 hours; ($240,940 (year 1) + (3 × $1,720) (years 1, 2 and 3)) ÷ 3 = $82,033.

[9] This estimated burden is based on the estimated wage rate of $531 per hour for outside legal services and the following calculation: $531 × 5 fund complexes = $2,655.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–617, OMB Control No. 3235–0728]

Proposed Collection; Comment Request; Extension: Rule 17Ab2–2

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 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ab2–2 (17 CFR 240.17Ab2–2) 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.

Exchange Act Rule 17Ab2–2 establishes procedures for the Commission to make a determination, either of its own initiative or upon application by any clearing agency or member of a clearing agency, whether a covered clearing agency is systemically important in multiple jurisdictions and procedures to determine, if the Commission deems appropriate, whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile. In addition, Exchange Act Rule 17Ab2–2 provides a procedure for the Commission to determine whether to rescind any such determinations previously made by the Commission.

Because determinations made by the Commission pursuant to Exchange Act Rule 17Ab2–2 may be made upon the request of a clearing agency, respondent clearing agencies would have the burden of preparing such requests for submission to the Commission.

Commission staff estimates that Rule 17Ab2–2 will impose a PRA burden on registered clearing agencies that seek a determination from the Commission regarding the covered clearing agency's status as systemically important in multiple jurisdictions. Commission staff estimates that two registered clearing agencies or their members on their behalf will apply for a Commission determination, or may be subject to a Commission-initiated determination, regarding whether a registered clearing agency is involved in activities with a more complex risk profile or whether a covered clearing agency is systemically important in multiple jurisdictions.

Commission staff estimates that each respondent clearing agency incurs a one-time burden of 10 hours and a one-time cost of $2,000 to draft and review a determination request submitted to the Commission, for a total of 20 hours and $4,000 for all respondents. The total annualized burden and cost for all respondents are 6.66 hours and $1,333.33.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by November 14, 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: September 7, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19677 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95695; File No. SR–BX–2022–015]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rules 4120, 4702 and 4703

September 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2022, Nasdaq BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 4, Rules 4120, 4702 and 4703 in light of planned changes to the System as well as to address existing issues, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is preparing to introduce a new upgraded version of the OUCH Order entry protocol [3] that will enable the Exchange to make functional enhancements and improvements to specific Order Types [4] and Order Attributes.[5] Specifically, enhancements to OUCH will enable the Exchange to upgrade the logic and implementation of these Order Types and Order Attributes so that the features are more robust, streamlined, and harmonized across the Exchange's Systems and Order entry protocols. The Exchange developed OUCH with simplicity in mind, and therefore, it presently lacks certain complex order handling capabilities. By contrast, the Exchange specifically designed its RASH Order Entry Protocol [6] to support advanced functionality, including discretion, random reserve, pegging and routing. The introduction of OUCH upgrades will enable participants to utilize OUCH, in addition to RASH, to enter Order Types that require advanced functionality. Thus, the proposal does not seek to introduce new functionality, but rather, it offers to OUCH users advanced functionality that already exists for RASH users.

The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[7]

To support and prepare for the introduction of OUCH upgrades, the Exchange proposes to amend Rule 4702 pertaining to Order Types to specify that, going forward, OUCH may be used to enter certain Order Types together with certain Order Attributes, whereas now, Rule 4702 specifies that RASH and FIX, but not OUCH, may be used to enter such combinations of Order Types and Attributes. The Exchange also proposes to adjust the current functionality of the Pegging,[8] Reserve,[9] and Trade Now Order Attributes,[10] as described below, so that they align with how OUCH, once upgraded, will handle these Order Attributes going forward.

Changes to Use of Certain Order Types With Certain Order Attributes

Pursuant to Rule 4702(b), the availability of certain Order Attributes for use with certain Order Types presently depends upon the particular Order entry protocol a participant uses to enter its Order. For Price to Comply and Price to Display Orders entered though OUCH, the Reserve Size, Primary Pegging and Market Pegging, and Discretion Attributes are not available to participants presently. For Non-Displayed Orders entered through OUCH, the Primary Pegging, Market Pegging, and Discretion Attributes are not available presently. The Exchange proposes to amend Rule 4702(b) so that for each of the Order Types listed above, participants may utilize the corresponding Order Attributes when participants enter their Orders using the upgraded version of OUCH.

Meanwhile, for Non-Displayed Orders with the Midpoint Pegging Attribute, the behavior of such Orders presently varies, as set forth in Rule 4703(d), based upon whether a participant uses OUCH/FLITE or RASH/FIX to enter them into the System. Going forward, the Exchange proposes to amend the Rule to reference the amended version Rule 4703(d) (discussed below), which will describe variances in behavior involving Non-Displayed Orders with Midpoint Pegging which will no longer depend strictly upon the Order entry protocol associated with the Orders.

Changes to Market Maker Peg Orders

Rule 4702(b)(7)(A) presently provides that Market Maker Peg Orders may be entered through RASH or FIX only. The Exchange proposes to amend this provision to state that the upgraded

[3] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See *https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[4] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See* Equity 1, Section 1(a)(11).

[5] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[6] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See *http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[7] The Exchange notes that its sister exchanges, The Nasdaq Stock Market and Nasdaq PSX, plan to file similar proposed rule changes with the Commission shortly.

[8] *See* Rule 4703(d).

[9] *See* Rule 4703(h).

[10] *See* Rule 4703(l).

version of OUCH may be used to enter such Orders going forward.

Changes to Pegging Order Attribute

In addition to the above, the Exchange proposes to amend Rule 4703(d), which governs the Pegging Order Attribute, to account for the new capabilities of the upgraded version of OUCH.

As described in Rule 4703(d), Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. The Exchange offers three types of Pegging: Primary Pegging, Market Pegging, and Midpoint Pegging.[11] The behavior of each of these types of Pegged Orders currently varies based upon the particular Order entry protocol associated with their use. With the introduction of the upgraded version of OUCH, these variances will narrow, as OUCH will be capable of handling Pegged Orders similar to how RASH and FIX handle them. However, variances will not disappear entirely, as the upgraded version of OUCH will continue to handle Orders with Midpoint Pegging that the System cancels in response to changes to the Midpoint (''Fixed Midpoint Orders'') the same way that the current iteration of OUCH and FLITE handles them.

Indeed, pursuant to the proposed rule filing, the behavior of Pegged Orders will no longer vary strictly by the Order entry protocol that a participant uses; instead, variance will occur based upon whether the Pegged Orders are subject to management during their lifetimes, *i.e.,* the Exchange may adjust the prices of those Orders during their lifetimes. Managed Pegged Orders (''Peg Managed Orders'') will include Primary Pegged and Market Pegged Orders entered using OUCH, RASH, and FIX, as well as Midpoint Pegged Orders, entered using the same protocols, which the System may update in response to changes to the Midpoint (''Managed Midpoint Orders''). The Exchange will handle Managed Midpoint Orders differently from non-managed Orders, *i.e.,* Fixed Midpoint Orders, in like circumstances.

The specific proposed amendments that effectuate the above are as follows.

Existing Rule 4703(d) states that if, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged, or pegging would lead to a price at which the Order cannot be posted, then the Order will not be immediately available on the Exchange Book and will be entered once there is a permissible price, provided, however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after Order entry.[12] This existing language applies to Primary, Market, and Midpoint Pegging Orders entered through RASH/FIX, but not Orders entered through OUCH/FLITE. The Exchange proposes to amend this provision of the Rule so that it applies to ''Peg Managed Orders,'' rather than ''Pegged Orders,'' which in practice will mean that the behavior it currently describes for Primary Pegged and Market Pegged Orders entered through RASH/FIX will also now apply to such Orders entered through the upgraded version of OUCH, as well as to Managed Midpoint Orders entered through RASH/FIX/upgraded OUCH.[13] Moreover, the proposed amended provision would provide for Managed Midpoint Orders that are not assigned a Routing Order Attribute (or a Time in Force of IOC) to behave similarly if the Inside Bid and Inside Offer are crossed (*i.e.,* the Managed Midpoint Order will not be immediately available on the Exchange Book unless and until a permissible price emerges within one second of entry (or other such time that the Exchange designates, at its discretion)).

Existing Rule 4703(d) also states that if a Pegged Order has been assigned a Routing Order Attribute, but there is no permissible price to which the Order can be pegged at the time of entry, then the Exchange will reject it, except that the Exchange will accept a Displayed Order with Market Pegging and a Market or a Primary Pegged Order with a Non-Display Attribute at their respective limit prices in this circumstance. The Exchange again proposes to amend this provision so that it applies to Peg Managed Orders, rather than Pegged Orders. It also proposes to apply this provision to Managed Midpoint Orders that are assigned a Routing Order Attribute, if the Inside Bid and Inside Offer are crossed. Finally, as is explained further below, the Exchange proposes to delete the last two sentences of this paragraph, which describe the behavior of Orders with Midpoint Pegging, and move them to the end of the next paragraph, which also pertains to Orders with Midpoint Pegging. The Exchange proposes this organizational change for ease of readability.

As to the next paragraph of Rule 4703(d), the Exchange proposes several changes. First, the Exchange proposes to delete the first sentence of this paragraph, which lists the Order entry protocols for which Primary Pegging and Market Pegging are presently available (RASH and FIX). This sentence is no longer needed because, as discussed above, the Exchange proposes to add a new sentence that specifies that all Peg Managed Orders will be available, not only through RASH and FIX, but also through OUCH, going forward. Second, the Exchange proposes to modify the second sentence of the paragraph, which presently states that for an Order entered through OUCH or FLITE with Midpoint Pegging, the Order will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. The Exchange proposes to apply this language to Midpoint Pegging Orders generally, rather than only Midpoint Pegging Orders entered through OUCH or FLITE, as it will apply to both Fixed Midpoint Orders and Managed Midpoint Orders. Third, the Exchange proposes to add and partially restate the following language from the preceding paragraph:

> In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price; and for Orders with Midpoint Pegging entered through OUCH or FLITE, if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will not be accepted. However, even if the Inside Bid and Inside Offer are locked, an Order with Midpoint Pegging that locked an Order on the Exchange Book would execute.

Specifically, the Exchange proposes to replace the phrase ''and for Orders with Midpoint Pegging entered through OUCH or FLITE'' with ''and for Fixed Midpoint Orders,'' because going forward, some Midpoint Pegging Orders entered through the upgraded version of OUCH will not behave in this manner; only Fixed Midpoint Orders will do so.[14]

[11] *See* Rule 4703(d) (defining ''Primary Pegging'' as pegging with reference to the inside quotation on the same side of the market, ''Market Pegging'' as pegging with reference to the inside quotation on the opposite side of the market, and ''Midpoint Pegging'' as pegging with reference to the midpoint between the inside bid and the inside offer).

[12] The Exchange may, in the exercise of its discretion, modify the length of this one second time period by posting advance notice of the applicable time period on its website.

[13] The Exchange also proposes to clarify that this provision applies to a Peg Managed Order that has not been assigned a Routing Order Attribute or a Time-in-Force of Immediate-Or-Cancel (''IOC''). This additional amendment makes it clear that IOC orders in this scenario will cancel immediately if no permissible pegging price is available upon Order entry, rather than waiting up to one second after Order entry to do so.

[14] The Exchange also proposes to make a stylistic, non-substantive change to this text by deleting the

Continued

The Exchange proposes to amend the next paragraph, which describes how the Exchange handles Orders with Midpoint Pegging entered through OUCH or FLITE where the Exchange does not adjust the prices of the Orders based on changes to the Inside Bid or Offer that occur after the Orders post to the Exchange Book. The Exchange proposes to amend this paragraph to state that it applies to Fixed Midpoint Orders (rather than Orders with Midpoint Pegging entered through OUCH or FLITE) and to state expressly that it applies to such Orders after they post to the Exchange Book.

The subsequent paragraph of Rule 4703(d) describes how the Exchange handles Pegged Orders entered through RASH or FIX where the Exchange does adjust the prices of the Orders based on changes to the relevant Inside Quotation that occur after the Orders Post to the Exchange Book. Like the preceding paragraph, the Exchange proposes to amend this paragraph to state that it applies to Peg Managed Orders (rather than Orders entered through RASH or FIX with Pegging). The Exchange also proposes to amend text in this paragraph, which states that the Exchange will reject such an Order, if it assigned a Routing Order Attribute, and if the price to which it is pegged becomes unavailable or pegging would lead to a price at which it cannot be posted. The proposed amended language states that the Exchange will cancel such an Order back to the participant in these circumstances, rather than ''reject'' it; the use of the term ''cancel'' is more appropriate than ''reject'' in this provision insofar as the Exchange only rejects Orders upon entry, but thereafter, it cancels them. Consistent with amendments elsewhere in the proposal, the Exchange also proposes to state that Managed Midpoint Orders assigned a Routing Order Attribute will cancel back to the participant if the Inside Bid and Inside Offer become crossed. The Exchange also proposes to qualify the foregoing by noting that an Order with Market Pegging, or an Order with Primary Pegging and a Non-Display Attribute, will be re-entered at its limit price. Finally, the Exchange proposes to amend the subsequent text, which presently reads as follows:

''. . . if the Order is not assigned a Routing Order Attribute, the Order will be removed from the Exchange Book and will be re-entered once there is a permissible price, provided however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).''

The Exchange proposes to amend this text to specify that it applies to a ''Peg Managed Order,'' rather than simply an ''Order.'' Additionally in this clause, the Exchange proposes to add, after the phrase, ''if [a Peg Managed Order] is not assigned a Routing Order Attribute,'' the following text, for clarity: ''and the price to which it is pegged becomes unavailable, pegging would lead to a price at which the Order cannot be posted, or, in the case of a Managed Midpoint Order, if the Inside Bid and Inside Offer become crossed, ...'' The Exchange believes that these conditions are implicit in the existing Rule text and should be made explicit to avoid confusion. Insofar as this proposed amended text will now account for Managed Midpoint Orders, then the Exchange proposes to delete the following existing text, which will otherwise be duplicative:

''For an Order with Midpoint Pegging, if the Inside Bid and Inside Offer become crossed or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Exchange Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed; provided, however, that the System will cancel the Order with Midpoint Pegging if no permissible price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).''

Finally, the Exchange proposes to restate the paragraph of Rule 4703(d) that describes Pegging Order collars. In pertinent part, this paragraph presently states that ''any portion of a Pegging Order that could execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.'' The Exchange proposes to restate this text to account for the fact that under certain conditions, the System will cancel Pegging Orders before clearing liquidity inside the collar. For non-routable Pegged Orders, the System cancels these Orders prior to polling the Exchange Book for liquidity (even inside of the collar) when the combination of limit price, pegging, offset, discretionary price, discretionary pegging, and discretionary offset attributes would result in the Order attempting to post to the book or clear resting Orders beyond the collar price (even if such liquidity does not exist).[15] For routable Primary or Market Peg Orders, by contrast, the System will clear any liquidity inside of the collar before cancelling.[16] The Exchange proposes to more precisely describe this behavior with the following restated text:

Any portion of a Pegging Order with a Routing attribute to buy (sell) that could execute, either on the Exchange or when routed to another market center, at a price of more than the greater of $0.25 or 5 percent higher (lower) than the NBO (NBB) at the time when the order reaches the System (the ''Collar Price''), will be cancelled. An Order entered without a Routing attribute will be cancelled if it would, as a result of the price determined by a Pegging or Discretionary Pegging attribute, execute or post to the Exchange Book at a price through the Collar Price.

Change To Reserve Attribute

The Exchange proposes to amend its rules governing the Reserve Order Attribute, at Rule 4703(h) to state that when a Reserve Order is entered using OUCH with a displayed size of an odd lot, the System will reject the Order, whereas if such an order is entered using RASH or FIX, then as is the case now under the existing Rule, the System will accept the Order but with the full size of the Order Displayed. The Exchange believes that this new proposed behavior will benefit participants insofar as Reserve Orders entered with odd lot displayed sizes are often the product of errors. Rather than expose erroneous displayed sizes, OUCH will cancel the Orders and thus provide participants with an opportunity to correct their errors, or to

phrase ''In the case of an Order with Midpoint Pegging.'' The Exchange believes this phrase is no longer needed due to the fact that the new paragraph to which it proposes to move the text clearly applies to Orders with Midpoint Pegging.

[15] For example, if NYSE is quoting $10.00 × $11.00 and a Displayed Sell Order of 100 shares is setting the NBO by resting on the Book at $10.05, then an incoming Primary Peg Buy order with a Limit Price of $10.75 and an Offset Value of $0.56 will be cancelled back without executing against the resting order at $10.05. The Primary Peg attribute initially sets the price of the Order at $10.00, then the offset amends the price to $10.56; the collar price is set to $10.05 + ($10.05 × 5%) = $10.5525, which is less than the price the incoming Order would attempt to book at.

[16] For example, if NYSE is quoting $10.00 × $11.00 and a Displayed Sell Order of 100 shares is setting the NBO by resting on the Book at $10.05, then an incoming Primary Peg Buy order of 200 shares with a Limit Price of $10.75, an Offset Value of $0.56, and the SCAN routing strategy will execute against the resting order before the remainder is cancelled before booking outside the collar price.

validate their original choices, by re-entering the Reserve Order.

Change To Trade Now Attribute

The Exchange proposes to amend its rules governing the Trade Now Order Attribute, at Rule 4703(l) to state that when the Trade Now Attribute is entered through RASH or FIX, and going forward, also through OUCH, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis. In the next sentence in the paragraph, the existing text will continue to apply, but as to FLITE only, and not to OUCH. Thus, when entered through FLITE (but not OUCH), the Trade Now Order Attribute may be enabled on a port-level basis for all Order Types that support it, and for the Non-Displayed Order Type, also on an order-by-order basis.

Change To Limit Up-Limit Down Mechanism

The Exchange proposed to amend its rules governing Limit Up-Limit Down (''LULD'') functionality, at Rule 4120(a)(13)(E)(2)(a) to state that limit priced orders entered via the OUCH protocol, which are not assigned a Managed Pegging, Discretionary, or Reserve Attribute, shall be repriced upon entry only if the Price Bands are such that the price of the limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Additionally, the Exchange is proposing to amend Rule 4120(a)(13)(E)(2)(b) to state that limit-priced orders entered via RASH or FIX protocols, or via the OUCH protocol if assigned a Managed Pegging, Discretionary, or Reserve Attribute, the order shall be eligible to be repriced by the system multiple times if the Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band.

The Exchange intends to implement the foregoing changes at the end of the Third Quarter or early in the Fourth Quarter of 2022. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Generally speaking, it is consistent with the Act to amend the Rulebook to reflect upgrades to the Exchange's OUCH Order entry protocols. The planned upgrades will enable members to utilize OUCH in additional circumstances, including for the entry of: (1) Price to Comply and Price to Display Orders with the Reserve Size, Primary and Market Pegging, and Discretion Order Attributes; (2) Non-Displayed Orders with the Primary and Market Pegging, Midpoint Pegging (in scenarios described in amended Rule 4703(d)), and Discretion Order Attributes; and (3) Market Maker Peg Orders.

Likewise, the Exchange believes that its proposed amendments to the Pegging Order Attribute, at Rule 4703(d), are consistent with the Act. The proposed amendments account for the fact that OUCH will become capable of use for the entry of Peg Managed Orders, including Managed Midpoint Orders, in addition to Fixed Midpoint Orders. The Exchange believes that it will be clearer and more coherent to describe the behavior of Pegged Orders and Orders with Midpoint Pegging in the Rule with regard to whether these Orders are ''Managed'' or ''Fixed,'' rather than with regard to the protocol used to enter them, especially as OUCH will be available for use in entering both Managed and Fixed Pegging Orders going forward. Additionally, proposed amendments to Rule 4703(d) would reorganize the description of the behavior of various types of Pegged Orders so that it flows more logically and is more readily comprehensible. Finally, proposed changes would describe the behavior of Pegged Orders more comprehensively, by adding language that was mistakenly omitted from the Rule.

Meanwhile, the Exchange's proposal to restate the Rule's description of the price collar applicable to Pegged Orders is consistent with the Act because it accounts for the fact that under certain conditions, the System will cancel Pegging Orders before clearing liquidity inside the collar.

The Exchange's proposal is consistent with the Act to amend its Rule governing the Reserve Order Attribute, at Rule 4703(h) to state that when a Reserve Order is entered using OUCH with a displayed size of an odd lot, the System will reject the Order. The Exchange believes that this new proposed behavior will benefit participants insofar as Reserve Orders entered with odd lot displayed sizes are often the product of errors. Rather than expose erroneous displayed sizes, OUCH will cancel the Orders and thus provide participants with an opportunity to correct their errors, or to validate their original choices, by re-entering the Reserve Order.

Additionally, the Exchange's proposal to amend its Rule governing the Trade Now Order Attribute, at Rule 4703(l), is consistent with the Act, because it accounts for the fact that when entered through the upgraded version of OUCH, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis.

Finally, the Exchange's proposal to amend its Rule governing the Limit Up-Limit Down Mechanism, at Rules 4120(a)(13)(E)(2)(a) and 4120(a)(13)(E)(2)(b) are consistent with the Act because the proposed amendments align with OUCH's capability going forward, once upgraded, to handle certain Order Types and Order Attributes similar to how RASH and FIX handle them. Additionally, as discussed above, variance will occur in certain Order Types based upon whether the orders are subject to management during their lifetimes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and Order entry protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Attributes, are pro-competitive because they bolster the efficiency, functionality, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from its proposals, as these proposals will restate and reorganize portions of the Rule to reflect the upgraded capabilities of OUCH, as well as to render the descriptions of OUCH's new capabilities easier to read and understand.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) [23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has represented that the proposal does not seek to introduce new functionality, but rather, it offers to OUCH users advanced functionality that already exists for RASH users. The Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest as it will allow the Exchange to provide existing advanced functionality to OUCH users without delay. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2022–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2022–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2022–015 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19684 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95699; File No. SR–NYSEAMER–2022–37]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Transfer the Services and Fees Related to Colocation

September 7, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 24, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) transfer the services and fees related to colocation from the NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule (together, the ''Price List and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Fee Schedule'') to the schedule of Wireless Connectivity Fees and Charges, and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) transfer the services and fees related to colocation from the Price List and Fee Schedule to the schedule of Wireless Connectivity Fees and Charges (''Connectivity Fee Schedule''), and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' There would be no changes to the existing colocation services and fees as a result of these administrative changes.

Background

The colocation services and related fees offered by the Exchange are currently listed in the Exchange's Price List and Fee Schedule. Each of the Exchange's Affiliate SROs[4] similarly includes the colocation services and related fees in its own separate price list or fee schedule.[5] The colocation portions of each of these price lists and fee schedules are substantively identical.

In December 2020, the Exchange and the Affiliate SROs created the Connectivity Fee Schedule to list their wireless connectivity services and related fees. Instead of including the wireless connectivity services and related fees in the seven price lists and fee schedules of the Exchange and the Affiliate SROs, the Connectivity Fee Schedule contains the wireless connectivity services and charges for the Exchange and the Affiliate SROs in one single fee schedule.

In an administrative change, the Exchange now proposes to remove its colocation services and related fees from its Price List and Fee Schedule and to move them into the Connectivity Fee Schedule, so that services and fees related to connectivity within, into and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. Each of the Affiliate SROs is contemporaneously making a similar filing.[6] To reflect the fact that the schedule would include services and fees for connectivity with the Mahwah Data Center that are not wireless, the Exchange also proposes to change its name to the ''Connectivity Fee Schedule.''

Proposed Amendments to the Price List and Fee Schedule

As shown in the attached Exhibit 5A [sic], the Exchange proposes to delete the entirety of the text in the NYSE American Equities Price List and Fee Schedule under the heading ''Co-Location Fees'' and the entirety of the text in the NYSE American Options Fee Schedule under heading ''B. Co-Location Fees.''

Proposed Amendments to the Connectivity Fee Schedule

As shown in the attached Exhibit 5B [sic], the Exchange proposes to amend the title to the ''Connectivity Fee Schedule.''

The Exchange proposes to insert the entirety of the text currently located in the NYSE American Equities Price List and Fee Schedule under the heading ''Co-Location Fees'' (which is identical to the text in the NYSE American Options Fee Schedule under heading ''B. Co-Location Fees'') into the Connectivity Fee Schedule under the heading ''A. Colocation Fees.'' No changes would be made to any of this text, except for the following clarifying and non-substantive changes:

1. The subheading ''Definitions'' would be amended to ''Colocation Definitions.''

2. The subheading ''General Notes'' would be amended to ''Colocation Notes'' and current General Note 1 would be deleted, as it would no longer be necessary since it would be duplicative of the existing General Note in the Connectivity Fee Schedule. The remainder of the current General Notes 2–8 would be renumbered as Colocation Notes 1–7 and the cross references in current General Note 8 would be updated accordingly.

3. In a conforming change, in the table of services and fees, the note to the Partial Cabinet Solution bundles would be amended to change the cross reference from ''Note 2 under 'General Notes' '' to ''Note 1 under 'Colocation Notes.' ''

4. In a conforming change, in the table of services and fees, the note to the Data Center Fiber Cross Connect would be amended to change the cross reference from ''General Note 3'' to ''Colocation Note 2.''

5. With the addition of the Colocation Fees at subheading ''A.'' of the Connectivity Fee Schedule, each of the subsequent headings would be renumbered accordingly. Specifically, ''A. Wireless Connectivity'' would become ''B. Wireless Connectivity,'' and ''B. Wireless Connectivity to Market Data'' would become ''C. Wireless Connectivity to Market Data.''

Application and Impact of the Proposed Changes

As noted above, the proposed change is administrative in nature. Any market participant that requests to receive colocation services directly from the Exchange (a ''User'')[7] is currently subject to the described services and fees, none of which are new or novel. Current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change. Rather, the change

[4] The ''Affiliate SROs'' are the Exchange's affiliates New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[5] *See* ''Co-Location Fees'' in ''New York Stock Exchange Price List 2022'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* ''NYSE American Equities Price List'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf;* ''NYSE American Options Fee Schedule'' at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf;* ''NYSE Arca Equities Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* ''NYSE Arca Options Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* ''Fee Schedule of NYSE Chicago, Inc.'' at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf;* and ''NYSE National, Inc. Schedule of Fees and Rebates'' at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[6] Each of the Affiliate SROs has submitted substantially similar rule changes to move their colocation price lists to the Connectivity Fee Schedule. *See* SR–NYSE–2022–40, SR–NYSEArca–2022–56, SR–NYSECHX–2022–20, and SR–NYSENAT–2022–16.

[7] *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67).

would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title accordingly.

As a result of the proposed change, the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in the same Connectivity Fee Schedule, and market participants would be able to see all such connectivity services and fees in one place.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant, as colocation is available to any market participant that wishes to be a User.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and with Section 6(b)(1)[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed change furthers the objectives of Section 6(b)(5) of the Act[10] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is a non-substantive change and does not impact the services available to Users or the fees charged for such services. Currently, colocation services and the related fees for the Exchange and its Affiliate SROs are substantively identical yet are located in seven separate price lists and fee schedules and not in the Connectivity Fee Schedule. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because moving the description of the existing colocation services and fees to the Connectivity Fee Schedule and changing the Connectivity Fee Schedule's title would mean that the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in one Connectivity Fee Schedule. All market participants would be able to enjoy the convenience of seeing such connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document. Making the change would therefore contribute to the orderly operation of the Exchange by adding clarity and transparency regarding what connectivity is offered within, into, and from the Mahwah Data Center.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because moving the colocation services and charges from the Exchange's Price List and Fee Schedule to the Connectivity Fee Schedule would more accurately reflect the fact that Users are not required to be members of the Exchange or of any of the Affiliate SROs. A User, like any market participant, could more easily navigate, understand, and comply with the list of colocation services and fees, without having to access the price list or fee schedule of an exchange of which it is not a member. The Exchange believes that the proposed change would thereby reduce potential investor or market participant confusion. Similarly, the Exchange believes that the proposed change would reduce potential investor or market participant confusion because market participants would be able to see all connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is ministerial in nature and is not designed to have any competitive impact. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title. As a result of the proposed rule change, the services and fees related to connectivity within, into, and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. All market participants would be able to see the connectivity services and fees within, into, and from the Mahwah Data Center in one place, alleviating any possible market participant confusion.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(3)[13] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(3).

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2022–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–37 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19688 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95685; File No. SR–ICEEU–2022–014]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the ICE Clear Europe Outsourcing Policy

September 7, 2022.

I. Introduction

On July 19, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or ''ICEEU'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt an Outsourcing Policy. The proposed rule change was published for comment in the **Federal Register** on August 4, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would create an Outsourcing Policy to describe, in a consolidated document, ICEEU's procedures for management of its outsourcing arrangements with third-party providers and affiliates, including how ICEEU's board maintains oversight of these outsourcing arrangements.[4]

The Outsourcing Policy, as a rule of the clearing agency, is designed to complement two of ICE Clear Europe's policies: the Vendor Management Policy (''VMP'') and the Outsourcing Operating Manual (''OOM''). The VMP describes certain group-wide policies of ICEEU's parent, Intercontinental Exchange, Inc., with respect to its outsourcing arrangements with third parties. The OOM sets out additional details concerning the steps it follows in order to introduce, amend and maintain outsourcing arrangements. Together with the VMP, the proposed Outsourcing Policy would document how the ICEEU assesses the risks of outsourcing certain functions. The Outsourcing Policy would not represent a change in the ICEEU's current practices, but rather more clearly document those practices in an overall policy.

The Outsourcing Policy would include an introduction section that describes the differences between outsourcing and purchasing services, the former described as ICEEU's use of a service provider to perform an ongoing activity that would usually be performed by ICEEU and which often involves transferring or sharing related non-public proprietary information, and the latter being ICEEU's purchases of services, goods and facilities and which would typically not include any transfer of non-public proprietary information.

The Outsourcing Policy would also differentiate ICEEU's outsourcing practices and purchasing arrangements with third-party providers from those with its affiliates. The Outsourcing Policy would state that outsourcing through its affiliates typically have a lower risk profile for ICEEU because affiliates tend to be regulated entities with the same or similar systems, risk appetites, standards and processes, among other commonalities, as ICE Clear Europe. The Outsourcing Policy would also set out ICEEU's overall objectives when considering outsourcing.

The Outsourcing Policy would include a discussion of outsourcing to third parties and to ICEEU's affiliates. As mentioned, outsourcing to third parties is covered under the VMP, which covers due diligence, risk assessment, suitability, and performance management, among other topics. Outsourcing to affiliates of ICEEU would follow the same process and standards as under the VMP; however, assessments would be performed by ICEEU's senior management rather than the ICEEU's Vendor Management Office. ICEEU represented that, in all cases, it would look to ensure that all service provider-related incidents (such as service interruptions) are recorded, monitored, and escalated to ICEEU's

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Outsourcing Policy, Exchange Act Release No. 95394 (July 29, 2022); 87 FR 47809 (Aug. 4, 2022) (File No. SR–ICEEU–2022–014) (''Notice'').

[4] The description that follows is substantially excerpted from the Notice. Capitalized terms not otherwise defined herein have the meanings assigned to them in ICEEU's Outsourcing Policy or Rules, as applicable.

senior management in a consistent manner.[5]

The Outsourcing Policy would provide that ICEEU would consider, in its assessment of service providers, the lower risk associated in outsourcing functions to third parties that are also regulated or authorized. ICEEU would also consider in its assessment of a service provider how the service provider's presence in a different jurisdiction impacts the risks associated with outsourcing functions to that service providers.

The Outsourcing Policy would also state that ICEEU would look to manage any potential or actual conflicts of interest resulting from its outsourcing arrangements, particularly in respect of outsourcing arrangements it has with its affiliates.

Additionally, ICE Clear Europe proposes to include in the Outsourcing Policy that it looks to reserve independent audit rights to check compliance with legal and regulatory requirements and policies in its outsourcing agreements with third-party and affiliate service providers, as required.

ICE Clear Europe also proposes to include in the Outsourcing Policy information about its cloud-based outsourcing arrangements. Outsourcing to the cloud is generally covered under the existing VMP. Relevant ICE Clear Europe and ICE Group policies, such as the Corporate Information Security Policy, would also be considered when engaging in cloud outsourcing arrangements. Adding a new or significantly changing an existing cloud outsource arrangement would be covered under the OOM.

The Outsourcing Policy would include a section describing ICEEU's considerations when deciding whether to outsource a function considered ''critical or important.'' A function is considered by ICEEU to be ''critical or important'' where a defect or failure in its performance would materially impair the ICEEU's continuing compliance with the conditions and obligations or its authorizations or other obligations, financial performance, or the soundness or continuity of its services and activities.

The Outsourcing Policy would include an acknowledgment by ICEEU that outsourcing ''critical or important'' functions could impact ICEEU's risk profile, ability to oversee the service provider and manage risks, business continuity measures, and performance of its business activities. Under the proposed Outsourcing Policy, ICEEU would ensure that such matters would be considered in the decision-making processes with respect to outsourcing. Additionally, ''critical or important'' functions would impact how an outsourcing arrangement is assessed, documented and managed by ICEEU (including by having an exit plan, if practical). Also, if a function to be outsourced is or would be a dependency to the delivery of one or more of ICEEU's important business services under its operational resilience framework, such function would be mapped accordingly with appropriate consideration given to potential vulnerabilities, resiliency, and impact to the relevant impact tolerances.

The Outsourcing Policy would also include a discussion of additional considerations of particular importance to ICEEU, in light of its position as a systemically important financial market infrastructure and in alignment with its regulatory oversight. The proposed Outsourcing Policy would highlight the following additional items that ICEEU would consider with respect to its outsourcing arrangements: (i) business continuity arrangements, (ii) incident management responsiveness and reporting, (iii) independent assurances, and (iv) redundancies, notice periods and exit strategies. Regarding business continuity arrangements, the proposed rule change would state that, during the onboarding process and through periodic reviews and testing, ICEEU would assess the service provider's business continuity plans to ensure that they are fit for the relevant purposes. The proposal would state that incident management and responsiveness and timely reporting are important factors in ICEEU's outsourcing arrangements, given the services that ICEEU operates. Accordingly, the proposal would require that outsourcing providers have appropriate mechanisms for timely response and incident management. Regarding independent assurances, the proposal would state that where possible and practicable, ICEEU would look to collect independent assurances of the outsourcing providers' services, which may include but are not limited to SOC2 audits, Regulation SCI audits, and enterprise technology risk assessments. Finally, the proposed Outsourcing Policy would state that where possible and practicable, the ICEEU would look to mitigate the risk of disruption to its services from outsourcing providers ceasing to provide their services to ICEEU, through redundancies (the use of multiple providers), sufficient notice periods, or exit strategies.

The proposed Outsourcing Policy would also include a section describing ICEEU's Board oversight of outsourcing arrangements. The Board oversees ICEEU's outsourcing arrangements through risk appetite metrics that include service and incident reporting, operational risk reporting that covers incidents observed in the relevant period, their resolution and other performance metrics, and an Annual Outsourcing Assessment Report.

The proposed Outsourcing Policy would state that the COO or its delegate would prepare the Annual Outsourcing Assessment Report, which would be reviewed by the Board each year directly or via its committees. The Annual Outsourcing Assessment Report would cover the following topics: (i) the activities and services that are outsourced, (ii) the identities of the outsource providers, (iii) the performance of the outsourcing providers and their adherence to agreed service levels, (iv) where relevant, the security measures of the outsourcing providers, (v) risk reviews of the outsourcing providers, particularly those providing critical or important cloud outsourcing arrangements, (vi) exit strategies and contingency arrangements associated with outsourcing critical or important functions, and (vii) results and conclusions of additional assurance mechanisms (for example, SOC2 audits) where applicable.

Finally, the proposed Outsourcing Policy would describe governance and exception handling. The document owner would be responsible for ensuring that it remains up to date and reviewed in accordance with ICEEU's governance processes. Exceptions to the Outsourcing Policy would also be approved in accordance with such governance processes. Any deviations from the Outsourcing Policy would have to be appropriately escalated and reported in a timely manner by the document owner, and the document owner would also be responsible for reporting any material breaches or deviations to the President of ICE Clear Europe and the Risk Oversight Department in order to determine the appropriate governance escalation and notification requirements.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

[5] *See* Notice at 47809.

applicable to such organization.[6] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[7] and Rules 17Ad–22(e)(2)(v) and (e)(3)(i) thereunder.[8]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[9] As noted above, the proposed rule change would create a consolidated policy-level document for managing outsourcing of services with both third-party providers and affiliates of ICEEU. Specifically, the proposed rule change would lay out in detail certain key considerations of ICEEU in outsourcing, including assessing service providers' operational capabilities, dependencies, resilience, financial, reputational, legal, and regulatory standing. The proposed rule change would also include an acknowledgment by ICEEU that outsourcing critical or important functions could impact its risk profile, ability to oversee the service provider and manage risks, business continuity measures, and performance of its business activities, and would be considered in outsourcing decisions. The proposed Outsourcing Policy would also include that ICEEU looks to manage any potential or actual conflicts of interest resulting from its outsourcing arrangements. The Commission believes that these overarching considerations, combined with a description of ICEEU's Board oversight of outsourcing arrangements, would enhance ICEEU's ability to manage risks associated with outsourcing as they arise as well as its ability to regularly assess outsourcing providers. The Commission believes that this in turn should strengthen ICEEU's ability to carry out its operations, thereby promoting the prompt and accurate clearance and settlement of securities transactions.

For these reasons, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[10]

B. Consistency With Rule 17Ad–22(e)(2)(v) Under the Act

Rule 17Ad–22(e)(2)(v) requires, in relevant part, that ICEEU establish, implement, maintain, and enforce written policies and procedures reasonably designed, as applicable, to provide for governance arrangements that specify clear and direct lines of responsibility.[11]

As noted above, the proposed Outsourcing Policy would explain the Board's role in overseeing outsourcing arrangements, including through utilization of risk metrics, operational risk reporting, and the review of the annual outsourcing assessment report (prepared by the COO). Further, the proposed rule change would state that the document owner is responsible for updating the proposed Outsourcing Policy, that any exceptions to the document would be escalated and reported by the document holder, and that the document owner would report any material breaches or deviations to the President of ICEEU and will notify the Risk Oversight Department in order to determine the appropriate governance escalation and notification requirements. The Commission believes that documenting the roles and responsibilities for managing the proposed Outsourcing Policy in this way provides for governance arrangements that specify clear and direct lines of responsibility.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(v).[12]

C. Consistency With Rule 17Ad–22(e)(3)(i) Under the Act

Rule 17Ad–22(e)(3)(i) requires that ICEEU establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICEEU, which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by ICEEU, that are subject to review on a specified periodic basis and approved by ICEEU's board of directors annually.[13]

Because the proposed Outsourcing Policy described above sets forth considerations and approaches to measuring, monitoring, and identifying the risks related to outsourcing arrangements and lays out governance of this process on an annual basis, the Commission believes that it strengthens ICEEU's management of a range of risks borne by it which is also subject to periodic and annual Board review. For example, the Commission believes that the proposed procedures related to identifying critical functions (defining a function as ''critical or important''), the regular assessment of service providers (assessment of service provider's business continuity plans and timely response to incidents), and mitigation of risk (through redundancies, notice periods and exit strategies) from service providers, all support and strengthen ICEEU's ability to identify, monitor, and measure the risks related to outsourcing arrangements.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(3)(i).[14]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act,[15] and Rules 17Ad–22(e)(2)(v) and 17Ad–22(e)(3)(i).[16]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[17] that the proposed rule change (SR–ICEEU–2022–014), be, and hereby is, approved.[18]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19679 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(3)(i).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17 Ad–22(e)(2)(v).

[12] 17 CFR 240.17 Ad–22(e)(2)(v).

[13] 17 CFR 240.17 Ad–22(e)(3)(i).

[14] 17 CFR 240.17Ad–22(e)(3)(i).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(2)(i) and (v) and 17 CFR 240.17Ad–22(e)(3)(i).

[17] 15 U.S.C. 78s(b)(2).

[18] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95688; File No. SR–MEMX–2022–23]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

September 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on September 1, 2022. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) adopt a reduced fee for executions of Pegged Orders [4] with a Midpoint Peg [5] instruction (such orders, ''Midpoint Peg Orders'') and a time-in-force (''TIF'') instruction of IOC [6] or FOK [7] that execute at the midpoint of the national best bid and offer (''NBBO''); (ii) modify the required criteria under Liquidity Provision Tiers 1 and 2; and (iii) allow affiliated Members to aggregate their quoting activity for purposes of the Exchange's Displayed Liquidity Incentive (''DLI'') Tiers with prior notice to the Exchange, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15.5% of the total market share of executed volume of equities trading.[8] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[9] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Midpoint Peg IOC/FOK Orders

The Exchange currently charges a standard fee of $0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, ''Removed Volume''). The Exchange now proposes to adopt a reduced fee of $0.0026 per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share with a TIF instruction of IOC or FOK that execute at the midpoint of the NBBO and remove liquidity from the Exchange upon entry [10] (such orders, ''Midpoint Peg IOC/FOK Orders'').[11] As proposed, executions of Midpoint Peg Orders in securities priced below $1.00 per share with a TIF instruction of IOC or FOK that execute at the midpoint of the NBBO and remove liquidity from the Exchange upon entry in will be charged a fee of 0.25% of the total dollar value of the transaction, which is the same fee that is currently charged for all such executions.

The purpose of reducing the fee for executions of Midpoint Peg IOC/FOK Orders is to incentivize Members to submit additional liquidity-removing orders designed to execute at the midpoint upon entry (*i.e.,* in the form of Midpoint Peg IOC/FOK Orders) to the Exchange, as the cost of such executions would be lower than it is today. In turn, the Exchange believes the submission of additional Midpoint Peg IOC/FOK Orders would encourage firms that post liquidity at the midpoint to submit additional liquidity-providing orders designed to execute at the midpoint to

[4] *See* Exchange Rule 11.6(h).

[5] *See* Exchange Rule 11.6(h)(2).

[6] *See* Exchange Rule 11.6(o)(1).

[7] *See* Exchange Rule 11.6(o)(3).

[8] Market share percentage calculated as of August 30, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[9] *Id.*

[10] The Exchange notes that all Midpoint Peg Orders with a TIF instruction of IOC or FOK, if executed on the Exchange, would remove liquidity from the Exchange upon entry, as orders with a TIF instruction of IOC or FOK do not post on the MEMX Book. The Exchange further notes that a Midpoint Peg Order with a TIF instruction of IOC may be eligible for routing away pursuant to Exchange Rule 11.11, and that if any such order is routed to and executed at an away market it would be charged the current standard fee of $0.0030 per share for orders that are routed to, and remove liquidity from, another market. *See* Exchange Rules 11.6(o)(1) and 11.6(o)(3).

[11] The proposed pricing for executions of Midpoint Peg IOC/FOK Orders is referred to by the Exchange on the Fee Schedule under the new description ''Removed volume from MEMX Book, Midpoint Peg (IOC/FOK)'' and such orders will receive a Fee Code of ''Rm'' assigned by the Exchange.

the Exchange, as such orders would have a greater chance of being executed as a result of additional contra-side liquidity-removing Midpoint Peg IOC/FOK Orders to interact with. Thus, the Exchange's proposal to reduce the fee for executions of Midpoint Peg IOC/FOK Orders is designed to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue.

Liquidity Provision Tiers 1 and 2

The Exchange currently provides a standard rebate of $0.0020 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers the Liquidity Provision Tiers under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to modify the required criteria under Liquidity Provision Tiers 1 and 2, as further described below, but the Exchange does not propose to change the rebates provided under such tiers.

With respect to Liquidity Provision Tier 1, a Member currently qualifies for such tier by achieving: (1) a Displayed ADAV [12] that is equal to or greater than 0.40% of the TCV; [13] or (2) a Remove ADV [14] that is equal to or greater than 0.25% of the TCV and a Step-Up ADAV [15] from June 2022 that is equal to or greater than 0.05% of the TCV. Now, the Exchange proposes to modify the required criteria under such tier such that a Member would now qualify for Liquidity Provision Tier 1 by achieving: (1) a Displayed ADAV that is equal to or greater than 0.40% of the TCV; or (2) a Remove ADV that is equal to or greater than 0.20% of the TCV and a Step-Up ADAV from June 2022 that is equal to or greater than 0.05% of the TCV. Thus, such proposed change would lower the Remove ADV threshold in one of the two alternative criteria under such tier.

With respect to Liquidity Provision Tier 2, a Member currently qualifies for such tier by achieving an ADAV [16] that is equal to or greater than 0.25% of the TCV.[17] Now, the Exchange proposes to modify the required criteria under such tier such that a Member would now qualify for Liquidity Provision Tier 2 by achieving an ADAV that is equal to or greater than 0.20% of the TCV. Thus, such proposed change would lower the ADAV threshold under such tier.

The Exchange believes that lowering the Remove ADV threshold under Liquidity Provision Tier 1 and the ADAV threshold under Liquidity Provision Tier 2, as proposed, would make such tiers easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange anticipates that more Members will strive to qualify for such tiers than currently do, resulting in the submission of additional order flow to the Exchange.

Aggregation of Affiliated Members' DLI Quoting Activity

Lastly, the Exchange proposes to add a note to the Fee Schedule to allow affiliated Members to aggregate the quoting activity of such affiliated Members' MPIDs for purposes of DLI Tier qualification if such Members provide prior notice to the Exchange. As proposed, to the extent that two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange would permit such Members to aggregate the quoting activity (but not the NBBO Time [18]) of such affiliated Members' MPIDs in a manner that is consistent with the DLI Tier calculation methodologies currently set forth on the Fee Schedule.[19] More specifically, the Exchange would use the same calculation methodologies currently applicable to the aggregation of the quoting activity (but not the NBBO Time) of multiple MPIDs of one Member to aggregate the quoting activity (but not the NBBO Time) of all MPIDs associated with the affiliated Members.

As proposed, the Exchange will verify such affiliation using a Member's Form BD, which lists control affiliates. The purpose of this proposed change is to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, as allowing affiliated Member firms to count their aggregate quoting activity as proposed would produce the same result for purposes of the Exchange's DLI Tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. The Exchange notes that the proposed aggregation of affiliated Member firms' quoting activity for purposes of DLI Tier qualification, as described above, is consistent with the current practice of the Exchange and other exchanges with respect to the aggregation of affiliated Member firms' volumes for purposes of ADAV and ADV calculations with respect to pricing tiers.[20]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[21] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be

[12] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[13] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[14] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis, and the term ''Remove ADV'' means ADV with respect to orders that remove liquidity.

[15] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADV in the relevant baseline month subtracted from current ADAV.

[16] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis.

[17] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[18] As set forth on the Fee Schedule, ''NBBO Time'' means the aggregate of the percentage of time during regular trading hours during which one of a Member's MPIDs has a displayed order of at least one round lot at the national best bid or the national best offer.

[19] *See* the Exchange's Fee Schedule (available at *https://info.memxtrading.com/fee-schedule/*) and the Exchange's initial proposal to adopt the DLI (Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR–MEMX–2021–07)) for additional details regarding the Exchange's calculation methodologies for the DLI Tiers.

[20] *See, e.g.,* the Cboe EDGX Exchange, Inc. equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*).

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(4) and (5).

excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including liquidity-adding and liquidity-removing orders designed to execute at the midpoint, to the Exchange, which the Exchange believes would enhance liquidity and market quality on the Exchange to the benefit of all Members.

The Exchange believes that its proposal to charge a reduced fee for executions of Midpoint Peg IOC/FOK Orders is reasonable, equitable, and not unfairly discriminatory. Specifically, the Exchange believes such proposal is reasonable, as it is reasonably designed to incentivize Members to submit additional Midpoint Peg IOC/FOK Orders to the Exchange, which, in turn, the Exchange believes would encourage firms that post midpoint liquidity to submit additional liquidity-adding orders designed to execute at the midpoint to the Exchange in order to interact with such Midpoint Peg IOC/FOK Orders, as described above. Thus, the Exchange believes the proposal reflects a reasonable attempt to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue, particularly as the Exchange believes the proposed reduction in the fee for executions of Midpoint Peg IOC/FOK Orders (*i.e.,* $0.0004 per share lower than the standard fee for Removed Volume) is not excessive and is instead reasonably related to the market quality benefits it is intended to achieve. The Exchange also believes that the proposed fee for executions of Midpoint Peg IOC/FOK Orders is equitable and not unfairly discriminatory, as such fee would be charged uniformly to all executions of such orders for all Members.

With respect to Liquidity Provision Tiers 1 and 2, the Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that Liquidity Provision Tiers 1 and 2, as modified by the proposed changes to the required criteria under such tiers, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to increase their order flow to the Exchange in order to qualify for the corresponding enhanced rebate for executions of Added Displayed Volume, thereby contributing to a deeper and more liquid market to the benefit of all Members. The Exchange also believes that the proposed changes to the required criteria under Liquidity Provision Tiers 1 and 2 reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes the enhanced rebate for executions of Added Displayed Volume under each such tier remains commensurate with the corresponding required criteria under the applicable tier and reasonably related to the market quality benefits the applicable tier is designed to achieve.

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for the proposed Liquidity Provision Tiers 1 and 2. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, the Exchange believes that the proposed changes to lower the Remove ADV threshold and the ADAV threshold under Liquidity Provision Tiers 1 and 2, respectively, would make such tiers easier to achieve, and the Exchange anticipates that more Members will strive to qualify for such tiers than currently do, resulting in the submission of additional order flow to the Exchange.

As described above, the proposed language on the Fee Schedule permitting aggregation of quoting activity (but not NBBO Time) amongst affiliated Members for purposes of DLI Tier qualification is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, as allowing affiliated Member firms to count their aggregate quoting activity in determining DLI Tier qualification would produce the same result for purposes of the Exchange's DLI Tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure. Moreover, as noted above, this proposed policy is consistent with the practice of the Exchange and other exchanges with respect to the aggregation of affiliated Members' volumes for purposes of determining ADAV and ADV with respect to pricing tiers, and therefore, it does not raise any new or novel issues that have not previously been considered by the Commission.[24]

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [25] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate

[23] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] *See supra* note 20.

[25] 15 U.S.C. 78f(b)(4) and (5).

between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including in the form of orders designed to execute at the midpoint of the NBBO, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [26]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including liquidity-adding and liquidity-removing orders designed to execute at the midpoint, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new criteria under Liquidity Provision Tiers 1 and 2, and thus receive the corresponding enhanced rebates for executions of Added Displayed Volume, would continue to be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, as noted above, the ability for Members to aggregate quoting activity amongst affiliated Member firms for purposes of the Exchange's determination of DLI Tier qualification is designed to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity and would apply equally to all Members as does the Exchange's current practice with respect to the aggregation of affiliated Members' volumes for purposes of determining ADAV and ADV with respect to pricing tiers. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15.5% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Midpoint Peg IOC/FOK Orders and Added Displayed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to encourage additional order flow to the Exchange through a reduced fee for executions of Midpoint Peg IOC/FOK Orders and modifications to the required criteria under certain volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Additionally, as discussed above, the proposed change to allow affiliated Members to aggregate their quoting activity for purposes of the Exchange's determination of DLI Tier qualification is consistent with the practice of the Exchange and other exchanges with respect to the aggregation of affiliated Member firms' volumes for purposes of ADAV and ADV calculations with respect to pricing tiers. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants and aggregation of trading activity amongst affiliated firms with respect to pricing incentives.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in

[26] *See supra* note 23.

[27] *See supra* note 23.

the execution of order flow from broker dealers'. . . .''.[28] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[29] and Rule 19b–4(f)(2)[30] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2022–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–23 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19681 Filed 9–12–22; 8:45 am]

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[28] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–814, OMB Control No. 3235–0764]

Proposed Collection; Comment Request; Extension: Rule 6c–11

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 (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 6c–11 under the Investment Company Act of 1940 (the ''Act'') permits exchange-traded funds (''ETFs'') that satisfy certain conditions to operate without first obtaining an exemptive order from the Commission. The rule was designed to create a consistent, transparent, and efficient regulatory framework for ETFs and facilitate greater competition and innovation among ETFs. Rule 6c–11 requires an ETF to disclose certain information on its website, to maintain certain records, and to adopt and implement written policies and procedures governing its constructions of baskets, as well as written policies and procedures that set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders.

We estimate that the total hour burdens and time costs associated with rule 6c–11, including the burden associated with reviewing and updating website disclosures, recordkeeping, and reviewing and updating policies and procedures, will result in an average aggregate annual burden of 51,156 hours and an average aggregate time cost of $1,248,912.

The requirements of this collection of information are mandatory. If information collected pursuant to rule 6c–11 is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's 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 by November 14, 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: September 7, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19670 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95684; File No. SR–MSRB–2022–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MSRB Rule G–3 Continuing Education Program Requirements To Harmonize With Industry-Wide Transformation

September 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2022 the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to consisting of amendments to MSRB Rule G–3, on professional qualification requirements, to (i) amend the MSRB's continuing education (''CE'') program requirements for brokers, dealers, and municipal securities dealers (collectively, ''dealers'') to align with the Financial Industry Regulatory Authority's (''FINRA'') rule change [3] (''FINRA's CE rule amendment'') in furtherance of implementing the recommendations of the Securities Industry/Regulatory Council on Continuing Education (''CE Council'') [4] and (ii) make technical amendments to renumber certain rule provisions under MSRB Rule G–3 (collectively, the ''proposed rule change'').[5] The proposed rule change is specific to dealers' professional qualification obligations under MSRB Rule G–3 and this proposed rule change does not modify municipal advisors' continuing education obligations under the rule.

The MSRB has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A) [6] of the Act and Rule 19b–4(f)(6) [7] thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The operative date for the proposed rule change is September 30, 2022.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2022-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB is charged with setting professional qualification standards for dealers and municipal advisors. Specifically, Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.[8] Sections 15B(b)(2)(A)(i) [9] and 15B(b)(2)(A)(iii) [10] of the Act also provide that the Board may appropriately classify associated persons of dealers and municipal advisors and require persons in any such class to pass tests prescribed by the Board. Accordingly, over the years, the MSRB has adopted professional qualification standards to ensure that associated persons of dealers and municipal advisors attain and maintain specified levels of competence and knowledge for each qualification category. The purpose of the proposed rule change is to align certain obligations under MSRB Rule G–3 for dealers with Commission approved amendments to FINRA Rules 1210, on registration requirements, and 1240, on continuing education requirements in furtherance of promoting regulatory consistency with respect to CE program requirements. To that end, the MSRB is proposing to (i) transition the Regulatory Element component of CE for dealers to an annual requirement for each dealer qualification category; (ii) extend the Firm Element component of CE for dealers to all registered persons of dealers; (iii) permit maintenance of professional qualifications for dealers after termination of registration; and (iv) make other amendments that are technical in nature. As noted above, the proposed rule filing is not proposing to modify continuing education obligations, under the rule, for registered municipal advisors.[11]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 21, 2021, the SEC approved FINRA's rule change to, among other things, require that the Regulatory Element of CE be completed annually rather than every three years and to provide a path for individuals to maintain their qualification following the termination of a registration by way of CE. *See* Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (File No. SR–FINRA–2021–015) (Order Approving a Proposed Rule Change to Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements), (available at *https://www.finra.org/sites/default/files/2021-09/sr-finra-2021-015-approval-order.pdf*). *See also* FINRA Regulatory Notice 21–41 (November 17, 2021) (available at *https://www.finra.org/sites/default/files/2021-11/Regulatory-Notice-21-41.pdf).*

[4] The CE Council is composed of 16 industry members and six self-regulatory organization (SRO) members, including the MSRB. Industry members generally serve four-year terms and represent a cross-section of the industry. In collaboration with the CE Council, the day-to-day operations of the CE Program is administered by FINRA.

[5] The proposed rule change is based on the CE Council's September 2019 recommendations to enhance the CE Program. *See* ''Recommended Enhancements for the Securities Industry Continuing Education Program'' (available at *http://cecouncil.org/media/266634/council-recommendations-final-.pdf).*

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] *See* 15 U.S.C. 78*o*–4(b)(2)(A).

[9] *See* 15 U.S.C. 78*o*–4(b)(2)(A)(i).

[10] *See* 15 U.S.C. 78*o*–4(b)(2)(A)(iii).

[11] Municipal advisor principals and municipal advisor representatives are not subject to Regulatory Element continuing education requirements that are applicable to dealers under MSRB Rule G–3(i)(i) and instead must satisfy separate continuing education program requirements as specifically provided under MSRB Rule G–3(i)(ii).

Background

In 1993, the Securities Industry Task Force on Continuing Education (''task force'') [12] was created to study and develop recommendations regarding CE in the securities industry. The task force issued a report calling for a formal, two-part CE program consisting of a (i) Regulatory Element requiring securities industry professionals to obtain periodic and uniform training in regulatory matters, and (ii) Firm Element requiring firms to provide ongoing training to employees to ensure they have up to date knowledge of the job function and securities product-related subjects.

On February 8, 1995, the SEC approved SRO rule changes based on the task force's recommendations.[13] In approving the SRO rule changes, the SEC stated that these SROs may require their members, either individually or as part of a group, to provide specific training in any areas the SROs deem necessary.[14] The SEC added that as the program evolves, the SEC expects SROs to define educational standards for products and services where heightened regulatory concerns exist.[15] Since approval of the initial CE rules, SROs have amended their CE rules as industry and market practices evolved.

More recently, the CE Council proposed enhancements to the current CE program requirements that sought to provide a path, through CE, for individuals to step away from the securities industry for a period of time and still maintain their qualification(s) following the termination of registration. Additionally, the CE Council's suggestions focused on the ability of firms to design effective and efficient Firm Element training by eliminating redundancy with other industry training requirements and providing opportunities for reciprocity with other securities or related credentialing programs.[16] With that, SROs commenced a multi-year effort to advance the recommendations of the CE Council in the form of an initiative to modernize the CE program requirements (''CE program requirements'') for securities industry professionals (''CE Transformation''). The modernization of CE program requirements is meant to ensure that all registered persons receive relevant content with respect to the Regulatory Element and Firm Element components of CE, in a timely manner, in pursuance of enhanced professionalization of the industry.

FINRA's rule change was by and large based on the CE Council's 2019 recommendations [17] to enhance the CE program requirements and reflects the extensive discussions with the CE Council, peer SROs, and stakeholders. FINRA's proposed rule change included, among other things, (i) transitioning the Regulatory Element component of CE to an annual requirement for each of its registration categories; (ii) recognizing other training requirements for the Firm Element component of CE; (iii) expanding the Firm Element component of CE to extend to all registered persons; and (iv) permitting eligible individuals to maintain their professional qualification(s) after the termination of employment with a FINRA member firms and consequently their registrations, if certain conditions are met.

The process leading to FINRA's CE rule amendment began, in part, in 2018 when FINRA solicited comments on enhancements to CE program requirements under consideration by the CE Council.[18] Subsequently, prior to filing the CE rule amendment with the Commission, FINRA published Regulatory Notice 20–05, soliciting comments on its proposal to amend its registration and CE rules, as described above, to facilitate the implementation of the recommendations of the CE Council regarding enhancements to the CE program requirements for securities industry professionals.[19]

On June 15, 2021, FINRA's CE rule amendment was filed with the SEC and was published for comment in the **Federal Register** on June 24, 2021. The SEC received nine comment letters in response to the proposal,[20] which FINRA responded to on August 12, 2021.[21] The SEC found that the proposal was consistent with the requirements of the Exchange Act and the rules and regulations thereunder and approved FINRA's CE rule amendment.[22]

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[12] The task force included representatives from six SROs, including the MSRB, and industry representatives.

[13] *See* Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (File No. SR–MSRB–94–17) (approving MSRB Rule G–3(h), on continuing education requirements). The CE Council was formed upon the recommendation from the task force and was tasked with facilitating the development of uniform continuing education requirements for the securities industry.

[14] *Id.*

[15] *Id.*

[16] On September 6, 2018, the CE Council published ''Enhancements Under Consideration for the Securities Industry Continuing Education Program,'' noting that providing timely, effective training to registered persons is of the utmost importance, given the increasing complexity of products and services offered through the U.S. financial markets, and that training is a critical factor in ensuring investor protection and preserving the integrity of the U.S. capital markets. *See* Enhancements Under Consideration for the Securities Industry Continuing Education Program (available at *ce-program-enhancements-final-.pdf (cecouncil.org*).

[17] On September 12, 2019, the CE Council issued the following recommendations: (i) transition to an annual Regulatory Element requirement; (ii) develop Regulatory Element content relevant and tailored to each registration category, using diverse instructional formats; (iii) publish Regulatory Element learning topics in advance each year; (iv) enhance FINRA system functionality to facilitate compliance with the Regulatory Element; (v) recognize other training requirements and credentialing programs for purposes of satisfying the Firm Element; (vi) improve guidance and resources for firms for conducting the Firm Element annual needs analysis and for training planning; (vii) develop a content catalog firms may use to select or supplement Firm Element content; (viii) consider rule changes that would enable individuals who were previously registered to maintain the qualification by participating in an annual continuing education program. *See* Recommended Enhancements for the Securities Industry Continuing Education Program (available at *http://cecouncil.org/media/266634/council-recommendations-final-.pdf*).

[18] *See* Regulatory Notice 18–26 (FINRA Requests Comment on Enhancements Under Consideration by the Securities Industry/Regulatory Council on Continuing Education) (September 2018), (available at *https://www.finra.org/rules-guidance/notices/18-26*). FINRA received 22 comment letters in response to Regulatory Notice 18–26 (available at *https://www.finra.org/rules-guidance/notices/18-26#comments*).

[19] *See* Regulatory Notice 20–05 (FINRA Requests Comment on a Proposal to Implement the Recommendations of the CE Council Regarding Enhancements to the Continuing Education Program for Securities Industry Professionals) (February 2020) (available at *https://www.finra.org/rules-guidance/notices/20-05*). FINRA received 26 comment letters in response to Regulatory Notice 20–05 (available at *https://www.finra.org/rules-guidance/notices/20-05#comments*).

[20] *See* Letters from Anonymous (''Anonymous Letter''), dated July 1, 2021; Brian A. Egwele (''Egwele Letter''), dated July 2, 2021; Frederick T. Greene, Executive Vice President, Portfolio Manager, Woodforest Wealth Strategies (''Woodforest Letter''), dated July 12, 2021; James Rabenstine, Vice President, NFS Chief Compliance Officer, Nationwide Office of the Chief Legal Officer (''Nationwide Letter''), dated July 13, 2021; Kevin Zambrowicz, Managing Director and Associate General Counsel, and Bernard V. Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (''SIFMA Letter''), dated July 14, 2021; Carrie L. Chelko, Chief Compliance Officer, Fidelity Brokerage Services LLC, and Janet Dyer, Chief Compliance Officer, National Financial Services LLC, John McGinty, Chief Compliance Officer, Fidelity Distributors Company LLC and Digital Brokerage Services LLC (''Fidelity Letter''), dated July 14, 2021; Lisa Hopkins, President, North American Securities Administrators Association, Inc. (''NASAA Letter''), dated July 14, 2021; Howard Spindel, Senior Managing Director, and Peggy E. Chait, Managing Director, Integrated Solutions (''Integrated Solutions Letter''), dated July 14, 2021; John S. Watts, Senior Vice President and Chief Counsel, PFS Investments Inc., (''PFS Letter'') dated July 15, 2021 (available at *https://www.sec.gov/comments/sr-finra-2021-015/srfinra2021015.htm*).

[21] *See* Letter from Afshin Atabaki, Special Advisor and Associate General Counsel, Financial Industry Regulatory Authority. (''FINRA Letter''), dated August 12, 2021.

[22] Specifically, the Commission found that the proposed rule change was consistent with Section 15A(b)(6) of the Exchange Act, 15 U.S.C. 78*o*–3(b)(6), which requires, among other things, that

Thereafter, FINRA announced in Regulatory Notice 21–41 that its rule amendment with respect to permitting eligible individuals to maintain their professional qualification(s) after the termination of their registrations, by way of the accompanying implementation of the Maintaining Qualifications Program (''MQP''), and that the termination of the Financial Services Affiliate Waiver Program (''FSAWP'') to new participants would both become effective on March 15, 2022. FINRA's CE rule amendment to transition the Regulatory Element component of CE to an annual requirement for each of FINRA's registration categories, and all other changes, will become effective on January 1, 2023.[23]

The MSRB's proposed rule change reflects the MSRB's intention to generally align the MSRB's CE program requirements with FINRA's CE rule amendment to facilitate the implementation of recommendations by the CE Council and for purposes of promoting regulatory consistency and fostering cooperation between regulators.[24] Provided below is a detailed description of the proposed amendments to MSRB Rule G–3(i), on CE requirements.

Description of the Proposed Amendments to MSRB Rule G–3 To Facilitate the Implementation of Recommendations by the CE Council and To Promote Regulatory Consistency With FINRA's Rule Change

I. Transition the Regulatory Element Component of CE to an Annual Requirement

A. Requirements

MSRB Rule G–3(i)(i) prescribes requirements regarding CE of certain registered persons subsequent to their initial qualification and registration with a registered securities association with respect to a person associated with a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to a person associated with any other dealer (''the appropriate enforcement authority'').

Currently, MSRB Rule G–3(i)(i)(A)(1) provides that no dealer shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the required provisions under subparagraph (i)(i)(A). More specifically, each registered person must complete the Regulatory Element component of CE on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Board. Additionally, on each occasion, the Regulatory Element component of CE must be completed within 120 days after the person's registration anniversary date.[25] The content of the Regulatory Element component of CE shall be determined by the Board for each registration category of persons subject to the rule.

Under amended FINRA Rule 1240(a), registered persons will be required to complete the Regulatory Element component of CE annually [26] by December 31 of each calendar year of every year in which the person remains registered rather than every three years. Specifically, as approved, FINRA Rule 1240(a) requires registered persons to complete the Regulatory Element component of CE for each representative or principal registration category that such person holds. As approved, firms will have the flexibility to require their registered persons to complete the Regulatory Element component of CE sooner than December 31, allowing firms to coordinate the timing of the Regulatory Element component of CE with other training requirements, including the Firm Element component of CE.[27]

FINRA Rule 1240(a) also establishes that persons who would be registering as a representative or principal for the first time on or after the implementation date of FINRA's CE rule amendment would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration. In addition, subject to specified conditions, individuals re-registering as a representative or principal on or after the implementation date of FINRA's CE rule amendment would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their re-registration.

In order to align with FINRA, the MSRB is proposing changes to MSRB Rule G–3(i)(i)(A)(1) that would similarly require associated persons of a dealer to complete the Regulatory Element component of CE annually by December 31 of each calendar year.[28] Municipal securities representatives and municipal securities principals would be required to complete Regulatory Element content appropriate to each qualification held in order to satisfy CE program requirements. Additionally, the MSRB notes it supports the flexibility provided to firms in determining the date by which the Regulatory Element component of CE must be completed by (*i.e.,* at any time during the calendar year, so long as it is completed by December 31 each year) and also believes creating flexibility allows for better efficiency across the CE program requirements. The proposed rule change would also set forth the time frame by which the Regulatory Element component of CE must be completed, after the implementation date of January 1, 2023, based on whether such persons would be registering for the first time or re-registering after the implementation date.

B. Failure To Complete

Currently, MSRB Rule G–3(i)(i)(A)(2), on failure to complete, prescribes, unless otherwise determined by the Board, that any registered persons who have not completed the Regulatory Element component of CE within the required time frames will have their registrations deemed inactive until such time as the requirements of the program

FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15(A)(g)(3) of the Exchange Act, 15 U.S.C. 78*o*–3(g)(3), which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

[23] *See* FINRA Regulatory Notice 21–41 (FINRA Amends Rules 1210 and 1240 to Enhance the Continuing Education Program for Securities Industry Professionals) (November 2021) (available at *https://www.finra.org/rules-guidance/notices/21-41*).

[24] On September 6, 2018, the MSRB issued MSRB Notice 2018–21 (CE Council Requests Comment on Continuing Education Program Considerations) (September 2018) (available at *https://www.msrb.org/-/media/Files/Regulatory-Notices/RFCs/2018-21.ashx??n=1*), with a comment period deadline of November 5, 2018. The MSRB received one comment letter in response to MSRB Notice 2018–21. *See* Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors (''Wells Letter''), dated November 5, 2018 (available at *https://msrb.org/RFC/2018-21/WFA.pdf*).

[25] A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this subparagraph (i)(i)(A).

[26] Generally, the amount of content required to be completed on an annual basis will be comparable to the continuing education content currently completed every three years, subject to the number of registrations held. For example, persons who hold multiple registrations may be required to complete more continuing education content because such persons would be required to complete content specific to each registration held.

[27] For example, a firm could require its registered persons to complete both their Regulatory Element and Firm Element component of continuing education by October 1 of each calendar year.

[28] As aforementioned, the requirement to complete the Regulatory Element on an annual basis would become effective on January 1, 2023.

have been satisfied.[29] The rule also provides that a registration that is inactive for a period of two years will be administratively terminated; and subsequently, that the qualification requirements must be satisfied prior to a person's registration being reactivated.[30]

FINRA Rule 1240(a)(2) also provides that individuals who fail to complete their Regulatory Element component of CE within the prescribed time frame would be designated as CE inactive. Further, FINRA Rule 1240(a)(2) preserves the ability for FINRA to extend the time frame by which a registered person must complete the Regulatory Element component of CE for good cause; however, the rule change establishes the requirement for firms to make such request for an extension of time by way of a written application with supporting documentation.[31]

The Commission also approved amendments to FINRA Rule 1240(a)(2) to specify that: (i) persons who are designated as CE inactive would be required to complete all of their pending and upcoming annual Regulatory Element component of CE, including any annual Regulatory Element that becomes due during such persons' CE inactive period, for purposes of returning to an active status; [32] and (ii) a registration that is inactive for a period of two years, and thus administratively terminated, is calculated from the date persons become CE inactive and continues to run regardless of whether such persons terminate their registrations.[33]

The proposed rule change to amend MSRB Rule G–3(i)(i)(A)(2) would adopt a similar provision to that of FINRA, requiring dealers to make a request for an extension of time in writing and provide supporting documentation. The MSRB believes the proposed rule change would further regulatory consistency and foster the appropriate enforcement authority's determination on whether to grant additional time to complete the Regulatory Element component of CE.

C. Disciplinary Actions

Currently, MSRB Rule G–3(i)(i)(A)(3), on disciplinary actions, provides that, unless otherwise determined by the appropriate enforcement authority, a registered person will be required to retake the Regulatory Element and satisfy all of its requirements in instances where a person becomes subject to a stated disciplinary action.[34] The retaking of the Regulatory Element must begin within 120 days of a person becoming subject to a statutory disqualification or the completion of an implemented sanction or disciplinary action becomes final.

FINRA Rule 1240(a)(3) provides that the requirements apply to a covered person, other than a covered person designated as eligible for a waiver under the FSAWP. Moreover, this provision provides that persons who become subject to a significant disciplinary action may be required to complete assigned CE content, including retaking the Regulatory Element component of CE.[35]

The MSRB is proposing to amend MSRB Rule G–3(i)(i)(A)(3) to expressly exempt Financial Services Industry Affiliate-eligible persons (*i.e.,* those individuals eligible for a waiver, pursuant to Supplementary Material .04 of MSRB Rule G–3, from the requirements of this provision).

D. Reassociation

Currently, MSRB Rule G–3(i)(i)(A)(4), on reassociation, states that any registered person who has terminated association with a dealer and who becomes reassociated in a registered capacity with a dealer, within two years, shall participate in the Regulatory Element at the required intervals [36] that apply based on such person's initial registration anniversary date rather than the date of reassociation in a registered capacity. Also, the rule requires former registered persons who become reassociated with a dealer in a registered capacity after a two-year period to satisfy CE program requirements in their entirety based on the most recent registration date.

FINRA Rule 1240(a)(4) provides that persons who have not completed the Regulatory Element component of CE for a registration category by December 31 of each calendar year prior to re-registering, would not be approved for registration for that category until the appropriate qualification requirement is satisfied.[37]

The MSRB's proposed rule change would amend MSRB Rule G–3(i)(i)(A)(4) to specify the CE requirements that must be satisfied in order for individuals to have their re-registration approved by the appropriate enforcement authority. More specifically, the proposed rule change would require persons who are re-registering with the appropriate examining authority to complete the Regulatory Element component of CE for the registration category annually by December 31 of each calendar year. The MSRB's proposed rule change would also make technical amendments, similar to approved changes to FINRA rules, to add the phrase ''or registering'' to MSRB Rule G–3(i)(i)(A)(5) to provide that the Regulatory Element requirements apply to individuals who are registered or in the process of registering as a representative or principal. MSRB proposed a second technical amendment to MSRB Rule G–3(i)(i)(A)(6) to delete the phrase ''continuing education'' that appears before the term ''Regulatory Element.''

II. Enhancements to the Firm Element Component of CE To Foster Efficiencies

Currently, MSRB Rule G–3(i)(i)(B), on Firm Element, requires that dealers maintain a CE program for their covered registered persons [38] to enhance such

[29] And, more specifically, the current requirements states, any person whose registration has been deemed inactive is required to cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. Further, such persons may not receive any compensation for transactions in municipal securities, however such person may receive trails, residual commissions or like compensation resulting from such transactions completed before the person's inactive status, unless the dealer with which the person is associated has a policy prohibiting such trails, residual commissions or like compensation.

[30] The appropriate enforcement authority may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

[31] *See* FINRA Rule 1240(c)(3).

[32] *See* FINRA Rule 1240(a)(2).

[33] *Id.*

[34] The specified disciplinary actions, under MSRB Rule G–3(i)(i)(A)(3), include instances in which persons: (a) become subject to any statutory disqualification as defined in Section 3(a)(39) of the Act; (b) become subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, the appropriate enforcement authority or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (c) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency, the appropriate enforcement authority or securities self-regulatory organization.

[35] *See* FINRA Rule 1240(a)(3).

[36] As aforementioned, the required intervals, pursuant to MSRB Rule G–3(i)(i)(A)(1) are the second registration anniversary and every three years, thereafter.

[37] Under approved amendments to FINRA Rule 1240(a)(4), a person seeking registration who has not completed any Regulatory Element content would be required to either (i) complete the Regulatory Element component of continuing education; (ii) pass an examination for the applicable registration category; or (iii) obtain an unconditional examination waiver for the applicable registration category, as applicable. *See* FINRA Rule 1240(a)(4).

[38] Under MSRB Rule G–3(i)(i)(B)(2)(1), ''covered registered persons'' is defined to mean any person(s) registered with a dealer and qualified as a representative or principal in accordance with MSRB Rule G–3 or as a general securities principal and who regularly engages in or supervises

persons' securities knowledge, skill and professionalism.[39] The Firm Element is a firm-administered training program that requires dealers to annually conduct a needs analysis to evaluate and prioritize their training needs. A needs analysis generally reflects a firm's assessment of its unique training needs based on various factors, for example, the firm size, organizational structure, business activities the firm and its associated persons engage in, the level of industry experience the firm's associated persons have and any changes to applicable rules or regulations.[40] Upon completion of a needs analysis, a dealer is required to develop a written training plan, consistent with its analysis of the training priorities identified. Additionally, dealers must maintain records documenting the completion of the needs analysis, the content of the training programs and completion of the training by each of the firm's covered registered persons, in accordance with the written training plan.[41]

The MSRB has supported a principles-based approach to compliance with the Firm Element requirement and afforded dealers considerable flexibility in developing the scope and content for their Firm Element, subject to the enumerated minimum content requirements. A dealer's Firm Element, as prescribed in MSRB Rule G–3(i)(i)(B)(2)(b), on minimum standards for training programs, must address, with respect to municipal securities products, services and strategies offered by the dealer, at a minimum:

(i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations; and

(iii) Applicable regulatory requirements.

MSRB Rule G–3(i)(i)(B)(4) also provides that the appropriate enforcement authority may require a dealer, individually or as part of a larger group, to provide specific training to its covered persons in such areas that the enforcement authority deems appropriate.

A. Persons Subject to Firm Element

As mentioned above, MSRB Rule G–3(i)(i)(B), on Firm Element, requires that dealers maintain a CE program for their covered registered persons. Pursuant to MSRB Rule G–3(i)(i)(B)(1), ''covered registered persons'' includes any person registered and qualified as a representative or principal with a dealer in accordance with MSRB Rule G–3 or as a general securities principal and who regularly engages in or supervises municipal securities activities.

Prior to its rule change, FINRA applied Firm Element requirements to ''covered registered persons,'' who were defined to include any registered person who had direct contact with a customer in the conduct of their securities sales, trading and investment banking activities; operations persons, research analysts and immediate supervisors of such persons.[42] FINRA deleted the reference to ''covered'' in its present definition of registered persons, expanding the definition to be inclusive of all registered persons, including any person permissively registered as a representative or principal pursuant to FINRA Rule 1210.02, on permissive registrations.[43] FINRA extended the definition to help ensure that firms enhance the securities knowledge, skill and professionalism of all registered persons. In addition, the expanded definition is intended to ensure that firms provide all registered persons with appropriate learning materials.[44] FINRA's extension of the definition to all registered persons also means that individuals who maintain solely a permissive registration under FINRA Rule 1210.02 are also subject to Firm Element, thus aligning FINRA's Firm Element requirement with other broadly-based training requirements such as anti-money laundering (''AML'') and compliance meetings.[45]

The MSRB is proposing to likewise extend Firm Element training requirements to all registered persons; thereby deleting the specific requirement for dealers to conduct annual municipal securities training for registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities. Accordingly, the proposed rule change would amend MSRB Rule G–3(i)(i)(B)(1) to delete the term ''covered'' from the phrase ''covered registered persons'' and update all applicable cross references under MSRB Rule G–3(i)(i)(B).

As the MSRB has previously stated, from the inception of the rule, the MSRB has intended for dealers to consider the scope of their municipal securities activities and regulatory developments in preparing their annual written training plan. Dealers are reminded that in developing a written training plan, each dealer must take into consideration the firm's size, organizational structure, scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.

This broader and expanded definition aligns with FINRA's amended definition of ''registered persons'' under FINRA Rule 1240(b)(1), on persons subject to the Firm Element. Also consistent with FINRA, the MSRB's proposed rule change would result in inclusion of individuals who maintain solely a permissive registration, consistent with MSRB Rule G–3 Supplementary Material .03 (Permissive Qualification), in Firm Element training requirements. The MSRB believes that expansion of the definition to include all registered persons, including individuals subject to permissive registrations, in Firm Element training will serve to ensure that all registered persons receive relevant and comprehensive Firm Element training, increasing their knowledge and understanding of applicable rules in furtherance of investor protection.

municipal securities activities. Currently, covered registered persons include only those registered persons who have direct contact with customers in the conduct of a dealer's securities sales, trading and investment banking activities, along with their immediate supervisors. Dealers must determine as part of their evaluation of training needs analysis which registered persons are regularly engaged in such municipal securities activities and therefore are required to participate in annual training.

[39] *See* Exchange Act Release No. 72705 (July 29, 2014), 79 FR 45529 (August 5, 2014) (File No. SR–MSRB–2014–05) (available at *https://www.msrb.org/~/media/Files/SEC-Filings/2014/MSRB-2014-05-Federal-Register-Approval.ashx?la=en&hash=5D9AC0B57D72F677B503E7FA7ACA3DE3).*

[40] *See* MSRB Rule G–3(i)(i)(B)(2)(a).

[41] *See* MSRB Rule G–9(b)(viii)(C).

[42] *See* FINRA Rule 1240(b)(1), as effective prior to January 1, 2023.

[43] *See* FINRA Rule 1240(b)(1). *See also* prior FINRA Rule 1240(a)(5) definition of ''Covered Person.'' Permissive registrations as representatives or principals under Rule 1210.02 (Permissive Registrations) may be granted upon application or to maintain the registration of individuals who are associated persons of a FINRA member firm or individuals engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of a FINRA member. Individuals holding such permissive registrations are subject to all FINRA rules relevant to their activities.

[44] *See* Exchange Act Release No. 92183 (June 15, 2021), 86 FR 33427, 33430 (June 24, 2021) (File No. SR–FINRA–2021–015) (Proposed Rule Change To Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) (available at: *https://www.govinfo.gov/content/pkg/FR-2021-06-24/pdf/2021-13286.pdf*).

[45] *Id.* FINRA stated in its filing that it would provide firms with flexibility, consistent with their needs analysis, in determining what types of training, including industry conferences, may be applied to Firm Element. FINRA expects that firms will provide Firm Element training that is more specific and relevant to the day-to-day activities of registered persons, including their roles, activities or responsibilities, as well as ethics and professional responsibility.

B. Recognition of Other Outside Training and Credentialing Programs To Satisfy Firm Element

The MSRB does not currently have a rule that expressly provides for the use of other training and credentialing programs to satisfy the Firm Element requirements.

FINRA's amended rules regarding the Firm Element are meant to better align Firm Element requirements with other required training. More specifically, as also noted above, FINRA's amendments to Rule 1240(b)(1), on persons subject to Firm Element, extends the Firm Element requirements to all registered persons, including persons who maintain solely a permissive registration consistent with FINRA Rule 1210.02, on permissive registrations, thereby further aligning the Firm Element requirement with other broadly-based training requirements.[46] Furthermore, FINRA's approved amendments modify its minimum training criteria under Rule 1240(b)(2)(B) to, by and large, require that Firm Element training must cover topics related to the role, activities or responsibilities of the registered person, as well as ethics and professional responsibility. Hence, FINRA is no longer prescribing specific subject matters that must be addressed as part of the minimum standards for Firm Element content.[47] Additionally, FINRA Rule 1240(b)(2)(D), on participation in other required trainings, expressly permits firms to consider training relating to the AML compliance program and the annual compliance meeting towards satisfying a person's annual Firm Element requirement.

The MSRB's proposed rule change would amend MSRB Rule G–3(i)(i)(B)(2)(b), on minimum standards for training programs, to require dealers' training programs to, at a minimum, cover training topics related to the role, activities or responsibilities of the registered person, and professional responsibility, and would delete reference to other specific subject matters specified in the rule. The proposed rule change, consistent with amended FINRA requirements, would also insert subparagraph (d) under MSRB Rule G–3(i)(i)(B)(2), thereby allowing dealers to count their AML compliance program training[48] towards satisfying registered persons' Firm Element requirement; and would permit the annual compliance meeting, to the extent appropriate, to satisfy Firm Element requirements for those persons associated with a member of a registered securities association.

III. Facilitate Maintaining Qualifications Through Continuing Education for Previously Registered Persons

A. Permit Previously Registered Persons To Maintain Qualification Through Continuing Education

FINRA's CE rule amendment added FINRA Rule 1240(c) and Supplementary Material .01 and .02 to Rule 1240 to provide eligible individuals who terminate any representative or principal registrations with the option to maintain their qualification for such terminated registrations by completing the required content in the proposed continuing education program.[49] The proposed continuing education program content, for such persons who have terminated their registration(s), would consist of a combination of Regulatory Element and Firm Element content selected by FINRA and the CE Council.

FINRA's amended rule does not affect the two-year qualification period—meaning eligible persons who would prefer not to participate in the proposed continuing education program for those with terminated registration(s) would continue to be subject to the current two-year qualification period. Rather, the amended rule would provide such persons an alternative means of keeping up with regulatory developments and securities knowledge following the termination of their registration(s). FINRA's rule changes generally align with other professions in which persons are allowed to maintain their qualifications through continuing education during a period of absence from their careers, such as accountants and attorneys. FINRA anticipates making enhancements to its systems to notify individuals of their eligibility to participate in the proposed continuing education program and also notify them of their annual continuing education requirement if entered into the program.[50]

In order to maintain qualifications after terminating registration(s), FINRA Rule 1240(c)(1)–(6) requires the following conditions to be satisfied:

- persons must be registered in the terminated registration category for at least one year immediately prior to the termination of their registration; [51]
- persons can elect to enter the proposed continuing education program upon terminating their registration or within two years from such termination of registration; [52]
- persons would be required to complete annually by December 31 all prescribed continuing education, but may seek an extension of time for good cause; [53]
- persons would have a maximum of five years in which to re-register with a FINRA member firm and would be required to satisfy all other requirements relating to the registration process; [54]
- persons who have been CE inactive for two consecutive years, or who become CE inactive for two consecutive years during their participation, would not be eligible to participate or continue; [55] and
- persons who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the

[46] Consistent with MSRB requirements, FINRA's current Firm Element requirements only apply to ''covered registered persons'' and not all registered persons, until January 1, 2023, when the new Rule 1240(b)(1) definition of ''registered persons'' becomes effective.

[47] FINRA's rule, prior to being amended, required, at a minimum, in addition to ethics and professional responsibility that firms' CE programs covered the following: general investment features and associated risk factors; suitability and sales practice considerations; and regulatory requirements related to securities products, services and strategies.

[48] Title III of the USA PATRIOT Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''AML Act'') imposes certain obligations on financial institutions and the dealer community. Section 352 of the AML Act requires financial institutions to establish certain minimum anti-money laundering standards and to develop and implement a written anti-money laundering compliance program by April 24, 2002. *See* 31 U.S.C. 5318(h) (amended by section 352 of the AML Act).

[49] As approved, the rule changes include a look-back provision that would, subject to specified conditions, allow persons who have been registered as a representative or principal within two years immediately prior to the implementation date, January 1, 2023, of the proposed rule change to maintain their qualification by completing the required CE program requirements. Additionally, as addressed later within this filing, persons who have been FSAWP participants immediately prior to the implementation date of the proposed rule change would have the option to enter the proposed continuing education program.

[50] *See supra* note 44.

[51] In addition to the one-year requirement, persons cannot be the subject of a statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act, during the person's registration period. *See* FINRA Rule 1240(c)(1).

[52] Persons who elect to participate at the later date, and not upon terminating their registration(s), would be required to complete any continuing education that becomes due between the time of their Form U5 (Uniform Termination Notice for Securities Industry Registration) submission and the date that they commence their participation. *See* FINRA Rule 1240(c)(2).

[53] *See* FINRA Rule 1240(c)(3).

[54] Pursuant to FINRA Rule 1240(c), persons that avail themselves of the proposed continuing education program in order to maintain their qualifications after terminating their registration(s), can re-gain eligibility to participate in the program, so long as such persons re-register with a firm for a period of at least one year, provided they satisfy the other participation conditions and limitations. *See* FINRA Rule 1240(c)(3).

[55] *See* FINRA Rule 1240(c)(4) and (5).

termination of their registration or during their participation in the continuing education program would not be eligible to participate or continue.[56]

Finally, FINRA's rule change made conforming amendments to Rule 1210, on registration requirements.

As aforementioned, under current MSRB rules a person whose registration(s) as a representative or principal has been terminated for two or more years does not have a path to maintain qualifications and must requalify by taking and passing the applicable examination(s) or by obtaining a waiver of such requirements. More specifically, the MSRB does not have a mechanism in place for persons to maintain their qualification(s) after the expiration of two years since the date of termination of any registration(s). The proposed rule change would adopt MSRB Rule G–3(i)(i)(C) to provide a mechanism for persons who have terminated their registration(s) to maintain their qualifications [57] by participating in the continuing education program administered by FINRA, subject to the specified conditions having been met.[58]

The ability for persons to maintain qualification(s) after terminating their registration(s) with a firm is consistent with other professions (*e.g.,* law and accounting) and promotes the desired outcome of preserving market knowledge and expertise by providing knowledgeable professionals with the opportunity to re-enter the industry with greater ease after stepping away for a period of time to address other life issues. Retention of industry professionals who know and understand securities laws, regulations and MSRB rules will protect investors and serve the market. In addition, the proposed rule contains rigorous continuing education standards that ensure that these persons maintain up-to-date knowledge about securities laws, regulations and MSRB rules, among other things, promoting investor protection and the public interest.

IV. Facilitate Eligibility of Persons Enrolled in the Financial Services Industry Affiliate Program To Transition to Proposed Continuing Education Program

Supplementary Material .01 of FINRA Rule 1240, states that a person participating in the Financial Services Affiliate Waiver Program under Rule 1210.09 immediately preceding the effective date of the proposed rule change shall be eligible to participate in the continuing education program under Rule 1240(c), on continuing education program, for persons maintaining their qualification after the termination of a registration, subject to certain conditions being met under paragraphs (c)(3), (c)(5) and (c)(6).[59] If such persons elect to participate in the continuing education program, FINRA will adjust the time remaining to participate by deducting from that period the amount of time that has lapsed between the date that such persons terminated their registration categories and the March 15, 2022 effective date of the rule.

Supplementary Material .04 of MSRB Rule G–3, similarly, contains an exception to the present requalification by examination by granting a waiver from the examination requirement for individuals who work for a financial services industry affiliate of a dealer. Under current Supplementary Material .04, such individuals can be designated as FSAWP-eligible, if the eligibility requirements are met, which include: (1) a requirement that such persons be registered as a representative or principal for a total of five years within the most recent 10-year period; (2) the waiver request is made within seven years of such persons' initial designation; (3) persons continuously worked for a financial services affiliate of a dealer since terminating association with a dealer; (4) persons who completed the Regulatory Element portion of CE consistent with Rule requirements based on such persons' most recent registration status and on the same Regulatory Element cycle, if they remained registered; and (5) such persons have no pending or adverse regulatory matters or termination and have not otherwise been subject to a statutory disqualification while working for a financial services industry affiliate(s) of a dealer.

Supplementary Material .04 of MSRB Rule G–3, would state that FINRA is not accepting any new persons to enter its waiver program due to the establishment of the new continuing education program, which allows persons who have terminated their registration(s) to maintain their qualifications, subject to meeting specified conditions, by completing the requisite annual continuing education requirements.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(A) of the Act,[60] which authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons; and Section 15B(b)(2)(C) of the Act,[61] which provides among other things, that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination among regulators, [. . .] in general, to protect investors, municipal entities, obligated persons, and the public interest [. . .].

Under Section 15B(b)(2)(A) of the Act,[62] the proposed rule change is necessary, appropriate and in the public interest because it enhances investor protection through enhanced training standards for municipal securities professionals, and also includes more efficient, effective and flexible continuing education requirements for municipal market professionals that will lead to better retention of knowledgeable municipal securities

[56] *See* FINRA Rule 1240(c)(6).

[57] As previously mentioned, the proposed rule change is specific to dealers' professional qualification obligations under MSRB Rule G–3 and the MSRB is not proposing to modify municipal advisors' obligations under the Rule.

[58] More specifically, the proposed rule change would provide those persons who have terminated their registration(s) would be permitted to maintain their qualification(s) beyond the current two-year timeframe for up to five years by satisfying annual CE requirements, if such a person: (i) was registered in the terminated registration category for at least one year immediately prior to the termination of his/her registration; (ii) elects to enter the proposed continuing education program upon terminating their registration or within two years from such termination of registration; (iii) completes the prescribed continuing education annually by December 31st; (iv) re-registers with a FINRA member firm and would be required to satisfy all other requirements relating to the registration process; and (v) is not subject to a statutory disqualification or becomes subject to a statutory disqualification. Proposed MSRB Rule G–3(i)(i)(C) and the prescribed eligibility requirements shall apply to any registered persons associated with a member of a registered securities association at the time of their termination from registration. For example, an associated person of a member of a registered securities association can associate with a bank dealer firm for the prescribed five-year period and still maintain qualification by way of the new CE Program.

[59] Persons eligible for participation shall make their election to participate in the maintaining qualification CE Program by the March 15, 2022, effective date. Generally, the conditions that must be satisfied include: the person completes annually by December 31 of the calendar year; the person does not become subject to a continuing education deficiency with respect to his or her Regulatory Element, for two consecutive years; and the person does not become subject to a statutory disqualification following the termination of his or her registration category or while participating in the CE program.

[60] 15 U.S.C. 78*o*–4(b)(2)(A).

[61] 15 U.S.C. 78*o*–4(b)(2)(C).

[62] 15 U.S.C. 78*o*–4(b)(2)(A).

market professionals, enhancing and promoting investor protection and the public interest.

In accordance with Section 15B(b)(2)(C) of the Act,[63] the proposed rule change would continue to prevent fraudulent and manipulative acts by ensuring that municipal securities market professionals meet operational competence, training, experience and qualification standards, and such protections would not be diminished by the proposed rule change. The proposed rule change would help promote just and equitable principles of trade, and protect investors, municipal entities, obligated persons and the public interest because municipal securities professionals receiving Regulatory Element content and just-in-time training on a more frequent basis will enhance understanding of federal securities laws and regulations, and MSRB rules. The proposed rule change would require that all registered persons, rather than just covered registered persons, receive the Firm Element component of CE; thereby ensuring that all individuals receive core training pertaining to their firm's practices, changes in municipal market practices, and other regulatory developments, which furthers the prevention of manipulative acts and practices and protection of investors, municipal entities, and the public interest.

In the same vein, by the proposed rule change expressly stating that other outside required regulatory training and credentialing programs can be used to satisfy the Firm Element component of CE, municipal market professionals may receive more current, flexible, comprehensive and effective training, enhancing the overall skill and professionalism of municipal securities professionals, which advances investor protection.

Additionally, the proposed rule change would also remove burdens on re-entry for certain previously registered municipal securities professionals who terminated their registrations for more than two years by enabling them to maintain their qualifications(s) by participating in a rigorous, annual CE program, much like professionals in other fields such as law and accounting. Specifically, the proposed rule change would provide that such municipal securities professionals stay abreast of rules and regulatory developments, promoting industry retention of a deeper and broader pool of knowledgeable municipal securities professionals, in support of the public interest.

Lastly, aligning the proposed rule change with FINRA's amended CE requirements fosters cooperation between regulators and allows for regulatory consistency, which promotes investor protection and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[64] The MSRB notes that its policy on economic analysis limits its applications regarding rules for which the Board seeks immediate effectiveness.[65] The proposed rule change reflects the MSRB's belief that its CE requirements should be generally harmonized with FINRA's rule change for purposes of regulatory consistency and efficiency; thereby reducing potential dealer confusion, and that such changes do not attach additional burdens on dealers. Moreover, the MSRB contends that the proposed rule change would enhance municipal securities professionals' knowledge and learning opportunities by ensuring that all registered persons receive timely and relevant training, which would, in turn, enhance compliance and investor protection. Further, the MSRB believes that the proposed rule change would aid skilled industry professionals in returning to the industry by reducing unnecessary impediments to maintaining qualification(s). Finally, the proposed rule change would be applied equally to all registered dealers. Therefore, the MSRB believes, by aligning the CE requirements with those of FINRA, the proposed rule change would not impose a burden on competition. Accordingly, the MSRB does not believe the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB solicited comments on the CE Council's recommended enhancements on September 6, 2018, with the comment deadline of November 5, 2018.[66] As noted above, one comment letter was received from Wells Fargo Advisors (''WFA'').[67] WFA generally supported the CE Council's goals and recommendations, but recommended changes, discussed below.

WFA recommended maintaining the current Regulatory Element training format and timing requirements for currently registered persons, expressing concern that moving to an annual requirement that focuses on rule changes would degrade the learning experience and also subject the firm to added work and expense. WFA next recommended allowing firms to customize Regulatory Element training based on registered persons' specific registrations and job functions.

As noted earlier, the MSRB believes that moving the Regulatory Element to an annual requirement would provide municipal securities professionals with more frequent, timely training that would enhance their understanding of federal securities laws, regulations and MSRB rules, enhancing their knowledge and compliance in furtherance of investor protection.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[68] and Rule 19b–4(f)(6)[69] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[63] 15 U.S.C. 78*o*–4(b)(2)(C).

[64] *Id.*

[65] The Board's ''Policy on the Use of Economic Analysis in MSRB Rulemaking'' (''policy''), available at: *https://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx,* maintains that proposed rule changes filed for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act are not subject to the policy. With such filings, the MSRB usually focuses its economic analysis exclusively on the burden of competition to regulated entities. However, the MSRB may include further analysis based upon facts and circumstances if it believes that such analysis may inform the rulemaking process.

[66] *See supra* note 24.

[67] *Id.*

[68] 15 U.S.C. 78s(b)(3)(A).

[69] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2022–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2022–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2022–07 and should be submitted on or before October 4, 2022.

For the Commission, pursuant to delegated authority.[70]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19678 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95696; File No. SR–NYSENAT–2022–16]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Transfer the Services and Fees Related to Colocation

September 7, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 24, 2022, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) transfer the services and fees related to colocation from its Schedule of Fees and Rebates (''Fee Schedule'') to the schedule of Wireless Connectivity Fees and Charges, and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) transfer the services and fees related to colocation from the Fee Schedule to the schedule of Wireless Connectivity Fees and Charges (''Connectivity Fee Schedule''), and (2) change the name of the schedule of Wireless Connectivity Fees and Charges to the ''Connectivity Fee Schedule.'' There would be no changes to the existing colocation services and fees as a result of these administrative changes.

Background

The colocation services and related fees offered by the Exchange are currently listed in the Exchange's Fee Schedule. Each of the Exchange's Affiliate SROs[4] similarly includes the colocation services and related fees in its own separate price list or fee schedule.[5] The colocation portions of each of these price lists and fee schedules are substantively identical.

In December 2020, the Exchange and the Affiliate SROs created the Connectivity Fee Schedule to list their wireless connectivity services and related fees. Instead of including the wireless connectivity services and related fees in the seven price lists and fee schedules of the Exchange and the Affiliate SROs, the Connectivity Fee Schedule contains the wireless connectivity services and charges for the

[70] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The ''Affiliate SROs'' are the Exchange's affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc.

[5] *See* ''Co-Location Fees'' in ''New York Stock Exchange Price List 2022'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* ''NYSE American Equities Price List'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf;* ''NYSE American Options Fee Schedule'' at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf;* ''NYSE Arca Equities Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* ''NYSE Arca Options Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* ''Fee Schedule of NYSE Chicago, Inc.'' at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf;* and ''NYSE National, Inc. Schedule of Fees and Rebates'' at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

Exchange and the Affiliate SROs in one single fee schedule.

In an administrative change, the Exchange now proposes to remove its colocation services and related fees from its Fee Schedule and to move them into the Connectivity Fee Schedule, so that services and fees related to connectivity within, into and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. Each of the Affiliate SROs is contemporaneously making a similar filing.[6] To reflect the fact that the schedule would include services and fees for connectivity with the Mahwah Data Center that are not wireless, the Exchange also proposes to change its name to the ''Connectivity Fee Schedule.''

Proposed Amendments to the Fee Schedule

As shown in the attached Exhibit 5A [sic], the Exchange proposes to delete the entirety of the text in the Exchange's Fee Schedule under the heading ''VI. Co-Location Fees.''

Proposed Amendments to the Connectivity Fee Schedule

As shown in the attached Exhibit 5B [sic], the Exchange proposes to amend the title to the ''Connectivity Fee Schedule.''

The Exchange proposes to insert the entirety of the text currently located in the Exchange's Fee Schedule under the heading ''VI. Co-Location Fees'' into the Connectivity Fee Schedule under the heading ''A. Colocation Fees.'' No changes would be made to any of this text, except for the following clarifying and non-substantive changes:

1. The subheading ''Definitions'' would be amended to ''Colocation Definitions.''

2. The subheading ''General Notes'' would be amended to ''Colocation Notes'' and current General Note 1 would be deleted, as it would no longer be necessary since it would be duplicative of the existing General Note in the Connectivity Fee Schedule. The remainder of the current General Notes 2–8 would be renumbered as Colocation Notes 1–7 and the cross references in current General Note 8 would be updated accordingly.

3. In a conforming change, in the table of services and fees, the note to the Partial Cabinet Solution bundles would be amended to change the cross reference from ''Note 2 under 'General Notes' '' to ''Note 1 under 'Colocation Notes.' ''

4. In a conforming change, in the table of services and fees, the note to the Data Center Fiber Cross Connect would be amended to change the cross reference from ''General Note 3'' to ''Colocation Note 2.''

5. With the addition of the Colocation Fees at subheading ''A.'' of the Connectivity Fee Schedule, each of the subsequent headings would be renumbered accordingly. Specifically, ''A. Wireless Connectivity'' would become ''B. Wireless Connectivity,'' and ''B. Wireless Connectivity to Market Data'' would become ''C. Wireless Connectivity to Market Data.''

Application and Impact of the Proposed Changes

As noted above, the proposed change is administrative in nature. Any market participant that requests to receive colocation services directly from the Exchange (a ''User'')[7] is currently subject to the described services and fees, none of which are new or novel. Current Users would not incur any new fees and the Exchange does not expect to attract any new Users as a result of the proposed change. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title accordingly.

As a result of the proposed change, the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in the same Connectivity Fee Schedule, and market participants would be able to see all such connectivity services and fees in one place.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant, as colocation is available to any market participant that wishes to be a User.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and with Section 6(b)(1)[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed change furthers the objectives of Section 6(b)(5) of the Act[10] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is a non-substantive change and does not impact the services available to Users or the fees charged for such services. Currently, colocation services and the related fees for the Exchange and its Affiliate SROs are substantively identical yet are located in seven separate price lists and fee schedules and not in the Connectivity Fee Schedule. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because moving the description of the existing colocation services and fees to the Connectivity Fee Schedule and changing the Connectivity Fee Schedule's title would mean that the services and fees related to connectivity within, into, and from the Mahwah Data Center, including colocation, would appear in one Connectivity Fee Schedule. All market participants would be able to enjoy the convenience of seeing such connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document. Making the change would therefore contribute to the orderly operation of the Exchange by adding clarity and transparency regarding what connectivity is offered

[6] Each of the Affiliate SROs has submitted substantially similar rule changes to move their colocation price lists to the Connectivity Fee Schedule. *See* SR–NYSE–2022–40, SR–NYSEAMER–2022–37, SR–NYSEARCA–2022–56, and SR–NYSECHX–2022–20.

[7] *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR–NYSENAT–2018–07).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

within, into, and from the Mahwah Data Center.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because moving the colocation services and charges from the Exchange's Fee Schedule to the Connectivity Fee Schedule would more accurately reflect the fact that Users are not required to be members of the Exchange or of any of the Affiliate SROs. A User, like any market participant, could more easily navigate, understand, and comply with the list of colocation services and fees, without having to access the price list or fee schedule of an exchange of which it is not a member. The Exchange believes that the proposed change would thereby reduce potential investor or market participant confusion. Similarly, the Exchange believes that the proposed change would reduce potential investor or market participant confusion because market participants would be able to see all connectivity services and fees in one place, alleviating any possible market participant confusion that could currently arise from having to consult more than one document.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is ministerial in nature and is not designed to have any competitive impact. Rather, the change would simply move the description of the existing colocation services and fees to the Connectivity Fee Schedule and change its title. As a result of the proposed rule change, the services and fees related to connectivity within, into, and from the Mahwah Data Center would appear in the same Connectivity Fee Schedule. All market participants would be able to see the connectivity services and fees within, into, and from the Mahwah Data Center in one place, alleviating any possible market participant confusion.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(3) [13] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2022–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2022–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2022–16 and should be submitted on or before October 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19685 Filed 9–12–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(3).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11860]

Certification Pursuant to Section 7041(A)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021

By the virtue of the authority vested in me as Secretary of State pursuant to Section 7041(a)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2022 (Div. K, Pub. L. 117–103), I hereby certify that the Government of Egypt is sustaining the strategic relationship with the United States and meeting its

obligations under the 1979 Egypt-Israel Peace Treaty.

This determination shall be published in the **Federal Register** and, along with the accompanying memorandum of justification, shall be reported to Congress.

Dated: July 28, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–19690 Filed 9–12–22; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0094]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Exemption for the Make Inoperative Prohibition To Accommodate People With Disabilities; OMB Control No. 2127–0635

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a reinstatement of a previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice (''30-day notice'') announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden and is a request for a reinstatement of a previously approved information collection regarding an exemption for the make inoperative prohibition to accommodate people with disabilities. The **Federal Register** notice with a 60-day comment period soliciting comments on the following information collection was published on January 12, 2022. NHTSA received one comment on the 60-day notice. The comment generally supported the information collection and further addressed broad issues not discussed in this ICR. Therefore, NHTSA has concluded that it is not necessary to make any changes to the information collection based on the comment received for the 60-day notice.

DATES: Comments must be submitted on or before October 13, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Gunyoung Lee, Office of Rulemaking (NRM230), 202–366–6005, Room W43–463, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted to the OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on January 12, 2022 (87 FR 1829). NHTSA received one comment on the 60-day notice from the National Mobility Equipment Dealers Association (NMEDA). NMEDA generally supported the information collection and further addressed broad issues, such as managing the collected information to enhance the benefits for the public; suggesting a particular form for the information collection; and questioning the label requirement which is not subject to the information collection. NHTSA may consider those broad issues in determining the agency's next steps regarding drivers and passengers with disabilities. However, the agency concluded that it is not necessary to make any changes to the information collection based on those broad issues not addressed in this ICR.

In a March 15, 2022 final rule (87 FR 14406), NHTSA provided a make inoperative exemption to rental companies to make inoperative a knee bolster air bag in order to permit the installation of hand controls to accommodate persons with physical disabilities. Regarding rental vehicles, NHTSA solicited comment on a proposed modification to this collection of information as part of a Supplemental Notice of Proposed Rulemaking (SNPRM) published on December 28, 2020 (85 FR 84281). NHTSA received comments opposing a proposed requirement that a copy of a disclosure that the vehicle may no longer comply with all applicable FMVSSs be required to be provided in a modified rental vehicle be separately provided to a renter at the time of transaction and be retained by the rental company for a period of five years. As part of the SNPRM, NHTSA assumed that this would result in an estimated information collection burden of 1,333 hours (10 respondents × 400 responses per respondent × 0.333 hours to annotate the invoice).

NHTSA received eight comments on this proposed requirement. Five commenters supported the requirement. One commenter argued that this requirement was unnecessary because renters would already likely know that the vehicle would not comply with the FMVSSs. Two commenters, Enterprise Holdings Inc., and the American Car Rental Association opined that this requirement would result in significant expense. After considering these comments, NHTSA determined that this separate notification was unnecessary and duplicative of the disclosure that would be required to be placed in the vehicle itself. This change eliminated the entire proposed hour burden associated with the make inoperative exemptions, as they apply to rental companies.

Title: Exemption for the Make Inoperative Prohibition to Accommodate People With Disabilities.

OMB Control Number: 2127–0635.

Form Number: This collection of information uses no standard form.

Type of Request: Reinstatement of a previously approved collection of information.

Type of Review Requested: Regular.

Length of Approval Requested: Three (3) years from date of approval.

Summary of the Collection of Information:

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. chapter 301) authorizes NHTSA to issue Federal motor vehicle safety standards (FMVSS) applicable to new motor vehicle and new items of motor vehicle equipment. In addition to regulating the manufacture and sale of new motor vehicles and items of motor vehicle equipment, the act also prohibits certain regulated entities from knowingly making inoperative a part of a device or element of design installed on or in a motor vehicle or motor vehicle in

compliance with an applicable FMVSS (49 U.S.C. 30122). The statute authorizes the Secretary of Transportation (NHTSA) to prescribe regulations to exempt a regulated entity from the make inoperative provision if such an exemption is consistent with motor vehicle safety (49 U.S.C. 30122(c)(1)).

On February 27, 2001, NHTSA published a final rule (66 FR 12638) to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them as passengers. In that final rule, the agency issued a limited exemption from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment or features to adversely affect their performance. The exemption is limited in that it allows repair businesses to modify only certain types of FMVSS-required safety equipment and features, under specified circumstances. The regulation is found at 49 CFR part 595 subpart C, ''Vehicle Modifications to Accommodate People with Disabilities.'' The regulation includes three collections of information: (1) a requirement for modifiers to submit identification information to NHTSA; (2) a requirement for modifiers to provide a document to the owner of the modified vehicle stating the exemptions used for that vehicle and any reduction in load carrying capacity of the vehicle of more than 100 kg (220 lbs); and (3) a requirement for rental companies and modifiers to retain a copy of the information provide to the owner or renter of the modified vehicle for five years.

Description of the Need for the Information and Proposed Use of the Information:

Commercial entities that modify vehicles after the first retail sale and wish to use the exemptions offered under this rule are required to provide NHTSA with their identification information. The registration involves a one-time submission using NHTSA's online Manufacturer Portal [1] containing only the name, address, and telephone number of the modifier and a prescribed statement that they will modify vehicles for persons with disabilities and intend to avail themselves of the exemptions. Any changes in the identification information must be conveyed to the agency within 30 days. The required information may be submitted using NHTSA's online Manufacturer Portal.[2] This information will be used by the agency to track entities involved in vehicle modification for persons with disabilities and is available to the public on NHTSA's website.

Modifiers must also provide each customer whose vehicle modification involves the use of the make inoperative exemptions with a list of the exemptions used in the process of modifying that vehicle.[3] The simplest form of this document is an annotated invoice. No specific or special forms are required. A copy of this document must also be retained by the modifier for five years. This document will be used by the consumer to understand the modifications made to his/her vehicle and their effect on vehicle safety. Similarly, rental companies are required to retain documents related to the modification for a period of five years. It may be requested by NHTSA in the event of an inquiry about the safety of the modified vehicles.

Affected Public: Motor vehicle repair business and rental companies.

Estimated Number of Respondents: 765.

For this estimate, NHTSA assumed that there are 900 businesses making vehicle modifications for people with disabilities, and 85 percent of these (*i.e.,* 765 businesses) will elect to use the exemptions available under the rule.

Frequency: On occasion (*e.g.,* a customer demands a vehicle modification to accommodate people with disabilities, or a company decides to become an adaptive vehicle modification business or changes its identification information).

Estimated Total Annual Burden Hours: 1,432.

This ICR is for three information collections. We estimate the total burden hours for this ICR to be 1,432. The burden hours for the three information collections were calculated as follows:

Information Collection 1: Requirement To Submit Identification Information to NHTSA To Use the Exemptions

NHTSA estimates that compiling and submitting the identification information will take approximately 10 minutes. NHTSA estimates that there are approximately 900 businesses making vehicle modifications for persons with disabilities in the United States and that 85 percent of these, or 765 businesses, will elect to use the exemptions available under the rule. After the initial registration (which occurred in 2001), NHTSA estimates that 90 businesses will either need to change their information or become new registrants who elect to use the exemptions each year. Therefore, NHTSA estimates the total burden hours associated with submitting new or updated identification information is 15 hours (90 business × 10 minutes).

To calculate the labor cost associated with submitting modifier identification information, NHTSA looked at wage estimates for the type of personnel involved with compiling and submitting the information. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for ''General Office Clerks'' (BLS Occupation code 43–9061) is $16.98.[4] The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.4% of total labor compensation costs.[5] Therefore, NHTSA estimates the hourly labor costs to be $24.12 for ''General Office Clerks'' (BLS Occupation code 43–9061). NHTSA estimates the total labor cost associated with the 15 burden hours (For submitting modifier identification by ''office clerks'') to be approximately $362. (15 × $24.12 = $361.80.)

Information Collection 2: Requirement To Provide a Document to the Owner of the Modified Vehicle

The second information collection in part 595 is the requirement to provide a disclosure to the vehicle owner. This disclosure is made with each vehicle modified using exemptions under part 595. In the final rule, we anticipated that the least costly way for a repair business to comply with this portion of the new rule would be to annotate the vehicle modification invoice as to the exemption, if any, involved with each item on the invoice. The cost of preparing the invoice is not a portion of our burden calculation, as that preparation would be done in the normal course of business. Additionally, NHTSA's burden estimate does not include an estimate for the time to gather the information required for the disclosure as it is assumed that this information would be gathered in the normal course of vehicle modification. Instead, NHTSA estimates that the only extra burden would be incurred for calculation of the reduction in loading-carrying capacity and annotating the information on the invoice. NHTSA estimates the time needed to annotate

[1] NHTSA's Manufacturer's Portal is found at *https://vpic.nhtsa.dot.gov/mfrportal/.*

[2] *Id.*

[3] 49 CFR 595.7(b) and (e).

[4] *See* May 2020 National Occupational Employment and Wage Estimates, United States, available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[5] *See* Table 1. Employer Costs for Employee Compensation by ownership (Mar. 2021), available at *https://www.bls.gov/news.release/ecec.t01.htm.*

the invoice is 20 minutes. NHTSA estimates that there are approximately 4,250 vehicles modified under exemptions provided by 49 CFR 595.7 each year. Therefore, NHTSA estimates the total burden associated with providing disclosures to vehicle owners is 1,417 hours (20 minutes × 4,250 vehicles = 1,416.67 hours).

To calculate the labor cost associated with the 1,417 burden hours for the disclosure document requirement, NHTSA looked at the average hourly wage for ''Mechanical Engineering Technicians'' (BLS Occupation code 17–3027). With the BLS's average hourly wage of $28.00 (which represents 70.4% of total compensation according to the Bureau of Labor Statistics), NHTSA estimates the hourly labor costs to be $39.78 for ''Mechanical Engineering Technicians (BLS Occupation code 17–3027). Therefore, NHTSA estimates the total labor cost associated with the 1,417 burden hours (for providing disclosure documents to vehicle owners by ''engineering technicians'') to be $56,368 (1,417 × $39.78 = $56,368.28).

Information Collection 3: Retaining a Copy of the Document Provided to Vehicle Owners

NHTSA estimates that there are no additional burden hours associated with the requirement to retain a copy of the disclosures provided to vehicle owners. Similarly, NHTSA estimates that there is no burden beyond the ordinary course of business associated with the requirement that rental companies retain records related to the modification for a period of five years. Accordingly, there are also no labor costs associated with this requirement.

Table 1 provides a summary of the estimated burden hours and labor costs associated with this collection of information request.

TABLE 1—BURDEN ESTIMATES

	Annual submissions or responses	Estimated burden per submission (minutes)	Average hourly labor cost	Labor cost per submission	Total burden hours	Total labor costs
Modifier identification	90	10	$24.12	$4.02	15	$362
Disclosure document (to vehicle owners)	4,250	20	39.78	13.26	1,417	56,368
Retention of a copy of document provided to vehicle owner	4,250	0	N/A	0.00	0	0.00
Annual total burden hours & labor costs					1,432	56,730

Estimated Total Annual Burden Cost: NHTSA estimates that there are no additional costs associated with this information collection request. There will be no additional material cost associated with complying with this requirement because no additional materials need to be used except those used to prepare the invoice in the normal course of business. We are assuming that it is normal and customary in the course of vehicle modification business to prepare an invoice, to provide a copy of the invoice to the vehicle owner, and to keep a copy of the invoice for five years after the vehicle is delivered to the owner in finished form.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.95, 501.5 and 501.8; and DOT Order 1351.29.

Milton E. Cooper,

Director, Rulemaking Operations.

[FR Doc. 2022–19561 Filed 9–12–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 27, 2022.

FOR FURTHER INFORMATION CONTACT: Gilbert Martinez at 1–888–912–1227 or (737) 800–4060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, October 27, 2022, at 1:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information, please contact Gilbert Martinez at 1–888–912–1227 or (737–800–4060), or write TAP Office 3651 S. IH–35, Stop 1005 AUSC, Austin, TX 78741, or post comments to the website: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: September 7, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–19666 Filed 9–12–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0864]

Agency Information Collection Activity Under OMB Review: Department of Veterans Affairs (VA) Post-Separation Transition Assistance Program (TAP) Assessment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0864''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0864'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 13571—Streamlining Service Delivery and Improving Customer Service.

Title: Department of Veterans Affairs (VA) Post-Separation Transition Assistance Program (TAP) Assessment.

OMB Control Number: 2900–0864.

Type of Review: Extension of a currently approved collection.

Abstract: The PSTAP Assessment is administered by VA to assess how the TAP training for Transitioning Service members (TSMs) prepares Veterans for civilian life and its effects on long-term Veteran outcomes. This information collection request (ICR) is conducted once per year and is designed as two separate collections which include a Cross-Sectional Survey and a Longitudinal Survey. The survey population for the Cross-Sectional Survey includes all Veterans who meet the criteria at the time of fielding of having separated from the military at six months, one year, and three years prior to the date that surveys. Service members who participated in the Cross-Sectional Survey and voluntarily agreed to participate in the Longitudinal Survey make up the Longitudinal Survey population. VA will use email and mail methods to administer the survey, limiting the burden on respondents. The surveys will be administered to gauge the long-term effectiveness of the Transition Assistance Program (TAP) by: (1) examining the relationship between attendance in TAP courses and the use of VA Benefits; (2) analyzing the effect of participation in TAP courses on the long-term outcomes of Veterans in the broad life domains of employment, education, health and social relationships, financial, social connectivity and overall satisfaction and well-being, and; (3) identifying areas of improvement for TAP and the broader transition process to guide training and/or operational activities aimed at enhancing the quality of service provided to transitioning service members, Veterans, their families and caregivers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 38458 on June 28, 2022, pages 38458 and 38459.

Affected Public: Individuals.

Estimated Annual Burden: 5,954 hours.

Estimated Average Burden per Respondent: 18.5 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 19,311.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–19784 Filed 9–12–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Agency Information Collection Activity: Request for Details of Expenses

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 14, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility;

(2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1522.

Title: Request for Details of Expenses, VA Form 21P–8049.

OMB Control Number: 2900–0138.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–8049 is primarily used to gather the necessary information to determine eligibility for VA Pension. Without VA Form 21P–8049, VA will not be able to properly evaluate the totality of a claimant's circumstances when considering an application for benefits. VA will also be unable to evaluate the totality of claimant's circumstances when VA receives evidence of a significant increase in the corpus of a claimant's estate. The collection is conducted on a one-time basis and cannot be conducted less frequently. The respondent burden has decreased due to the number of receivables over the past year with non substantive and substantive changes. These changes include updated instructions, reformatting to include optical character recognition boxes, and renumbering section headers and questions.

Affected Public: Individuals and households.

Estimated Annual Burden: 218 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 871 per year.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–19731 Filed 9–12–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cost-Based and Inter-Agency Billing Rates for Medical Care or Services Provided by the Department of Veterans Affairs for Fiscal Year 2023

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document updates the Cost-Based and Inter-Agency billing rates for medical care or services provided by the U.S. Department of Veterans Affairs (VA) furnished in certain circumstances.

DATES: The rates set forth herein are effective October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Vatthauer, Office of Finance, Revenue Operations, Payer Relations and Services, Rates and Charges (104RO1), Veterans Health Administration, Department of Veterans Affairs, 128 Bingham Road, Suite 1000, Asheville, NC 28806; telephone: 608–821–7346 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA's methodology for computing Cost-Based and Inter-Agency rates for medical care or services provided by VA is set forth in 38 CFR 17.102(h). Two sets of rates are obtained by applying this methodology, Cost-Based and Inter-Agency.

Cost-Based rates apply to medical care and services that are provided by VA under 38 CFR 17.102(a), (b), (d) and (g), respectively, in the following circumstances:

- In error or based on tentative eligibility;
- In a medical emergency;
- To pensioners of allied nations; and
- For research purposes in circumstances under which the medical care appropriation shall be reimbursed from the research appropriation.

Inter-Agency rates apply to medical care and services that are provided by VA under § 17.102(c) and (f), respectively, in the following circumstances when the care or services provided are not covered by any applicable sharing agreement in accordance with § 17.102(e):

- To beneficiaries of the Department of Defense or other Federal agencies; and
- To military retirees with chronic disability.

The calculations for the Cost-Based and Inter-Agency rates are the same with two exceptions. Inter-Agency rates are all-inclusive and are not broken down into three components (*i.e.,* Physician; Ancillary; and Nursing Room and Board), and do not include standard fringe benefit costs that cover Government employee retirement, disability costs and return on fixed assets.

The following table depicts the Cost-Based and Inter-Agency rates that are effective October 1, 2022, and will remain in effect until the next fiscal year **Federal Register** update. These rates supersede those established by the **Federal Register** notice published on August 4, 2021, at 86 FR 42015.

	Cost-based rates	Inter-agency rates
A. Hospital Care per inpatient day:		
General Medicine:		
All Inclusive Rate	$5,724	$5,630
Physician	685	.....
Ancillary	1,492	.....
Nursing Room and Board	3,547	.....
Neurology:		
All Inclusive Rate	4,969	4,885
Physician	727	.....
Ancillary	1,312	.....
Nursing Room and Board	2,930	.....
Rehabilitation Medicine:		
All Inclusive Rate	4,254	4,179
Physician	483	.....
Ancillary	1,300	.....
Nursing Room and Board	2,471	.....
Blind Rehabilitation:		
All Inclusive Rate	4,249	4,171
Physician	342	.....
Ancillary	2,111	.....

	Cost-based rates	Inter-agency rates
Nursing Room and Board	1,796	
Spinal Cord Injury:		
All Inclusive Rate	4,396	4,318
Physician	545	
Ancillary	1,106	
Nursing Room and Board	2,745	
Surgery:		
All Inclusive Rate	9,923	9,761
Physician	1,094	
Ancillary	3,010	
Nursing Room and Board	5,819	
General Psychiatry:		
All Inclusive Rate	3,575	3,510
Physician	337	
Ancillary	563	
Nursing Room and Board	2,675	
Substance Abuse (Alcohol and Drug Treatment):		
All Inclusive Rate	3,631	3,565
Physician	346	
Ancillary	840	
Nursing Room and Board	2,445	
Psychosocial Residential Rehabilitation Program:		
All Inclusive Rate	521	512
Physician	33	
Ancillary	55	
Nursing Room and Board	433	
Intermediate Medicine:		
All Inclusive Rate	3,906	3,841
Physician	192	
Ancillary	573	
Nursing Room and Board	3,141	
Poly-trauma Inpatient:		
All Inclusive Rate	4,765	4,673
Physician	541	
Ancillary	1,456	
Nursing Room and Board	2,768	
B. Nursing Home Care, Per Day:		
All Inclusive Rate	2,314	2,273
Physician	72	
Ancillary	313	
Nursing Room and Board	1,929	
C. Outpatient Medical Treatments:		
Outpatient Visit (to include Ineligible Emergency Dental Care)	453	446
Outpatient Physical Medicine & Rehabilitation Service Visit	366	359
Outpatient Poly-trauma/Traumatic Brain Injury	673	663

Note: Outpatient Prescriptions will be billed at Drug Cost plus Administrative Fee.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 7, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2022–19739 Filed 9–12–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Tuesday,
No. 176 September 13, 2022

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 535

Improvements for Heavy-Duty Engine and Vehicle Fuel Efficiency Test Procedures, and Other Technical Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 535

[NHTSA–2020–0079]

RIN 2127–AM28

Improvements for Heavy-Duty Engine and Vehicle Fuel Efficiency Test Procedures, and Other Technical Amendments

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Proposed rule.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is proposing minor technical amendments to the test procedures for heavy-duty engines and vehicles to improve accuracy and reduce testing burden. These amendments affect the certification procedures for fuel efficiency standards and related requirements. These proposed amendments increase compliance flexibility, harmonize with other requirements, add clarity, correct errors, and streamline the regulations. Given the nature of the proposed changes, NHTSA does not expect either significant environmental impacts or significant economic impacts for any sector.

DATES: *Comments:* Comments are requested on or before November 14, 2022.

ADDRESSES: You may send comments, identified by Docket No. NHTSA–2020–0079 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Fax: NHTSA:* (202) 493–2251.
- *Mail:*
  - Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:*
  - West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *https://www.regulations.gov,* and/or: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Management NHTSA: Docket Management Facility, M–30, U.S. Department of Transportation (DOT), West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590. The DOT Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. However, due to current COVID–19 restrictions, access to the office is limited. Please call ahead if you plan to drop off or pick up a document to ensure someone is available to assist them. The Docket Management Facility can be reached at (202) 366–9826 or (202) 366–9317 to arrange a drop off/pick up.

FOR FURTHER INFORMATION CONTACT: Gregory Powell, Office of Rulemaking, Fuel Economy Division, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number: (202) 493–0515.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

A. Does this action apply to me?

This action would affect companies that manufacture, sell, or import into the United States new heavy-duty engines and new Class 2b through 8 trucks, including combination tractors, all types of buses, vocational vehicles including municipal, commercial, recreational vehicles, and ¾-ton and 1-ton pickup trucks and vans. The heavy-duty category incorporates all motor vehicles with a gross vehicle weight rating of 8,500 lbs. or greater, and the engines that power them, except for medium-duty passenger vehicles already covered by the corporate average fuel economy standards and greenhouse gas standards issued for light-duty vehicles.[1]

Regulated categories and entities include the following:

[1] *https://www.ecfr.gov/cgi-bin/text-idx?SID=7031ab132d93d2ab3729f7c3b8e412f0&mc=true&node=pt49.6.535&rgn=div5.*

Category	NAICS codes [A]	Examples of potentially regulated entities
Industry	333618, 336111, 336112, 336120, 336211, 336212, 336611, 336911, 336999.	Motor vehicle manufacturers and engine manufacturers.
Industry	811111, 811112, 811198, 423110	Commercial importers of vehicles and vehicle components.
Industry	335312, 811198	Alternative fuel vehicle converters.
Industry	326199, 332431	Portable fuel container manufacturers.

[A] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

This action proposes to amend the regulations that implement our fuel efficiency standards for engines and vehicles. The proposed amendments are technical in nature and include corrections and clarifications to a variety of existing regulatory provisions to improve consistency with related EPA standards and with NHTSA's original intent for those provisions. In other words, this proposal comprises a variety of small changes for multiple types of engines and vehicles.

These amendments parallel similar ones in a rulemaking conducted by the EPA under RIN 2060–AU62. The proposed technical amendments are intended to maintain the alignment of EPA's Medium and Heavy-Duty Vehicle Greenhouse Gas Emissions and NHTSA's Fuel Efficiency Standards. The technical amendments to NHTSA regulations contained in this proposal are both necessary and completely align with the technical amendments finalized by EPA under the parallel rulemaking referenced in this paragraph.

The majority of the amendments being proposed would modify existing test procedures for heavy-duty highway engines and vehicles. These test procedure changes would improve accuracy, and in some cases, reduce test burden.

Other heavy-duty highway amendments would update NHTSA regulations to enhance implementation of existing fuel efficiency standards. For example, some changes would reduce the likelihood that manufacturers would need to conduct unique certification testing for compliance with NHTSA, Canadian, and Californian standards. Some amendments would make it easier for manufacturers to more fully account for the fuel efficiency benefits of advanced fuel efficiency improving technology, which could provide them the opportunity to generate additional fuel consumption improvements for compliance. These amendments are described in Section II.

Additionally, as a matter of housekeeping, NHTSA is proposing to remove portions of its regulations that were vacated by the United States Court of Appeals for the District of Columbia Circuit. In November 2021, that Court ''vacate[d] all portions of the [2016 joint NHTSA and EPA] rule that apply to trailers.'' *Truck Trailer Mfrs. Ass'n, Inc.* v. *EPA,* 17 F.4th 1198, 1200 (D.C. Cir. 2021). The underlying statute authorizes NHTSA to examine the fuel efficiency of and prescribe fuel economy standards for ''commercial medium-duty [and/or] heavy-duty on-highway vehicles.'' 49 U.S.C. 32902(b)(1)(C); 49 U.S.C. 32902(k)(2). The Court reasoned that trailers do not qualify as ''vehicles'' when that term is used in the fuel economy context because trailers are motorless and use no fuel. *Truck Trailer Mfrs. Ass'n, Inc.,* 17 F.4th at 1200, 1204–08. Accordingly, the Court held that NHTSA does not have the authority to regulate the fuel economy of trailers. *Id.* at 1208.[2] NHTSA is therefore proposing to remove the vacated trailer provisions from its regulations

C. What are the incremental costs and benefits of this action?

This action would be limited in scope and is not intended to include amendments that would have significant economic or environmental impacts. NHTSA has not drafted a Regulatory Impact Analysis.

[2] For similar reasons, the Court also held that the statute authorizing EPA to regulate the emissions of ''motor vehicles'' does not encompass trailers. *Id.* at 1200–03. The Court affirmed, however, that both agencies still ''can regulate *tractors* based on the *trailers* they pull.'' *Id.* at 1208. Moreover, NHTSA is still authorized to regulate trailers in other contexts, such as under 49 U.S.C. Chapter 301. *See* 49 U.S.C. 30102(a)(7) (defining ''motor vehicle'' to include ''a vehicle . . . drawn by mechanical power''); *Truck Trailer Mfrs. Ass'n, Inc.,* 17 F.4th at 1207 (''A trailer is 'drawn by mechanical power.' '').

II. Medium and Heavy-Duty Fuel Efficiency Program Technical Amendments

A. Overview

In September 2011, NHTSA and EPA finalized Phase 1 of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles. The Phase 1 program covered new commercial heavy-duty vehicles and work trucks manufactured in model years 2014 to 2018 and beyond, with unique standards for combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles, as well as separate standards for engines in tractors and vocational vehicles. NHTSA and EPA finalized Phase 2 of the standards in October 2016. Besides standards being more stringent, the Phase 2 program also incorporated enhanced test procedures that (among other things) allow individual drivetrain and powertrain performance to be reflected in the vehicle certification process; and included an expanded and improved compliance simulation model.

Since the promulgation of the Phase 2 regulations, manufacturers have been revising their internal test procedures for compliance with the new requirements that begin in model year 2021. In doing so, they have identified to the agencies several areas in which the test procedure regulations could be improved (in terms of overall accuracy, repeatability and clarity) without changing the effective stringency of the standards.

In its May 12, 2020 NPRM, EPA proposed numerous changes to the test procedure regulations to address manufacturers' concerns and to address other issues it had identified. EPA sought comment on those changes and issued a final rule on December 28, 2020 responding to the comments and adjusting the regulatory changes as appropriate. NHTSA has carefully reviewed all technical amendments in the EPA proposal, public comments to the proposal, and the technical amendments that EPA finalized, and is proposing to make technical amendments that parallel the technical amendments that EPA finalized. NHTSA's proposed regulatory changes

described below consist primarily of references and definitions contained in NHTSA regulations which were impacted by the technical amendments finalized by the EPA. This proposal also includes various minor editorial changes to NHTSA regulations that simply correct typographical/formatting errors or revise NHTSA's regulatory text to improve clarity or to update references to EPA regulations that have changed as a result of the EPA technical amendments.

B. Greenhouse Gas Emission Model Supplemental Notice of Proposed Rulemaking

In conjunction with its final rule issued on December 28, 2020, EPA issued a supplemental notice of proposed rulemaking (SNPRM) proposing further revisions to the Greenhouse Gas Emissions Model (GEM). In the supplemental notice of proposed rulemaking, EPA proposed to revise GEM after consideration of comments solicited and received on the Technical Amendments proposed rule. The details of these changes to the GEM and other considerations are provided on EPA's website.[3]

C. 49 CFR 535.1 Scope

NHTSA is proposing to amend the scope provision of 49 CFR part 535 to remove the reference to trailers, consistent with the 2021 D.C. Circuit decision as discussed above.

D. 49 CFR 535.3 Applicability

1. 535.3 (a) Enforcement Action Related to Compliance With NHTSA Standards

NHTSA is proposing clarifications to its MDHD fuel efficiency program's applicability and compliance. More specifically, NHTSA is adding the clarification that manufacturers found not to comply with NHTSA's standards or regulations which apply to the construction of new and incomplete vehicles in 49 CFR parts 566 through 568 due to incorrect or fraudulent information will be subject to enforcement in accordance with Chapter 301 of Title 49 and deemed as not complying with Part 535. For example, if a manufacturer is unregistered with NHTSA as a manufacturer, as required by Part 566, or fails to affix an accurate certification label to a complete or incomplete vehicle, then the manufacturer concurrently violates both NHTSA's safety and fuel efficiency regulations. If the manufacturer is unable to correct its noncompliance(s), the manufacturer fails to comply with NHTSA's fuel efficiency program and is unable to earn fuel efficiency credits or must forfeit its credits, if already issued by NHTSA.

2. 535.3(d)(5) Exclusion of Heavy-Duty Trailers

NHTSA is proposing to delete 535.3(d)(5) consistent with the 2021 D.C. Circuit decision, discussed above.

3. 535.3(e)(1)(i) Vocational Vehicle Tire Speed Rating Exemption

NHTSA is proposing to update this section with a new applicability provision for vocational vehicles, to reflect the rulemaking intention and to be consistent with EPA regulations. The added provision allows for vocational vehicles with a date of manufacture before January 1, 2021 to automatically qualify for an exemption under 40 CFR 1037.631 if the tires installed on the vehicle have a maximum speed rating at or below 55 miles per hour.

4. 535.3(e)(1)(ii) Request for Exemption

NHTSA is proposing to add a second exemption clause to this section where vehicle manufacturers may request exemption under the EPA defined provisions found in 40 CFR 1037.631 and based on other criteria that are equivalent to those specified in 40 CFR 1037.631(a).

5. 535.3(e)(2)(ii) Early Certification for Small Manufacturers

Vehicle manufacturers that qualify as small businesses are exempt from the Phase 1 standards, but must meet the Phase 2 standards beginning January 1, 2022.[4] However, some vehicle families have been certified voluntarily to Phase 1 standards by small manufacturers. In an effort to encourage more voluntary early certification to Phase 1 standards, EPA finalized a new interim provision in 40 CFR 1037.150(y)(4) for small manufacturers that certify their entire U.S.-directed production volume to the Phase 1 standards for calendar year 2021 (*see* 85 FR at 28150). These small manufacturers would be allowed to certify to the Phase 1 standards for model year 2022, instead of the otherwise applicable Phase 2 standards. The agencies believe that early compliance with the Phase 1 standards should more than offset any reduction in benefits that would otherwise be achieved from meeting Phase 2 standards starting January 1, 2022.[5]

The finalized provision also allows the Phase 1 compliance credits that small manufacturers generate from model year 2018 through 2022 vocational vehicles to be used through model year 2027. Under the existing regulations, all manufacturers that generate vehicle credits under the Phase 1 program can use these credits for compliance in the Phase 2 averaging, banking, and trading program, but these credits are only subject to a five-year credit life. As EPA stated in its final rule, the agencies believe that the limit on credit life can be problematic for small manufacturers with limited product lines which allows them less flexibility in averaging, and the longer credit life will provide them additional flexibility to ensure all their products are fully compliant by the time the Phase 2 standards are fully phased in for model year 2027.

EPA received no adverse comment to either proposal for small manufacturers in § 1037.150(y)(4) and, therefore, finalized the provisions. NHTSA is proposing to implement parallel changes by updating § 535.5(e)(2)(ii) with the same provisions which can be found at § 535.5(e)(2)(ii)(A) and § 535.5(e)(2)(ii)(B), respectively. These changes would also maintain program alignment across both agencies.

6. 535.3(e)(3)—Transitional Allowance for Trailers

NHTSA is proposing to delete 535.3(e)(3) consistent with the 2021 D.C. Circuit decision, discussed above.

7. 535.3(j) Potential Enforcement Actions for Incomplete, Incorrect or Fraudulent Information

NHTSA is proposing to add a new section to the program applicability regulations. This new section provides clarifications and potential outcomes under the NHTSA fuel efficiency program, if EPA denies, suspends or revokes, a manufacturer's certificate of conformity in accordance with 40 CFR 1036.255 or 1037.225, due to incomplete, incorrect or fraudulent information.

[3] ''Greenhouse Gas Emissions Model (GEM) for Medium- and Heavy-Duty Vehicle Compliance.'' (n.d.). *https://www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty.* Accessed May 18, 2022.

[4] In December 2020, EPA proposed further revisions to the Phase 2 GEM Simulation Model in the December 2020 Notice of Proposed Rulemaking (NRPM) for technical amendments to the GHG Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty VehicleS. EPA's GEM model is released and can be found *https://www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty* which incorporates the revisions being considered.'' (last accessed: May 11, 2022)

[5] EPA stated that it believed that the magnitude of any impact on air quality would be small because of the low production volumes from these small business manufacturers.

E. 49 CFR Part 535.4 Definitions

NHTSA is proposing adding and modifying several definitions to clarify the meaning of certain terms. Almost all of these definitions reference EPA regulatory definitions to ensure alignment of the NHTSA and EPA programs.

1. Adjustable Parameter

NHTSA is proposing to add the definition for *adjustable parameter* as having the meaning given in 40 CFR 1037.801.

2. Alternative Fuel Conversion

NHTSA is proposing to add the definition for *alternative fuel conversion* as having the meaning given in 40 CFR 85.502.

3. Averaging Sets

NHTSA is proposing to delete ''long trailer'' and ''short trailer'' in reference to averaging sets definition in HD program, consistent with the 2021 D.C. Circuit decision.

4. Certificate of Conformity

After receiving no adverse comments, EPA finalized clarifying statements related to the information submitted in an application for a certificate of conformity. These clarifying statements are related to determining the date of application submission and the submission date for any potential changes to applications that are deemed incomplete or amended. NHTSA is proposing to update its Certificate of Conformity definition in Part 535 to include the same language finalized by EPA because the clarifications are also applicable to NHTSA's fuel efficiency program. These changes would also maintain program alignment across the agencies.

5. Hybrid Engine, Hybrid Powertrain, and Hybrid Vehicle

NHTSA is proposing to revise its definition of hybrid engine or hybrid powertrain in 49 CFR part 535.4 to reference directly the EPA definition for these powertrain types found in 1037.801. EPA changed its definitions for ''hybrid engine or powertrain'' and ''hybrid vehicle'' to be consistent with the revised hybrid powertrain test procedures it recently finalized in part 1036 subpart F, and the definitions of ''hybrid powertrain'' and ''mild hybrid'' added to 40 CFR part 1036. NHTSA is proposing corresponding revisions to the Part 535 definitions that add examples of systems that qualify as hybrid engines or powertrains, specifically systems that recover kinetic energy and use it to power an electric heater in the aftertreatment.

6. Emission Data Engine

NHTSA is proposing to add the definition for *emission data engine* as having the meaning given in 40 CFR 1036.801.

7. Engine Configuration

NHTSA is proposing to add the definition for *engine configuration* as having the meaning given in 40 CFR 1036.801.

8. Flatbed Trailer

NHTSA is proposing to delete the definition of flatbed trailer, consistent with the 2021 D.C. Circuit decision.

9. Flexible Fuel

NHTSA is proposing to add the definition for *flexible fuel* as having the meaning given in 40 CFR 1036.801.

10. Fuel Type

NHTSA is proposing to add the definition for *fuel type* as having the meaning given in 40 CFR 1036.801.

11. Gear Ratio

NHTSA is proposing to add the definition for *gear ratio* as having the meaning given in 40 CFR 1036.801.

12. Greenhouse Gas

NHTSA is proposing to add the definition for *greenhouse gas* as having the meaning given in 40 CFR 1036.801.

13. Good Engineering Judgment

NHTSA is proposing to add the definition for *good engineering judgement* as having the meaning given in 40 CFR 1068.30.

14. Heavy-Duty Engine

NHTSA is proposing to add the definition for *heavy-duty engine* as having the meaning given in 40 CFR 1036.801 and 49 CFR part 523.

15. Hybrid

NHTSA is proposing to add the definition for *hybrid* as having the meaning given in 40 CFR 1036.801.

16. Identification Number

NHTSA is proposing to add the definition for *identification number* as having the meaning given in 40 CFR 1037.801.

17. Manufacturer

NHTSA is proposing to add the definition for *manufacturer* as having the meaning given in 40 CFR 1037.801.

18. Model Year

NHTSA is proposing revisions to the definition for *model year* as it pertains to vehicles and engine installations. NHTSA is also proposing to delete references to trailers in this definition, consistent with the 2021 D.C. Circuit decision.

19. Motor Vehicle

NHTSA is proposing to add the definition for *motor vehicle* as having the meaning given in 49 U.S.C. 32901.

20. Multi-Purpose

NHTSA is proposing to add the definition for *multi-purpose* as having the meaning given in 40 CFR 1037.801.

21. Neutral-Idle

NHTSA is proposing to add the definition for *neutral idle* as having the meaning given in 40 CFR 1037.801.

22. New Vehicles

NHTSA is proposing to add the definition for *new vehicles* as having the meaning given to ''new motor vehicle'' given in 40 CFR 1037.801.

23. Percent

NHTSA is proposing to add the definition for *percent* as having the meaning given in 40 CFR 1037.801.

24. Placed Into Service

NHTSA is proposing to add the definition for *placed into service* as having the meaning given in 40 CFR 1037.801.

25. Phase 2

NHTSA is proposing to delete reference to fuel efficiency and greenhouse gas emissions standards for trailer regulations, consistent with the 2021 D.C. Circuit decision.

26. Regulatory Subcategory

NHTSA is proposing to delete the section (4) reference to trailer subcategory, consistent with the 2021 D.C. Circuit decision.

27. Relating

NHTSA is proposing to add the definition for *relating* as having the meaning given in 40 CFR 1037.801.

28. Round

NHTSA is proposing to add the definition for *round* as having the meaning given in 40 CFR1065.1001.

29. Standard Payload

NHTSA is proposing to remove the definition of standard payload for trailers, consistent with the 2021 D.C. Circuit decision.

30. Standard Tractor

NHTSA is proposing to correct the definition for *standard tractor* as having

the meaning given in 40 CFR 1037.801 versus the currently defined 40 CFR 1037.501.

31. Standard Trailer

NHTSA is proposing to correct the definition for *standard trailer* as having the meaning given in 40 CFR 1037.801 versus the currently defined 40 CFR 1037.501.

32. Suspend

NHTSA is proposing to add the definition for *suspend* as having the meaning given in 40 CFR 1037.801.

33. Vehicle Service Class

NHTSA is proposing to revise the *vehicle service class* definition found in 49 CFR part 535.4 to directly reference EPA regulation 40 CFR 1037.140. NHTSA is proposing this revision to avoid redundancy across the agencies and align directly with EPA revisions finalized in their recent technical amendments rulemaking.

The recent EPA technical amendments clarify that the classification for tractors, where provisions are the same as vocational vehicles, are applicable to both hybrid and non-hybrid vehicles. The amendments also clarify that Class 8 hybrid and electric vehicles are Heavy HDVs while all other vehicles are classified by GVWR classes.

EPA explained in its final rule that prior to these revisions, manufacturers had expressed concern that the Phase 2 regulations were not specific enough regarding how to classify hybrid vocational vehicles, because vocational vehicles are generally classified by the class of the engines (as opposed to tractors, which are classified based on GVW), which was not applicable to electrically driven vehicles that have no engine.

34. Void

NHTSA is proposing to add the definition for *void* as having the meaning given in 40 CFR 1037.801.

F. 49 CFR Part 535.5 Standards

1. 49 CFR Part 535.5(a)

NHTSA is proposing to add clarification to the regulatory standards relating to heavy-duty pickup trucks and vans. More specifically, the agency is proposing adding language that ensures manufacturer options for EPA and NHTSA vehicle standards are aligned. Please refer to the proposed regulatory text for additional details.

2. 49 CFR Part 535.5(b)

NHTSA is proposing to add clarification to the regulatory standards relating to heavy-duty vocational vehicles. More specifically, the agency is proposing adding language that ensures manufacturer options for EPA and NHTSA vehicle standards are aligned. Please refer to the proposed regulatory text under this section for additional details.

3. 49 CFR Part 535.5(b)(1)

NHTSA is proposing deletion of the mandatory requirements for *all* heavy-duty vocational vehicles to be equipped tire pressure monitoring systems. The proposed revision, however, does not include removal of this mandatory requirement for motorhomes, as specified under 49 CFR part 535.5 (b)(6)(vi) and 49 CFR 571.138.

4. 49 CFR Part 535.5(b)(4)

NHTSA is proposing to correct the Vocational HHD Vehicle Regional compression ignition (CI) standards. The current published standard for this vehicle class is incorrect, and does not align with EPA GHG standards for this vehicle type. The incorrect values resulted from an incorrect calculation during the Phase 2 rulemaking which intended to maintain alignment of the NHTSA and EPA standards. The proposed corrected value for this regulatory class is 20.1375 gallons per 1000-ton miles vs. the currently published standard of 20.2358.

5. 49 CFR Part 535.5(c)

NHTSA is proposing to add clarification to the regulatory standards relating to truck tractors. More specifically, the agency is proposing adding language that ensures manufacturer options for EPA and NHTSA vehicle standards are aligned across both agencies. Please refer to the proposed regulatory text for additional details.

6. 49 CFR Part 535.5(c)(5)

NHTSA is proposing to revise its Alternate Fuel Consumption Standards for Tractors above 120,000 GCWR for 2021 model year and later. The revised standards are directly aligned with the revised GHG standards for this class of vehicles proposed and finalized by EPA as part of its technical amendments rulemaking.[6] The revised standards provide additional clarity on this vehicle class along with fuel efficiency standards that increase in three increments, model years 2021–2023, model years 2024–2026, model years 2026 and later.

As described in EPA's final rulemaking action, the agencies originally defined these alternate fuel consumption and greenhouse-gas standards during the Phase 2 rulemaking, to enable Environment and Climate Change Canada (ECCC) to fully harmonize with the U.S.'s HD Phase 2 standards.

In the interim, ECCC has since adopted final standards for these 120,000 to 140,000 pound GCWR tractors, which differ from the optional standards finalized in Phase 2.[7] Since the purpose of these standards was to facilitate certification of vehicles intended for Canada, EPA proposed optional standards in 40 CFR 1037.670 that would be the same as the final ECCC standards, and did not receive any adverse comments regarding that proposal. NHTSA is proposing to adopt these alternative standards, in gallons per 1,000 ton-miles units, for 120,000 to 140,000-pound GCWR tractors that are equivalent to the EPA and ECCC standards. This would maintain harmonization across the programs for all three agencies.

7. 49 CFR Part 535.5(d)

NHTSA is proposing to add clarifications in 49 CFR part 535.5(d) and 535.6(d) to expand its regulatory provision to optionally accommodate powertrain families and subfamilies added by EPA in 40 CFR 1036.108(a) and 1036.230(d) and (f). The EPA provisions allow manufacturers to apply CO_2 standards to powertrain families and subfamilies. They also allow manufacturers to optionally certify powertrains using the engine testing provisions in 40 CFR 1036 instead of 40 CFR 1037. Manufacturers may choose to include electric powertrain and hybrid electric powertrain emissions in their engine families or subfamilies under part 1036 instead of (or in addition to) the otherwise applicable engine fuel maps. Doing so would provide the same compliance options for manufacturers under the EPA and NHTSA programs.

[6] In December 2020, EPA proposed further revisions to the Phase 2 GEM Simulation Model in the December 2020 Notice of Proposed Rulemaking (NRPM) for technical amendments to the GHG Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Vehicles and is soliciting comments on these revisions. S. The latest EPA's GEM model is released and can be found *https://www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty* which incorporates the revisions being considered.'' (last accessed: May 11, 2022)

[7] Regulations Amending the Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations and Other Regulations Made Under the Canadian Environmental Protection Act, 1999: SOR/2018–98, Canada Gazette, Part II, Volume 152, Number 11, May 16, 2018.

8. 49 CFR Part 535.5(d)(3)

NHTSA is proposing to correct the Heavy-Duty Engine Fuel Consumption Standards for Phase 1 MHD and HHD compression ignition (CI) tractor engines. The current published standards for these engine classes are incorrect, and do not align with EPA GHG standards for these engine types. The incorrect values resulted from an incorrect calculation during the Phase 2 rulemaking which intended to maintain alignment of the NHTSA and EPA standards. The proposed correct values for these regulatory classes are 4.7839 gallons per 100 hp-hr for MHD CI tractor engines and 4.5187 gallons per 100 hp-hr for HHD CI tractor engines.

9. 49 CFR Part 535.5(d)(11)

NHTSA is proposing to correct the *Alternate transition option for Phase 2 engine standards* (A) and (C). The current published standards for these engine standards are incorrect, and do not align with current EPA GHG standards for these engine types. The incorrect values resulted from an incorrect calculation during the Phase 2 rulemaking which intended to maintain alignment for the NHTSA and EPA standards. The proposed corrected values for these regulatory classes are 5.3241 gallons per 100 hp-hr for MHD vocational vehicle engines and 5.0098 gallons per 100 hp-hr for HHD vocational engines.

10. 49 CFR Part 535.5(e)

NHTSA is proposing to delete 535.3(e), Heavy Duty Trailer, consistent with the 2021 D.C. Circuit decision, discussed above.

G. 49 CFR Part 535.6 Measurement and Calculation Procedures

1. 49 CFR Part 535.6(b)(1)

NHTSA is proposing to add a reference to EPA's finalized regulation 40 CFR 1037.150 to 49 CFR part 535.6(b)(1). This added reference would provide clear guidance that would be used to determine the proper vehicle and vehicle family to select when determining a manufacturer's regulatory subcategories for vocational vehicles and tractors. The addition would also maintain program alignment across the agencies.

2. 49 CFR Part 535.6(b)(4)(ii)

NHTSA is proposing to add a reference to EPA's finalized regulation 40 CFR 1037.525 to 49 CFR part 535.6(b)(4)(ii). This added reference would clarify how to determine a high-roof tractor's aerodynamic performance. EPA finalized this revision to more clearly relate the drag areas to the defined effective yaw variable, as recommended by EMA as a comment to the EPA proposal.[8] NHTSA is proposing to adopt this same measurement schema to keep programs aligned across the agencies.

3. 49 CFR Part 535.6(b)(5)(i)

NHTSA is proposing to revise 49 CFR part 535.6(b)(5)(i) to change the reference to an EPA regulation from 40 CFR 1036.510 to 1036.503. This revision would align the NHTSA regulations with the revised and finalized EPA regulations. This change would keep the programs of both agencies aligned.

4. 49 CFR Part 535.6(b)(5)(v)(E)*(3)*

NHTSA is proposing to add a new requirement in 49 CFR part 535.6(b)(5)(v)(E)*(3)* that allows manufacturers to characterize torque converters to allow a manufacturer to determine their own torque converter capacity factor instead of using the default value provided in GEM. This change aligns with EPA provisions in 40 CFR 1037.570 and maintains program alignment across both agencies.

5. 49 CFR Part 535.6(b)(5)(v)(E)*(4)*

NHTSA is proposing to add a new requirement in 49 CFR part 535.6(b)(5)(v)(E)*(4)* to allow vocational vehicles to input a value for neutral coasting in GEM as a compliance option for its fuel consumption program. This revision would align the NHTSA regulations with the EPA regulations in 40 CFR 1037.52 and keep both agencies aligned for program compliance.

6. 49 CFR Part 535.6(d)

Like 49 CFR part 535.5(d), NHTSA is proposing to add clarifications in NHTSA 535.6(d) to expand its regulatory provision to optionally accommodate powertrain families and subfamilies added by EPA in 40 CFR 1036.108(a) and 1036.230(d) and (f). The EPA provisions allow manufacturers to apply CO_2 standards to powertrain families and subfamilies. They also allow manufacturers to optionally certify powertrains using the engine testing provisions in 40 CFR 1036 instead of 40 CFR 1037. Manufacturers may choose to include electric powertrain and hybrid electric powertrain emissions in their engine families or subfamilies under part 1036 instead of (or in addition to) the otherwise applicable engine fuel maps. Doing so would provide the same compliance options for manufacturers under the EPA and NHTSA programs.

7. 49 CFR Part 535.6(d)(1)

NHTSA is proposing a consolidation of references to EPA regulation 40 CFR 1036.501 for engines in heavy-duty truck tractors and vocational vehicles that make up each of the manufacturer's regulatory subcategories.

8. 49 CFR Part 535.6(d)(2)

Like 49 CFR part 535.6(d), NHTSA is proposing to add clarifications to 535.6(d)(2) that align with the EPA regulation 40 CFR 1036.230(f) and to expand this regulatory provision to accommodate powertrains other than engines and to also include sub-families.

9. 49 CFR Part 535.6(d)(3)

NHTSA is proposing to add a new section to 49 CFR part 535.6(d) to address medium and heavy heavy-duty engines. This new subsection (3) mirrors and references the recently finalized EPA technical amendment for 40 CFR 1036.501 addressing the same regulatory items. Subsequently, existing sections 49 CFR part 535.6(d)(3) and 49 CFR part 535.6(d)(4) would be incremented by one as a result of inserting this new section, resulting in the existing 49 CFR part 535.6(d)(3) becoming 49 CFR part 535.6(d)(4), and the existing 49 CFR part 535.6(d)(4) becoming 49 CFR part 535.6(d)(5).

10. 49 CFR Part 535.6(d)(3)(ii)

NHTSA is proposing to add clarifications to 49 CFR part 535.6(d)(3)(ii) that expand this regulatory provision to accommodate powertrains other than engines and to also include sub-families.

11. 49 CFR Part 535.6(e)

NHTSA is proposing to delete 49 CFR part 535.6(e) reference to heavy duty trailer, consistent with the 2021 D.C. Circuit decision.

H. 49 CFR 535.7 Averaging, Banking, and Trading (ABT) Credit Program

1. 49 CFR Part 535.7(a)

NHTSA is proposing to delete reference to trailer manufacturers, consistent with the 2021 D.C. Circuit decision.

2. 49 CFR Part 535.7(a)(2)(v)

NHTSA is proposing to delete reference to application of using bank or trade credit to trailer, consistent with the 2021 D.C. Circuit decision.

[8] The variables $C_dA_{effective\text{-}yaw\text{-}coastdown}$ and $C_dA_{effective\text{-}yaw\text{-}alt}$ are now $C_dA_{coastdown}(\psi_{eff})$ and $C_dA_{alt}(\psi_{eff})$, respectively.

3. 49 CFR Part 535.7(a)(3)(v)

NHTSA is proposing to delete reference to trailer manufacturers generating credits, consistent with the 2021 D.C. Circuit decision.

4. 49 CFR part 535.7(a)(4)

NHTSA is clarifying its requirements for trading fuel consumption credits. Tractor, vocational vehicle and engine manufacturers may trade credits generated for vehicle or engine families or subfamilies while manufacturers of heavy-duty pickup trucks and vans certified as complete vehicles may trade credits generated for averaging sets. NHTSA is also proposing to delete reference to trading credits earned for compliance with trailer regulations, consistent with the 2021 D.C. Circuit decision.

5. 49 CFR Part 535.7(a)(4)(v)

NHTSA is proposing to delete reference to trailer manufacturers generating credits starting in model year 2027 may not bank or trade credits, consistent with the 2021 D.C. Circuit decision.

6. 49 CFR Part 535.7(a)(8)

The agency is proposing additions to the credit calculation provisions and to the calculations used for vocational vehicles transitioning to Phase 2 standards. More specifically, NHTSA is proposing to mirror the crediting provisions finalized by EPA as part of their technical amendments rulemaking. These added provisions include extending credit life, allowing off-cycle credits, allowing credit values for automatic tire inflation systems, and allowing automatic engine shutdown systems.

7. 49 CFR Part 535.7(a)(9)(iv)(B)

NHTSA is proposing to provide clarifications regarding production limits for drayage tractors under the custom chassis allowance, and how it relates to corporate relationships regarding averaging, banking and trading of credits.

8. 49 CFR Part 535.7(a)(11)

NHTSA is proposing regulatory provisions that prevent the calculation of any Phase 1 fuel consumption credits more than once for compliance unless the regulations explicitly allow it.

9. 49 CFR Part 535.7(b)(1)

NHTSA is proposing to amend the Total MY Fleet FCC equation because the current CFR shows an incorrect equation.

10. 49 CFR Part 535.7(c)(1)

NHTSA is proposing to amend the Vehicle Family FCC equation because the current CFR shows an incorrect equation.

11. 49 CFR Part 535.7(d)(1)

NHTSA is proposing to amend the Engine Family FCC equation because the current CFR shows an incorrect equation.

12. 49 CFR Part 535.7(d)(7)(ii)

NHTSA is proposing to the remove the usage restrictions associated with model year 2021 and earlier vocational engine credits. Manufacturers may use Phase 1 credits in the Phase 2 program using an adjustment factor to prorate credits to compensate for changes in the technologies and drive cycles used in developing the Phase 2 standards. NHTSA is also correcting the adjustment factor values used for the conversion to fuel consumption values in terms of gallons/100 hp-hr versus the currently published grams of CO_2 reference values.

13. 49 CFR 535.7(e)

NHTSA is proposing to delete 535.7(e), ABT Provision for Trailers, consistent with the 2021 D.C. Circuit decision, discussed above.

14. 49 CFR 535.7(f)(2)(v)

NHTSA is proposing to delete the provision formerly labeled as 535.7(f)(2)(v) reference to application of off-cycle provision to trailers, consistent with the 2021 D.C. Circuit decision, discussed above.

I. 49 CFR 535.8 Reporting and Recordkeeping Requirements

1. 49 CFR Part 535.8(a)(6)

NHTSA is proposing to amend the address to 1200 New Jersey Avenue, NVS–200, Office W45–306, SE, Washington, DC 20590, because the current CFR shows an incorrect address.

2. 49 CFR Part 535.8(b)(11)(i)(C)

Like 49 CFR part 535.6(d), NHTSA is proposing to add clarifications to 49 CFR part 535.8(b)(11)(i)(C) that expand this regulatory provision to accommodate powertrains other than engines and to also include sub-families.

3. 49 CFR Part 535.8(c)(13)(h)(i)

NHTSA is proposing additions to this reporting requirement that clarify potential enforcement actions associated with the submission of information that is fraudulent or grossly negligent or otherwise provided in bad faith.

4. 49 CFR Part 535.8(g)(12)

NHTSA is proposing to delete reference to requirements for trailer manufacturers, consistent with the 2021 D.C. Circuit decision, discussed above.

J. 49 CFR 535.9 Enforcement Approach

1. 49 CFR Part 535.9(a)(1)(i)

NHTSA is proposing additional language and clarifications that NHTSA will perform confirmatory testing and collaborate with EPA regarding any potential issues with testing results.

2. 49 CFR Part 535.9(a)(1)(v)

NHTSA is proposing additional language and clarifications with respect to any GEM inputs in a manufacturer's application for certification or in the end of the year ABT final reports. The proposed revisions include streamlining references to EPA regulations.

K. 49 CFR 535.10 How do manufacturers comply with fuel consumption standards?

1. 49 CFR Part 535.10(a)(3)

NHTSA is clarifying that EPA's compliance requirements 40 CFR 1037.601 and 40 CFR part 1068 apply similarly to NHTSA's fuel consumption program, except for the warranty provisions in 40 CFR 1037.601(a)(5).

2. 49 CFR Part 535.10(a)(6)

NHTSA is proposing the addition of language clarifying that vehicles required to meet the fuel consumption standards of this part must also comply with the same requirements as specified in the EPA regulation 40 CFR 1037.115.

3. 49 CFR Part 535.10(c)

NHTSA is proposing to delete the 535.10(c)(2) reference to box trailers, as well as the 535.10(c)(3) reference to manufacturer's compliance if their trailer meet specified standards, consistent with the 2021 D.C. Circuit decision, discussed above.

III. Statutory Authority and Executive Order Reviews

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 was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities

contained in the existing regulations and has assigned OMB control numbers 2060–0104, 2060–0287, 2060–0338, 2060–0545, 2060–0641. This rule clarifies and simplifies procedures without affecting information collection requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action would not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed action is designed to reduce testing burdens, increase compliance flexibility, and make various corrections and adjustments to compliance provisions. We therefore anticipate no costs and no regulatory burden associated with this proposed rule. We have concluded that this proposed action will have no significant increase in regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed $100 million in any one year.

E. National Environmental Policy Act (NEPA)

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

F. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule will be implemented at the Federal level and affects engine and vehicle manufacturers. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because there are no environmental health or safety risks created by this action that could present a disproportionate risk to children.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this action is not likely to have any adverse energy effects because it is designed merely to reduce testing burdens, increase compliance flexibility, and make various corrections and adjustments to compliance provisions.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs agencies to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action involves technical standards.

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

NHTSA believes this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). Due to the lack of environmental impact, these proposed regulatory changes will not have a disproportionate adverse effect on minority populations, low-income populations, or indigenous peoples.

IV. Regulatory Text

List of Subjects in 49 CFR Part 535

Energy conservation, Fuel, Fuel economy, Motor vehicles.

For the reasons discussed in the preamble, the National Highway Traffic Safety Administraton proposes to amend 49 CFR part 535 as follows:

■ 1. Revise Part 535 to read as follows:

PART 535—MEDIUM- AND HEAVY-DUTY VEHICLE FUEL EFFICIENCY PROGRAM

Sec.

Authority: 49 U.S.C. 32902.

§ 535.1 Scope.

This part establishes fuel consumption standards pursuant to 49 U.S.C. 32902(k) for work trucks and commercial medium- and heavy-duty on-highway vehicles (hereafter referenced as heavy-duty vehicles), and engines manufactured for sale in the United States. This part establishes a credit program manufacturers may use to comply with standards and requirements for manufacturers to provide reports to the National Highway Traffic Safety Administration regarding their efforts to reduce the fuel consumption of heavy-duty vehicles and engines.

§ 535.2 Purpose.

The purpose of this part is to reduce the fuel consumption of new heavy-duty vehicles and engines by establishing maximum levels for fuel consumption standards while providing a flexible credit program to assist manufacturers in complying with standards.

§ 535.3 Applicability.

(a) This part applies to manufacturers that produce complete and incomplete heavy-duty vehicles as defined in 49 CFR part 523, and to the manufacturers of all heavy-duty engines manufactured for use in the applicable vehicles for each given model year. Incomplete vehicle manufacturers must comply with NHTSA's safety requirements in 49 CFR parts 565, 567 and 568 to comply with part 535. Manufacturers found under this program not to comply with NHTSA's safety standards or regulations which apply to the construction of new and incomplete vehicles in 49 CFR parts 566 through 568 due to incorrect or fraudulent information will be subject to enforcement in accordance with Chapter 301 of Title 49 and deemed as not complying with Part 535. If the manufacturer is unable to correct its noncompliance with NHTSA, the manufacturer fails to comply with the fuel efficiency program and is unable to earn fuel efficiency credits.

(b) This part also applies to alterers, final stage manufacturers, and intermediate manufacturers producing vehicles and engines or assembling motor vehicles or motor vehicle equipment under special conditions. Manufacturers comply with this part by following the special conditions in 40 CFR 1037.620, 1037.621, and 1037.622 in which EPA allows manufacturer to:

(1) Share responsibility for the vehicles they produce. Manufacturers sharing responsibility for complying with emissions and fuel consumption standards must submit to the agencies a joint agreement as specified in 49 CFR 534.8(a);

(2) Have certificate holders sell or ship vehicles that are missing certain emission-related components to be installed by secondary vehicle manufacturers;

(3) Ship partially complete vehicles to secondary manufacturers;

(4) Build electric vehicles; and

(5) Build alternative fueled vehicles from all types of heavy-duty engine conversions. The conversion manufacturer must:

(i) Install alternative fuel conversion systems into vehicles acquired from vehicle manufacturers prior to first retail sale or prior to the vehicle's introduction into interstate commerce.

(ii) Be designated by the vehicle manufacturer and EPA to be the certificate holder.

(iii) Omit alternative fueled vehicles from compliance with vehicle fuel consumption standards, if–

(A) Excluded from EPA emissions standards; and

(B) A reasonable technical basis exist that the modified vehicle continues to meet emissions and fuel consumption vehicle standards.

(c) Vehicle and engine manufacturers that must comply with this part include manufacturers required to have approved certificates of conformity from EPA as specified in 40 CFR parts 86, 1036, and 1037.

(d) The following heavy-duty vehicles and engines are excluded from the requirements of this part:

(1) Vehicles and engines manufactured prior to January 1, 2014, unless certified early under NHTSA's voluntary provisions in § 535.5.

(2) Medium-duty passenger vehicles and other vehicles subject to the light-duty corporate average fuel economy standards in 49 CFR parts 531 and 533.

(3) Recreational vehicles, including motor homes manufactured before January 1, 2021, except those produced by manufacturers voluntarily complying with NHTSA's early vocational standards for model years 2013 through 2020.

(4) Aircraft vehicles meeting the definition of ''motor vehicle''. For example, this would include certain convertible aircraft that can be adjusted to operate on public roads.

(5) Engines installed in heavy-duty vehicles that are not used to propel vehicles. Note, this includes engines used to indirectly propel vehicles (such as electrical generator engines that power to batteries for propulsion).

(6) The provisions of this part do not apply to engines that are not internal combustion engines. For example, the provisions of this part do not apply to fuel cells. Note that gas turbine engines are internal combustion engines.

(e) The following heavy-duty vehicles and engines are exempted from the requirements of this part:

(1) Off-road vehicles. Vehicle manufacturers producing vehicles intended for off-road may exempt vehicles without requesting approval from the agencies subject to the criteria in § 535.5(b)(9)(i) and 40 CFR 1037.631(a). If unusual circumstances exist and a manufacturer is uncertain as to whether its vehicles qualify, the manufacturer should ask for a preliminary determination from the agencies before submitting its application for certification in accordance with 40 CFR 1037.205 for the applicable vehicles. Send the request with supporting information to EPA and the agencies will coordinate in making a preliminary determination as specified in 40 CFR 1037.210. These decisions are considered to be preliminary approvals and subject to final review and approval.

(i) Vocational vehicles with a date of manufacture before January 1, 2021 automatically qualify for an exemption under § 1037.631 if the tires installed on the vehicle have a maximum speed rating at or below 55 miles per hour.

(ii) In unusual circumstances, vehicle manufacturers may ask EPA and NHTSA to exempt vehicles under § 1037.631 based on other criteria that are equivalent to those specified in § 1037.631(a); however, the agencies will normally not grant relief in cases where the vehicle manufacturer has credits or can otherwise comply with applicable standards. Manufacturers should request approval for an exemption before producing the subject vehicles. Send your request with supporting information to the Designated Compliance Officer; EPA will coordinate in making a determination under § 1037.210. If the manufacturer introduces into U.S. commerce vehicles that depend on our approval under this paragraph (h) of this section before we inform you of our approval, those vehicles violate 40 CFR 1068.101(a)(1) and 40 CFR 535.9.

(2) Small business manufacturers. (i) For Phase 1, small business manufacturers are exempted from the vehicle and engine standards of § 535.5, but must comply with the reporting requirements of § 535.8(g).

(ii) For Phase 2, fuel consumption standards apply on a delayed schedule for manufacturers meeting the small business criteria specified in 13 CFR 121.201 and in 40 CFR 86.1819-14(k)(5), 40 CFR 1036.150, and 40 CFR 1037.150. Qualifying manufacturers of truck tractors, vocational vehicles, heavy duty pickups and vans, and engines are not subject to the fuel consumption standards for vehicles built before January 1, 2022 and engines (such as those engines built by small alternative fuel engine converters) with a date of manufacturer on or after November 14, 2011 and before January 1, 2022. Qualifying manufacturers may choose to voluntarily comply early.

(A) Small manufacturers that certify their entire U.S.-directed production volume to the Phase 1 standards for calendar year 2021 may certify to the Phase 1 standards for model year 2022 (instead of the otherwise applicable Phase 2 standards).

(B) Phase 1 vehicle credits small manufacturers generate under provision (A) of this section for model year 2018 through 2022 vocational vehicles may be used through model year 2027 (instead of being subject to a five-year credit life).

(iii) Small business manufacturers producing vehicles and engines that run on any fuel other than gasoline, E85, or diesel fuel meeting the criteria specified in 13 CFR 121.201 and in 40 CFR 86.1819–14(k)(5), 40 CFR 1036.150, and 40 CFR 1037.150 may delay complying with every new mandatory standard under this part by one model year.

(3) Engines for specialty vehicles. Engines certified to the alternative standards specified in 40 CFR 86.007–11 and 86.008–10 for use in specialty vehicles as described in 40 CFR 1037.605. Compliance with the vehicle provisions in 40 CFR 1037.605 satisfies compliance for NHTSA under this part.

(f) For model year 2021 and later, vocational vehicle manufacturers building custom chassis vehicles (*e.g.,* emergency vehicles) may be exempted from standards in § 535.5(b)(4) and may comply with alternative fuel consumption standards as specified in § 535.5(b)(6). Manufacturers complying with alternative fuel consumption standards in § 535.5(b)(6) are restricted in using fuel consumption credits as specified in § 535.7(c).

(g) The fuel consumption standards in some cases apply differently for spark-ignition and compression-ignition engines or vehicles as specified in 40 CFR parts 1036 and 1037. Engine requirements are similarly differentiated by engine type and by primary intended service class, as described in 40 CFR 1036.140.

(h) NHTSA may exclude or exempt vehicles and engines under special conditions allowed by EPA in accordance with 40 CFR parts 85, 86, 1036, 1037, 1039, and 1068. Manufacturers should consult the agencies if uncertain how to apply any EPA provision under the NHTSA fuel consumption program. It is recommended that manufacturers seek clarification before producing a vehicle. Upon notification by EPA of a fraudulent use of an exemption, NHTSA reserves that right to suspend or revoke any exemption or exclusion.

(i) In cases where there are differences between the application of this part and the corresponding EPA program regarding whether a vehicle is regulated or not (such as due to differences in applicability resulting from differing agency definitions, etc.), manufacturers should contact the agencies to identify these vehicles and assess the applicability of the agencies' standards. The agencies will provide guidance on how the vehicles can comply. Manufacturers are required to identify these vehicles in their final reports submitted in accordance with § 535.8.

(j) If EPA denies, suspends or revokes, a manufacturer's certificate of conformity in accordance with 40 CFR 1036.255 or 1037.225, due to incomplete, incorrect or fraudulent information, the vehicles or engines covered by the applicable certificate will be:

(1) ineligible to participate in the NHTSA fuel consumption program if the certificate is denied.

(2) eligible only for partial crediting under § 535.7, for the population of vehicles or engines which the certificate remains in effect before the date of the suspension. The population of vehicle or engines after the suspension may also be subject to possible fines in accordance with § 535.9.

(3) ineligible for crediting under § 535.7, and subject to possible fines in accordance with § 535.9 if fraud exists.

(4) If NHTSA finds a manufacturer has submitted incomplete, incorrect or fraudulent information, it will contact EPA to deliberate and determine the appropriate enforcement action.

§ 535.4 Definitions.

The terms manufacture and manufacturer are used as defined in section 501 of the Act and the terms commercial medium-duty and heavy-duty on highway vehicle, fuel and work truck are used as defined in 49 U.S.C. 32901. See 49 CFR 523.2 for general definitions related to NHTSA's fuel efficiency programs.

Act means the Motor Vehicle Information and Cost Savings Act, as amended by Public Law 94–163 and 96–425.

Adjustable parameter has the meaning given in 40 CFR 1037.801.

Administrator means the Administrator of the National Highway Traffic Safety Administration (NHTSA) or the Administrator's delegate.

Advanced technology means vehicle technology under this fuel consumption program in § 535.6 and 535.7 and by EPA under 40 CFR 86.1819–14(d)(7), 1036.615, or 1037.615.

Alterers means a manufacturer that modifies an altered vehicle as defined in 49 CFR 567.3.

Alternative fuel conversion has the meaning given for clean alternative fuel conversion in 40 CFR 85.502.

Alternative fuel conversion has the meaning given in 40 CFR 85.502.

A to B testing has the meaning given in 40 CFR 1037.801.

Automated manual transmission has the meaning given in 40 CFR 1037.801.

Automatic tire inflation system has the meaning given in 40 CFR 1037.801.

Automatic transmission (AT) has the meaning given in 40 CFR 1037.801.

Auxiliary power unit has the meaning given in 40 CFR 1037.801.

Averaging set means, a set of engines or vehicles in which fuel consumption credits may be exchanged. Credits generated by one engine or vehicle family may only be used by other respective engine or vehicle families in the same averaging set as specified in § 535.7. Note that an averaging set may comprise more than one regulatory subcategory. The averaging sets for this HD program are defined as follows:

(1) Heavy-duty pickup trucks and vans.

(2) Light heavy-duty (LHD) vehicles.

(3) Medium heavy-duty (MHD) vehicles.

(4) Heavy heavy-duty (HHD) vehicles.

(5) Light heavy-duty engines subject to compression-ignition standards.

(6) Medium heavy-duty engines subject to compression-ignition standards.

(7) Heavy heavy-duty engines subject to compression-ignition standards.

(8) Engines subject to spark-ignition standards.

(9) Vehicle types certifying to optional custom chassis standards as specified in § 535.5(b)(6) form separate averaging sets for each vehicle type as specified in § 535.7(c).

Axle ratio or Drive axle ratio, ka has the meaning given in 40 CFR 1037.801.

Basic vehicle frontal area has the meaning given in 40 CFR 1037.801.

Cab-complete vehicle has the meaning given in 49 CFR 523.2.

Carryover has the meaning given in 40 CFR 1037.801.

Certificate holder means the manufacturer who holds the certificate of conformity for the vehicle or engine and that assigns the model year based on the date when its manufacturing operations are completed relative to its annual model year period.

Certificate of Conformity means an approval document granted by EPA to a manufacturer that submits an application for a vehicle or engine emissions family in 40 CFR 1036.205 and 1037.205. A certificate of conformity is valid from the indicated effective date until December 31 of the model year for which it is issued. The certificate must be renewed annually for any vehicle a manufacturer continues to produce. Information included in an amended application made in accordance with 40 CFR part 1036.225 and 1037.225, before the end of the model year applies similarly to the NHTSA fuel consumption program as to the EPA. If a manufacturer amends its application to make the amended application correct and complete, these changes do not apply retroactively to

the NHTSA fuel efficiency program. Also, if EPA or NHTSA determines that the manufacturer's amended application is not correct and complete, or otherwise does not conform to its regulations, any changes finalized by EPA or if EPA suspends, revokes, or voids a certification, also applies to the NHTSA fuel efficiency program. See § 535.3(j).

Certification has the meaning given in 40 CFR 1037.801.

Certified emission level has the meaning given in 40 CFR 1036.801.

Chassis-cab means the incomplete part of a vehicle that includes a frame, a completed occupant compartment and that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions.

Chief Counsel means the NHTSA Chief Counsel, or his or her designee.

Class means relating to GVWR classes for vehicles other than trailers, as follows:

(1) Class 2b vehicles are vehicles with a gross vehicle weight rating (GVWR) ranging from 8,501 to 10,000 pounds.

(2) Class 3 through Class 8 vehicles are vehicles with a gross vehicle weight rating (GVWR) of 10,001 pounds or more as defined in 49 CFR 565.15.

Complete sister vehicle is a complete vehicle of the same configuration as a cab-complete vehicle.

Complete vehicle has the meaning given in 49 CFR part 523.

Compression-ignition (CI) means relating to a type of reciprocating, internal-combustion engine, such as a diesel engine, that is not a spark-ignition engine. Note, in accordance with 40 CFR 1036.1, gas turbine engines and other engines not meeting the definition of compression-ignition are deemed to be compression-ignition engines for complying with fuel consumption standards.

Configuration means a subclassification within a test group for passenger cars, light trucks and medium-duty passenger vehicles and heavy-duty pickup trucks and vans which is based on basic engine, engine code, transmission type and gear ratios, and final drive ratio.

Container chassis trailer has the same meaning as container chassis in 40 CFR 1037.801.

Curb weight has the meaning given in 40 CFR 86.1803.

Custom chassis vehicle means a vocational vehicle that is a motor home, school bus, refuse hauler, concrete mixer, emergency vehicle, mixed-use vehicle or other buses that are not school buses or motor coaches. These vehicle types are defined in 49 CFR 523.3. A ''mixed-use vehicle'' is one that meets at least one of the criteria specified in 40 CFR 1037.631(a)(1) or at least one of the criteria in 40 CFR 1037.631(a)(2), but not both.

Date of manufacture means the date on which the certifying vehicle manufacturer completes its manufacturing operations, except as follows:

(1) Where the certificate holder is an engine manufacturer that does not manufacture the complete or incomplete vehicle, the date of manufacture of the vehicle is based on the date assembly of the vehicle is completed.

(2) EPA and NHTSA may approve an alternate date of manufacture based on the date on which the certifying (or primary) vehicle manufacturer completes assembly at the place of main assembly, consistent with the provisions of 40 CFR 1037.601 and 49 CFR 567.4.

(3) A vehicle manufacturer that completes assembly of a vehicle at two or more facilities may ask to use as the month and year of manufacture, for that vehicle, the month and year in which manufacturing is completed at the place of main assembly, consistent with provisions of 49 CFR 567.4, as the model year. Note that such staged assembly is subject to the provisions of 40 CFR 1068.260(c). NHTSA's allowance of this provision is effective when EPA approves the manufacturer's certificates of conformity for these vehicles.

Day cab has the meaning given in 40 CFR 1037.801.

Drayage tractor has the meaning given in 40 CFR 1037.801.

Dual-clutch transmission (DCT) means a transmission has the meaning given in 40 CFR 1037.801.

Dual-fuel has the meaning given in 40 CFR 1037.801.

Electric vehicle has the meaning given in 40 CFR 1037.801.

Emergency vehicle means a vehicle that meets one of the criteria in 40 CFR 1037.801.

Emission data engine has the meaning given in 40 CFR 1036.801.

Engine configuration has the meaning given in 40 CFR 1036.801.

Engine family has the meaning given in 40 CFR 1036.230. Manufacturers designate families in accordance with EPA provisions and may not choose different families between the NHTSA and EPA programs.

Excluded means a vehicle or engine manufacturer or component is not required to comply with any aspects with the NHTSA fuel consumption program.

Exempted means a vehicle or engine manufacturer or component is not required to comply with certain provisions of the NHTSA fuel consumption program.

Family certification level (FCL) has the meaning given in 40 CFR 1036.801.

Family emission limit (FEL) has the meaning given in 40 CFR 1037.801.

Final drive ratio has the meaning given in 40 CFR 1037.801.

Final-stage manufacturer has the meaning given in 49 CFR 567.3 and includes secondary vehicle manufacturers as defined in 40 CFR 1037.801.

Fleet in this part means all the heavy-duty vehicles or engines within each of the regulatory sub- categories that are manufactured by a manufacturer in a particular model year and that are subject to fuel consumption standards under § 535.5.

Fleet average fuel consumption is the calculated average fuel consumption performance value for a manufacturer's fleet derived from the production weighted fuel consumption values of the unique vehicle configurations within each vehicle model type that makes up that manufacturer's vehicle fleet in a given model year. In this part, the fleet average fuel consumption value is determined for each manufacturer's fleet of heavy-duty pickup trucks and vans.

Fleet average fuel consumption standard is the actual average fuel consumption standard for a manufacturer's fleet derived from the production weighted fuel consumption standards of each unique vehicle configuration, based on payload, tow capacity and drive configuration (2, 4 or all- wheel drive), of the model types that makes up that manufacturer's vehicle fleet in a given model year. In this part, the fleet average fuel consumption standard is determined for each manufacturer's fleet of heavy-duty pickup trucks and vans.

Flexible-fuel has the meaning given in 40 CFR 1036.801.

Fuel cell means an electrochemical cell that produces electricity via the non-combustion reaction of a consumable fuel, typically hydrogen.

Fuel cell electric vehicle means a motor vehicle propelled solely by an electric motor where energy for the motor is supplied by a fuel cell.

Fuel efficiency means the amount of work performed for each gallon of fuel consumed.

Fuel type has the meaning given in 40 CFR 1037.801.

Gaseous fuel has the meaning given in 40 CFR 1037.801.

Gear ratio or *Transmission gear ratio,* kg, has the meaning given in 40 CFR 1037.801.

Good engineering judgment has the meaning given in 40 CFR 1068.30. See 40 CFR 1068.5 for the administrative process used to evaluate good engineering judgement.

Greenhouse gas has the meaning given in 40 CFR 1036.801.

Greenhouse gas Emissions Model (GEM) has the meaning given in 40 CFR 1037.801.

Gross axle weight rating (GAWR) has the meaning given in 49 CFR 571.3.

Gross combination weight rating (GCWR) has the meaning given in 49 CFR 571.3.

Gross vehicle weight rating (GVWR) has the meaning given in 49 CFR 571.3.

Heavy-duty off-road vehicle means a heavy-duty vocational vehicle or vocational tractor that is intended for off-road use.

Heavy-duty engine has the meaning given in 40 CFR 1036.801 and 49 CFR part 523.

Heavy-duty vehicle has the meaning given in 40 CFR 1036.801 and 49 CFR part 523.

Heavy-haul tractor has the meaning given in 40 CFR 1037.801 and 49 CFR part 523.

Heavy heavy-duty (HHD) vehicle has the meaning given in vehicle service class.

Hybrid has the meaning given in 40 CFR 1036.801.

Hybrid engine or hybrid powertrain has the meaning given in 40 CFR 1037.801.

Hybrid vehicle has the meaning given in 40 CFR 1037.801.

Identification number has the meaning given in 40 CFR 1037.801.

Idle operation has the meaning given in 40 CFR 1037.801.

Incomplete vehicle has the meaning given in 49 CFR part 523. For the purpose of this regulation, a manufacturer may request EPA and NHTSA to allow the certification of a vehicle as an incomplete vehicle if it manufactures the engine and sells the unassembled chassis components, provided it does not produce and sell the body components necessary to complete the vehicle.

Innovative technology means technology certified under § 535.7 and by EPA under 40 CFR 86.1819–14(d)(13), 1036.610, and 1037.610 in the Phase 1 program.

Intermediate manufacturer has the meaning given in 49 CFR 567.3.

Light heavy-duty (LHD) vehicle has the meaning given in vehicle service class.

Liquefied petroleum gas (LPG) has the meaning given in 40 CFR 1036.801.

Low rolling resistance tire means a tire on a vocational vehicle with a tire rolling resistance level (TRRL) of 7.7 kg/metric ton or lower, a steer tire on a tractor with a TRRL of 7.7 kg/metric ton or lower, or a drive tire on a tractor with a TRRL of 8.1 kg/metric ton or lower.

Manual transmission (MT) has the meaning given in 40 CFR 1037.801.

Manufacturer has the meaning given in 40 CFR 1036.801.

Medium heavy-duty (MHD) vehicle has the meaning given in vehicle service class.

Model type has the meaning given in 40 CFR 600.002.

Model year as it applies to vehicles means:

(1) For tractors and vocational vehicles with a date of manufacture on or after January 1, 2021, the vehicle's *model year* is the calendar year corresponding to the date of manufacture; however, the vehicle's model year may be designated to be the year before the calendar year corresponding to the date of manufacture if the engine's model year is also from an earlier year. Note that paragraph (2) of this definition limits the extent to which vehicle manufacturers may install engines built in earlier calendar years. Note that 40 CFR 1037.601(a)(2) limits the extent to which vehicle manufacturers may install engines built in earlier calendar years.

(2) For Phase 1 tractors and vocational vehicles with a date of manufacture before January 1, 2021, *model year* means the manufacturer's annual new model production period, except as restricted under this definition. It must include January 1 of the calendar year for which the model year is named, may not begin before January 2 of the previous calendar year, and it must end by December 31 of the named calendar year. The model year may be set to match the calendar year corresponding to the date of manufacture.

(i) The manufacturer who holds the certificate of conformity for the vehicle must assign the model year based on the date when its manufacturing operations are completed relative to its annual model year period. In unusual circumstances where completion of your assembly is delayed, we may allow you to assign a model year one year earlier, provided it does not affect which regulatory requirements will apply.

(ii) Unless a vehicle is being shipped to a secondary manufacturer that will hold the certificate of conformity, the model year must be assigned prior to introduction of the vehicle into U.S. commerce. The certifying manufacturer must re-designate the model year if it does not complete its manufacturing operations within the originally identified model year. A vehicle introduced into U.S. commerce without a model year is deemed to have a model year equal to the calendar year of its introduction into U.S. commerce unless the certifying manufacturer assigns a later date.

Model year as it applies to engines means the manufacturer's annual new model production period, except as restricted under this definition. It must include January 1 of the calendar year for which the model year is named, may not begin before January 2 of the previous calendar year, and it must end by December 31 of the named calendar year. Manufacturers may not adjust model years to circumvent or delay compliance with emission standards or to avoid the obligation to certify annually.

(1) The following provisions apply for production and ABT reports during the transition to engine-based model year determinations for tractors and vocational vehicles in 2020 and 2021:

(i) If a manufacturer installs model year 2020 or earlier engines in its vehicles in calendar year 2020, the manufacturers should include all those Phase 1 vehicles in its production and ABT reports related to model year 2020 compliance, although EPA may require the manufacturer to identify these separately from vehicles produced in calendar year 2019.

(ii) If a manufacturer installs model year 2020 engines in its vehicles in calendar year 2021, the manufacturer should submit production and ABT reports for those Phase 1 vehicles separate from the reports it submits for Phase 2 vehicles with model year 2021 engines.

Motor Vehicle has the meaning given in 49 U.S.C. 32901.

Multi-purpose has the meaning given in 40 CFR 1037.801.

Natural gas has the meaning given in 40 CFR 1036.801. Vehicles that use a pilot-ignited natural gas engine (which uses a small diesel fuel ignition system), are still considered natural gas vehicles.

NHTSA Enforcement means the NHTSA Associate Administrator for Enforcement, or his or her designee.

Neutral coasting has the meaning given in 40 CFR 1037.801.

Neutral idle has the meaning given in 40 CFR 1037.801.

New vehicles has the meaning given to ''new motor vehicle'' provided in 40 CFR 1037.801.

Off-cycle technology means technology certified under § 535.7 and by EPA under 40 CFR 86.1819–14(d)(13), 1036.610, and 1037.610 in the Phase 2 program.

Party means the person alleged to have committed a violation of § 535.9, and includes manufacturers of vehicles and manufacturers of engines.

Payload means in this part the resultant of subtracting the curb weight from the gross vehicle weight rating.

Percent has the meaning given in 40 CFR 1036.801.

Petroleum has the meaning given in 40 CFR 1037.801.

Phase 1 means the joint NHTSA and EPA program established in 2011 for fuel efficiency standards and greenhouse gas emissions standards regulating medium- and heavy-duty engines and vehicles. See § 535.5 for the specific model years that standards apply to vehicles and engines.

Phase 2 means the joint NHTSA and EPA program established in 2016 for fuel efficiency standards and greenhouse gas emissions standards regulating medium- and heavy-duty vehicles and engines. See § 535.5 for the specific model years that standards apply to vehicles and engines.

Pickup truck has the meaning given in 49 CFR part 523.

Placed into service has the meaning given in 40 CFR 1037.801.

Plug-in hybrid electric vehicle (PHEV) means a hybrid electric vehicle that has the capability to charge the battery or batteries used for vehicle propulsion from an off-vehicle electric source, such that the off-vehicle source cannot be connected to the vehicle while the vehicle is in motion.

Power take-off (PTO) means a secondary engine shaft or other system on a vehicle that provides substantial auxiliary power for purposes unrelated to vehicle propulsion or normal vehicle accessories such as air conditioning, power steering, and basic electrical accessories. A typical PTO uses a secondary shaft on the engine to transmit power to a hydraulic pump that powers auxiliary equipment such as a boom on a bucket truck.

Powertrain family has the meaning given in 40 CFR 1037.231. Manufacturers choosing to perform powertrain testing as specified in 40 CFR 1037.550, divide product lines into powertrain families that are expected to have similar fuel consumptions and CO_2 emission characteristics throughout the useful life.

Preliminary approval means approval granted by an authorized EPA representative prior to submission of an application for certification, consistent with the provisions of 40 CFR 1037.210. For requirements involving NHTSA, EPA will ensure decisions are jointly made and will convey the decision to the manufacturer.

Primary intended service class has the same meaning for engines as specified in 40 CFR 1036.140. Manufacturers must identify a single primary intended service class for each engine family that best describes vehicles for which it designs and markets the engine, as follows:

(1) Divide compression-ignition engines into primary intended service classes based on the following engine and vehicle characteristics:

(i) Light heavy-duty ''LHD'' engines usually are not designed for rebuild and do not have cylinder liners. Vehicle body types in this group might include any heavy-duty vehicle built from a light-duty truck chassis, van trucks, multi-stop vans, and some straight trucks with a single rear axle. Typical applications would include personal transportation, light-load commercial delivery, passenger service, agriculture, and construction. The GVWR of these vehicles is normally below 19,500 pounds.

(ii) Medium heavy-duty ''MHD'' engines may be designed for rebuild and may have cylinder liners. Vehicle body types in this group would typically include school buses, straight trucks with single rear axles, city tractors, and a variety of special purpose vehicles such as small dump trucks, and refuse trucks. Typical applications would include commercial short haul and intra- city delivery and pickup. Engines in this group are normally used in vehicles whose GVWR ranges from 19,500 to 33,000 pounds.

(iii) Heavy heavy-duty ''HHD'' engines are designed for multiple rebuilds and have cylinder liners. Vehicles in this group are normally tractors, trucks, straight trucks with dual rear axles, and buses used in inter-city, long-haul applications. These vehicles normally exceed 33,000 pounds GVWR.

(2) Divide spark-ignition engines into primary intended service classes as follows:

(i) Spark-ignition engines that are best characterized by paragraph (1)(i) or (ii) of this section are in a separate ''spark-ignition'' primary intended service class.

(ii) Spark-ignition engines that are best characterized by paragraph (1)(iii) of this section share a primary intended service class with compression-ignition heavy heavy-duty engines. Gasoline-fueled engines are presumed not to be characterized by paragraph (1)(iii) of this section; for example, vehicle manufacturers may install some number of gasoline-fueled engines in Class 8 trucks without causing the engine manufacturer to consider those to be heavy heavy-duty engines.

(iii) References to ''spark-ignition standards'' in this part relate only to the spark-ignition engines identified in paragraph (b)(1) of this section. References to ''compression-ignition standards'' in this part relate to compression-ignition engines, to spark-ignition engines optionally certified to standards that apply to compression-ignition engines, and to all engines identified under paragraph (b)(2) of this section as heavy heavy-duty engines.

Rechargeable Energy Storage System (RESS) means the component(s) of a hybrid engine or vehicle that store recovered energy for later use, such as the battery system in a electric hybrid vehicle.

Refuse hauler has the meaning given in 40 CFR 1037.801.

Regional has the meaning relating to the Regional duty cycle as specified in 40 CFR 1037.510.

Regulatory category means each of the four types of heavy-duty vehicles defined in 49 CFR 523.6 and the heavy-duty engines used in these heavy-duty vehicles.

Regulatory subcategory means the sub-groups in each regulatory category to which mandatory fuel consumption standards and requirements apply as specified in 40 CFR 1036.230 and 1037.230 and are defined as follows:

(1) Heavy-duty pick-up trucks and vans.

(2) Vocational vehicle subcategories have 18 separate vehicle service classes as shown in Tables 1 and 2 below and include vocational tractors. Table 1 includes vehicles complying with Phase 1 standards. Phase 2 vehicles are included in Table 2 which have separate subcategories to account for engine characteristics, GVWR, and the selection of duty cycle for vocational vehicles as specified in 40 CFR 1037.510; vehicles may additionally fall into one of the subcategories defined by the custom-chassis standards in § 535.5(b)(6) and 40 1037.105(h). Manufacturers using the alternate standards in § 535.5(b)(6) and 40 CFR 1037.105(h) should treat each vehicle type as a separate vehicle subcategory.

TABLE 1—PHASE 1 VOCATIONAL VEHICLE SUBCATEGORIES

Vocational LHD vehicles.
Vocational MHD vehicles.
Vocational HHD vehicles.

TABLE 2—PHASE 2 VOCATIONAL VEHICLE SUBCATEGORIES

Engine type	Vocational LHD vehicles	Vocational MHD vehicles	Vocational HHD vehicles
CI	Urban	Urban	Urban.
CI	Multi-Purpose	Multi-Purpose	Multi-Purpose.
CI	Regional	Regional	Regional.
SI	Urban	Urban.	
SI	Multi-Purpose	Multi-Purpose.	
SI	Regional	Regional.	

(3) Tractor subcategories are shown in Table 3 below for Phase 1 and 2. Table 3 includes 10 separate subcategories for tractors complying with Phase 1 and 2 standards. The heavy-haul tractor subcategory only applies for Phase 2.

TABLE 3—PHASE 1 AND 2 TRUCK TRACTOR SUBCATEGORIES

Class 7	Class 8 day cabs	Class 8 sleeper cabs
Low-roof tractors	Low-roof day cab tractors	Low-roof sleeper cab tractors.
Mid-roof tractors	Mid-roof day cab tractors	Mid-roof sleeper cab tractors.
High-roof tractors	High-roof day cab tractors	High-roof sleeper cab tractors.
	Heavy-haul tractors (applies only to Phase 2 program).	

(5) Engine subcategories are shown for each primary intended service class in Table 5 below. Table 5 includes 6 separate subcategories for engines which are the same for Phase 1 and 2 standards.

TABLE 5—ENGINE SUBCATEGORIES

LHD engines	MHD engines	HHD engines
CI engines for vocational vehicles	CI engines for vocational vehicles	CI engines for vocational vehicles.
	CI engines for truck tractors	CI engines for truck tractors.
All spark-ignition engines.		

Relating to has the meaning given in 40 CFR 1037.801.

Revoke has the same meaning given in 40 CFR 1068.30.

Roof height means the maximum height of a vehicle (rounded to the nearest inch), excluding narrow accessories such as exhaust pipes and antennas, but including any wide accessories such as roof fairings. Measure roof height of the vehicle configured to have its maximum height that will occur during actual use, with properly inflated tires and no driver, passengers, or cargo onboard. Determine the base roof height on fully inflated tires having a static loaded radius equal to the arithmetic mean of the largest and smallest static loaded radius of tires a manufacturer offers or a standard tire EPA approves. If a vehicle is equipped with an adjustable roof fairing, measure the roof height with the fairing in its lowest setting. Once the maximum height is determined, roof heights are divided into the following categories:

(1) Low-roof means a vehicle with a roof height of 120 inches or less.

(2) Mid-roof means a vehicle with a roof height between 121 and 147 inches.

(3) High-roof means a vehicle with a roof height of 148 inches or more.

Round has the meaning given in 40 CFR 1065.1001.

Secondary vehicle manufacturer has the same meaning as final-stage manufacturer in 49 CFR part 567.

Service class group means a group of engine and vehicle averaging sets defined as follows:

(1) Spark-ignition engines, light heavy-duty compression-ignition engines, light heavy-duty vocational vehicles and heavy-duty pickup trucks and vans.

(2) Medium heavy-duty compression-ignition engines and medium heavy-duty vocational vehicles and tractors.

(3) Heavy heavy-duty compression-ignition engines and heavy heavy-duty vocational vehicles and tractors.

Sleeper cab means a type of truck cab that has a compartment behind the driver's seat intended to be used by the driver for sleeping. This includes both cabs accessible from the driver's compartment and those accessible from outside the vehicle.

Small business manufacturer means a manufacturer meeting the criteria specified in 13 CFR 121.201. For manufacturers owned by a parent company, the employee and revenue limits apply to the total number employees and total revenue of the parent company and all its subsidiaries.

Spark-ignition (SI) means relating to a gasoline-fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Note that some spark-ignition engines are subject to requirements that apply for compression-ignition engines as described in 40 CFR 1036.140.

Standard payload means the payload assumed for each vehicle, in tons, for modeling and calculating emission credits, as follows:

(1) For vocational vehicles:

(i) 2.85 tons for light heavy-duty vehicles.

(ii) 5.6 tons for medium heavy-duty vehicles.

(iii) 7.5 tons for heavy heavy-duty vocational vehicles.

(2) For tractors:

(i) 12.5 tons for Class 7.

(ii) 19 tons for Class 8.

(iii) 43 tons for heavy-haul tractors.

Standard tractor has the meaning given in 40 CFR 1037.801.

Standard trailer has the meaning given in 40 CFR 1037.801.

Stop start has the meaning given in 40 CFR 1037.801

Subconfiguration means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters that EPA determines may significantly affect CO2 emissions within a vehicle configuration as defined in 40 CFR 600.002.

Suspend has the meaning given in 40 CFR 1037.801.

Tank trailer has the meaning given in 40 CFR 1037.801.

Test group means the multiple vehicle lines and model types that share critical emissions and fuel consumption related features and that are certified as a group by a common certificate of conformity issued by EPA and is used collectively with other test groups within an averaging set or regulatory subcategory and is used by NHTSA for determining the fleet average fuel consumption.

The agencies means the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) in this part.

Tire pressure monitoring system (TPMS) has the meaning given in section S3 of 49 CFR 571.138.

Tire rolling resistance level (TRRL) means a value with units of kg/metric ton that represents that rolling resistance of a tire configuration. TRRLs are used as inputs to the GEM model under 40 CFR 1037.520. Note that a manufacturer may assign a value higher than a measured rolling resistance of a tire configuration.

Towing capacity in this part is equal to the resultant of subtracting the gross vehicle weight rating from the gross combined weight rating.

Trade means to exchange fuel consumption credits, either as a buyer or a seller.

U.S.-directed production volume means the number of vehicle units, subject to the requirements of this part, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

Useful life has the meaning given in 40 CFR 1036.801 and 1037.801.

Vehicle configuration means a unique combination of vehicle hardware and calibration (related to measured or modeled emissions) within a vehicle family as specified in 40 CFR 1037.801. Vehicles with hardware or software differences, but that have no hardware or software differences related to measured or modeled emissions or fuel consumption can be included in the same vehicle configuration. Note that vehicles with hardware or software differences related to measured or modeled emissions or fuel consumption are considered to be different configurations even if they have the same GEM inputs and FEL. Vehicles within a vehicle configuration differ only with respect to normal production variability or factors unrelated to measured or modeled emissions and fuel consumption for EPA and NHTSA.

Vehicle family has the meaning given in 40 CFR 1037.230. Manufacturers designate families in accordance with EPA provisions and may not choose different families between the NHTSA and EPA programs. If a manufacturer is certifying vehicles within a vehicle family to more than one FEL, it must subdivide its greenhouse gas and fuel consumption vehicle families into subfamilies that include vehicles with identical FELs. Note that a manufacturer may add subfamilies at any time during the model year.

Vehicle service class has the same meaning for vehicles as specified in 40 CFR 1037.140.

Vehicle subfamily or subfamily means a subset of a vehicle family including vehicles subject to the same FEL(s).

Vocational tractor has the meaning given in 40 CFR 1037.801.

Void has the meaning given in 40 CFR 1036.30.

Zero emissions vehicle means an electric vehicle or a fuel cell vehicle.

§ 535.5 Standards.

(a) *Heavy-duty pickup trucks and vans.* Each manufacturer's fleet of heavy-duty pickup trucks and vans shall comply with the fuel consumption standards in this paragraph (a) expressed in gallons per 100 miles. Each vehicle must be manufactured to comply for its full useful life. For the Phase 1 program, if the manufacturer's fleet includes conventional vehicles (gasoline, diesel and alternative fueled vehicles) and advanced technology vehicles (hybrids with powertrain designs that include energy storage systems, vehicles with waste heat recovery, electric vehicles and fuel cell vehicles), it may divide its fleet into two separate fleets each with its own separate fleet average fuel consumption standard which the manufacturer must comply with the requirements of this paragraph (a). For Phase 2, manufacturers may calculate their fleet average fuel consumption standard for a conventional fleet and multiple advanced technology vehicle fleets. Advanced technology vehicle fleets should be separated into plug-in hybrid electric vehicles, electric vehicles and fuel cell vehicles. The standards in this paragraph (a) correspond to the same requirements for EPA as specified in 40 CFR 86.1819–14. Manufacturers must apply the fuel consumption standards in this paragraph (a) to the same vehicles and engines using the same options used to comply with EPA in 40 CFR part 86, subpart S. Engines that comply to the standards in this paragraph are not allowed to comply with the standards in paragraph (d) of this section.

(1) *Mandatory standards.* For model years 2016 and later, each manufacturer must comply with the fleet average standard derived from the unique subconfiguration target standards (or groups of subconfigurations approved by EPA in accordance with 40 CFR 86.1819) of the model types that make up the manufacturer's fleet in a given model year. Each subconfiguration has a unique attribute-based target standard, defined by each group of vehicles having the same payload, towing capacity and whether the vehicles are equipped with a 2-wheel or 4-wheel drive configuration. Phase 1 target standards apply for model years 2016 through 2020. Phase 2 target standards apply for model year 2021 and afterwards.

(2) *Subconfiguration target standards.*

(i) Two alternatives exist for determining the subconfiguration target standards for Phase 1. For each alternative, separate standards exist for compression-ignition and spark-ignition vehicles:

(A) The first alternative allows manufacturers to determine a fixed fuel consumption standard that is constant over the model years; and

(B) The second alternative allows manufacturers to determine standards that are phased-in gradually each year.

(ii) Calculate the subconfiguration target standards as specified in this paragraph (a)(2)(ii) of this section, using the appropriate coefficients from Table 6 choosing between the alternatives in paragraph (a)(2)(i) of this section. For electric or fuel cell heavy-duty vehicles, use compression-ignition vehicle coefficients ''c'' and ''d'' and for hybrid (including plug-in hybrid), dedicated and dual-fueled vehicles, use coefficients ''c'' and ''d'' appropriate for the engine type used. Round each standard to the nearest 0.001 gallons per 100 miles and specify all weights in pounds rounded to the nearest pound. Calculate the subconfiguration target standards using the following equation:

Subconfiguration Target Standard (gallons per 100 miles) = [c × (WF)] + d

Where:

WF = Work Factor = [0.75 × (Payload Capacity + Xwd)] + [0.25 × Towing Capacity]

Xwd = 4wd Adjustment = 500 lbs if the vehicle group is equipped with 4wd and all-wheel drive, otherwise equals 0 lbs for 2wd.

Payload Capacity = GVWR (lbs) − Curb Weight (lbs) (for each vehicle group)

Towing Capacity = GCWR (lbs) − GVWR (lbs) (for each vehicle group)

TABLE 6—COEFFICIENTS FOR MANDATORY SUBCONFIGURATION TARGET STANDARDS

Model year(s)	c	d
Phase 1 Alternative 1—Fixed Target Standards		
CI Vehicle Coefficients		
2016 to 2018	0.0004322	3.330
2019 to 2020	0.0004086	3.143
SI Vehicle Coefficients		
2016 to 2017	0.0005131	3.961
2018 to 2020	0.0004086	3.143
Phase 1 Alternative 2—Phased-in Target Standards		
CI Vehicle Coefficients		
2016	0.0004519	3.477
2017	0.0004371	3.369
2018 to 2020	0.0004086	3.143
SI Vehicle Coefficients		
2016	0.0005277	4.073
2017	0.0005176	3.983
2018 to 2020	0.0004951	3.815
Phase 2—Fixed Target Standards		
CI Vehicle Coefficients		
2021	0.0003988	3.065
2022	0.0003880	2.986
2023	0.0003792	2.917
2024	0.0003694	2.839
2025	0.0003605	2.770
2026	0.0003507	2.701
2027 and later	0.0003418	2.633
SI Vehicle Coefficients		
2021	0.0004827	3.725
2022	0.0004703	3.623
2023	0.0004591	3.533
2024	0.0004478	3.443
2025	0.0004366	3.364
2026	0.0004253	3.274
2027 and later	0.0004152	3.196

(3) *Fleet average fuel consumption standard.* (i) For the Phase 1 program, calculate each manufacturer's fleet average fuel consumption standard for a conventional fleet and a combined advanced technology fleet separately based on the subconfiguration target standards specified in paragraph (a)(2) of this section, weighted to production volumes and averaged using the following equation combining all the applicable vehicles in a manufacturer's U.S.-directed fleet (compression-ignition, spark-ignition and advanced technology vehicles) for a given model year, rounded to the nearest 0.001 gallons per 100 miles:

$$Fleet\ Average\ Standard = \frac{\sum[Subconfiguration\ Target\ Standard_i \times Volume_i]}{\sum Volume_i}$$

Where:

Subconfiguration Target Standard*i* = fuel consumption standard for each group of vehicles with same payload, towing capacity and drive configuration (gallons per 100 miles).

Volume*i* = production volume of each unique subconfiguration of a model type based upon payload, towing capacity and drive configuration.

(A) A manufacturer may group together subconfigurations that have the same test weight (ETW), GVWR, and GCWR. Calculate work factor and target value assuming a curb weight equal to two times ETW minus GVWR.

(B) A manufacturer may group together other subconfigurations if it uses the lowest target value calculated for any of the subconfigurations.

(ii) For Phase 1, manufacturers must select an alternative for subconfiguration target standards at the same time they submit the model year 2016 pre-model year Report, specified in § 535.8. Once selected, the decision cannot be reversed and the manufacturer must continue to comply with the same alternative for subsequent model years.

(4) *Voluntary standards.* (i) Manufacturers may choose voluntarily to comply early with fuel consumption standards for model years 2013 through 2015, as determined in paragraphs (a)(4)(iii) and (iv) of this section, for example, in order to begin accumulating credits through over-compliance with the applicable standard. A manufacturer choosing early compliance must comply with all the vehicles and engines it manufactures in each regulatory category for a given model year.

(ii) A manufacturer must declare its intent to voluntarily comply with fuel consumption standards at the same time it submits a Pre-Model Report, prior to the compliance model year beginning as specified in § 535.8; and, once selected, the decision cannot be reversed and the manufacturer must continue to comply for each subsequent model year for all the vehicles and engines it manufactures in each regulatory category for a given model year.

(iii) Calculate separate subconfiguration target standards for compression-ignition and spark-ignition vehicles for model years 2013 through 2015 using the equation in paragraph (a)(2)(ii) of this section, substituting the appropriate values for the coefficients in the following table as appropriate:

TABLE 7—COEFFICIENTS FOR VOLUNTARY SUBCONFIGURATION TARGET STANDARDS

Model year(s)	c	d
CI Vehicle Coefficients		
2013 and 14	0.0004695	3.615
2015	0.0004656	3.595
SI Vehicle Coefficients		
2013 and 14	0.0005424	4.175
2015	0.0005390	4.152

(iv) Calculate the fleet average fuel consumption standards for model years 2013 through 2015 using the equation in paragraph (a)(3) of this section.

(5) *Exclusion of vehicles not certified as complete vehicles.* The vehicle standards in paragraph (a) of this section do not apply for vehicles that are chassis-certified with respect to EPA's criteria pollutant test procedure in 40 CFR part 86, subpart S. Any chassis-certified vehicles must comply with the vehicle standards and requirements of paragraph (b) of this section and the engine standards of paragraph (d) of this section for engines used in these vehicles. A vehicle manufacturer choosing to comply with this paragraph and that is not the engine manufacturer is required to notify the engine manufacturers that their engines are subject to paragraph (d) of this section and that it intends to use their engines in excluded vehicles.

(6) *Optional certification under this section.* Manufacturers may certify certain complete or cab- complete vehicles to the fuel consumption standards of this section. All vehicles optionally certified under this paragraph (a)(6) are deemed to be subject to the fuel consumption standards of this section given the following conditions:

(i) For fuel consumption compliance, manufacturers may certify any complete or cab-complete spark-ignition vehicles above 14,000 pounds GVWR and at or below 26,000 pounds GVWR to the fuel consumption standards of this section.

(ii) Manufacturers may apply the provisions of this section to cab-complete vehicles based on a complete sister vehicle. In unusual circumstances, manufacturers may ask the agencies to apply these provisions to Class 2b or Class 3 incomplete vehicles that do not meet the definition of cab-complete.

(A) Except as specified in paragraph (a)(6)(iii) of this section, for purposes of this section, a complete sister vehicle is a complete vehicle of the same vehicle configuration as the cab- complete vehicle. A manufacturer may not apply the provisions of this paragraph (a)(6) to any vehicle configuration that has a four-wheel rear axle if the complete sister vehicle has a two- wheel rear axle.

(B) Calculate the target value for the fleet-average fuel consumption standard under paragraph (a)(3) of this section based on the work factor value that applies for the complete sister vehicle.

(C) Test these cab-complete vehicles using the same equivalent test weight and other dynamometer settings that apply for the complete vehicle from which you used the work factor value (the complete sister vehicle). For fuel consumption certification, manufacturers may submit the test data from that complete sister vehicle instead of performing the test on the cab-complete vehicle.

(D) Manufacturers are not required to produce the complete sister vehicle for sale to use the provisions of this paragraph (a)(6)(ii). This means the complete sister vehicle may be a carryover vehicle from a prior model year or a vehicle created solely for the purpose of testing.

(iii) For fuel consumption purposes, if a cab-complete vehicle is not of the same vehicle configuration as a complete sister vehicle due only to certain factors unrelated to coastdown performance, manufacturers may use the road-load coefficients from the complete sister vehicle for certification testing of the cab-complete vehicle, but it may not use fuel consumption data from the complete sister vehicle for certifying the cab-complete vehicle.

(7) *Loose engines.* For model year 2023 and earlier spark-ignition engines with identical hardware compared with engines used in vehicles certified to the standards of this section, where such engines are sold as loose engines or as engines installed in incomplete vehicles that are not cab-complete vehicles. Manufacturers may certify such engines to the standards of this section, subject to the following provisions:

(i) For 2020 and earlier model years, the maximum allowable U.S.-directed production volume of engines manufacturers may sell under this paragraph (a)(7) in any given model year is ten percent of the total U.S-directed production volume of engines of that design that the manufacturer produces for heavy-duty applications for that model year, including engines it produces for complete vehicles, cab-complete vehicles, and other incomplete vehicles. The total number of engines a manufacturer may certify under this paragraph (a)(7), of all engine designs, may not exceed 15,000 in any model year. Engines produced in excess of either of these limits are not covered by your certificate. For example, a manufacturer produces 80,000 complete model year 2017 Class 2b pickup trucks with a certain engine and 10,000 incomplete model year 2017 Class 3 vehicles with that same engine, and the manufacturer did not apply the provisions of this paragraph (a)(7) to any other engine designs, it may produce up to 10,000 engines of that design for sale as loose engines under this paragraph (a)(7). If a manufacturer produced 11,000 engines of that design for sale as loose engines, the last 1,000 of them that it produced in that model year 2017 would be considered uncertified.

(ii) For model years 2021 through 2023, the U.S.-directed production volume of engines manufacturers sell under this paragraph (a)(7) in any given model year may not exceed 10,000 units. This paragraph (a)(7) does not apply for engines certified to the standards of paragraph (d) of this section and 40 CFR 1036.108.

(iii) Vehicles using engines certified under this paragraph (a)(7) are subject to the fuel consumption and emission standards of paragraph (b) of this section and 40 CFR 1037.105 and engine standards in 40 CFR 1036.150(j).

(iv) For certification purposes, engines are deemed to have a fuel consumption target values and test result equal to the fuel consumption target value and test result for the complete vehicle in the applicable test group with the highest equivalent test weight, except as specified in paragraph (a)(7)(iv)(B) of this part. Manufacturers use these values to calculate target values and the fleet- average fuel consumption rate. Where there are multiple complete vehicles with the same highest equivalent test weight, select the fuel consumption target value and test result as follows:

(A) If one or more of the fuel consumption test results exceed the applicable target value, use the fuel consumption target value and test result of the vehicle that exceeds its target value by the greatest amount.

(B) If none of the fuel consumption test results exceed the applicable target value, select the highest target value and set the test result equal to it. This means that the manufacturer may not generate fuel consumption credits from vehicles certified under this paragraph (a)(7).

(8) *Alternative fuel vehicle conversions.* Alternative fuel vehicle conversions may demonstrate compliance with the standards of this part or other alternative compliance approaches allowed by EPA in 40 CFR 85.525.

(9) *Advanced, innovative and off-cycle technologies.* For vehicles subject to Phase 1 standards, manufacturers may generate separate credit allowances for advanced and innovative technologies as specified in § 535.7(f)(1) and (2). For vehicles subject to Phase 2 standards, manufacturers may generate separate credits allowance for off-cycle technologies in accordance with § 535.7(f)(2). Separate credit allowances for advanced technology vehicles cannot be generated; instead manufacturers may use the credit multipliers specified in § 535.7(f)(1)(iv) through model year 2026.

(10) *Useful life.* The following useful life values apply for the standards of this section:

(i) 120,000 miles or 10 years, whichever comes first, for Class 2b through Class 3 heavy-duty pickup trucks and vans certified to Phase 1 standards.

(ii) 150,000 miles or 15 years, whichever comes first, for Class 2b through Class 3 heavy-duty pickup trucks and vans certified to Phase 2 standards.

(iii) For Phase 1 credits that you calculate based on a useful life of 120,000 miles, multiply any banked credits that you carry forward for use into the Phase 2 program by 1.25. For Phase 1 credit deficits that you generate based on a useful life of 120,000 miles multiply the credit deficit by 1.25 if offsetting the shortfall with Phase 2 credits.

(11) *Compliance with standards.* A manufacturer complies with the standards of this part as described in § 535.10.

(b) *Heavy-duty vocational vehicles.* Each manufacturer building complete or incomplete heavy- duty vocational vehicles shall comply with the fuel consumption standards in this paragraph (b) expressed in gallons per 1000 ton-miles. Manufacturers must apply the fuel consumption standards in this paragraph (b) to the same vehicles using the same options used to comply with EPA in 40 CFR 1037.105. Engines used in heavy-duty vocational vehicles shall comply with the standards in paragraph (d) of this section. Each vehicle must be manufactured to comply for its full useful life. Standards apply to the vehicle subfamilies based upon the vehicle service classes within each of the vocational vehicle regulatory subcategories in accordance with § 535.4 and based upon the applicable modeling and testing specified in § 535.6. Determine the duty cycles that apply to vocational vehicles according to 40 CFR 1037.140 and 1037.150(z).

(1) *Mandatory standards.* Heavy-duty vocational vehicle subfamilies produced for Phase 1 must comply with the fuel consumption standards in paragraph (b)(3) of this section. For Phase 2, each vehicle manufacturer of heavy-duty vocational vehicle subfamilies must comply with the fuel consumption standards in paragraph (b)(4) of this section.

(i) For model years 2016 to 2020, the heavy-duty vocational vehicle category is subdivided by GVWR into three regulatory subcategories as defined in § 535.4, each with its own assigned standard.

(ii) For model years 2021 and later, the heavy-duty vocational vehicle category is subdivided into 15 regulatory subcategories depending upon whether vehicles are equipped with a compression or spark-ignition engine, as defined in § 535.4. Standards also differ based upon vehicle service class and intended vehicle duty cycles. See 40 CFR 1037.140 and 1037.150(z).

(iii) For purposes of certifying vehicles to fuel consumption standards, manufacturers must divide their product lines in each regulatory subcategory into vehicle families that have similar emissions and fuel consumption features, as specified by EPA in 40 CFR 1037.230. These families will be subject to the applicable standards. Each vehicle family is limited to a single model year.

(2) *Voluntary compliance.* (i) For model years 2013 through 2015, a manufacturer may choose voluntarily to comply early with the fuel consumption standards provided in paragraph (b)(3)

of this section. For example, a manufacturer may choose to comply early in order to begin accumulating credits through over-compliance with the applicable standards. A manufacturer choosing early compliance must comply with all the vehicles and engines it manufactures in each regulatory category for a given model year.

(ii) A manufacturer must declare its intent to voluntarily comply with fuel consumption standards and identify its plans to comply before it submits its first application for a certificate of conformity for the respective model year as specified in § 535.8; and, once selected, the decision cannot be reversed and the manufacturer must continue to comply for each subsequent model year for all the vehicles and engines it manufactures in each regulatory category for a given model year.

(3) *Regulatory subcategory standards for model years 2013 to 2020.* The mandatory and voluntary fuel consumption standards for heavy-duty vocational vehicles are given in the following table:

TABLE 8—PHASE 1 VOCATIONAL VEHICLE FUEL CONSUMPTION STANDARDS

[Gallons per 1000 ton-miles]

Regulatory subcategories	Vocational LHD Vehicles	Vocational MHD Vehicles	Vocational HHD Vehicles
Model Years 2013 to 2016 Voluntary Standards			
Standard	38.1139	22.9862	22.2004
Model Years 2017 to 2020 Mandatory Standards			
Standard	36.6405	22.1022	21.8075

(4) *Regulatory subcategory standards for model years 2021 and later.* The mandatory fuel consumption standards for heavy-duty vocational vehicles are given in the following table:

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Table 9 – Phase 2 Vocational Vehicle Fuel Consumption Standards (gallons per 1000 ton-miles)

Model Years 2021 to 2023 Standards for CI Vehicles			
Duty Cycle	LHD Vocational Vehicles	MHD Vocational Vehicles	Vocational HHD Vehicles
Urban	41.6503	29.0766	30.2554
Multi-Purpose	36.6405	26.0314	25.6385
Regional	30.5501	22.9862	20.1375
Model Years 2021 to 2023 Standards for SI Vehicles			
Duty Cycle	LHD Vocational Vehicles	MHD and HHD Vocational Vehicles	[redacted]
Urban	51.8735	36.9078	
Multi-Purpose	45.7972	32.9695	
Regional	37.6955	29.3687	
Model Years 2024 to 2026 Standards for CI Vehicles			
Duty Cycle	Vocational LHD Vehicles	Vocational MHD Vehicles	Vocational HHD Vehicles
Urban	37.8193	26.6208	27.7996
Multi-Purpose	33.7917	24.1650	23.7721
Regional	29.0766	21.7092	19.0570
Model Years 2024 to 2026 Standards for SI Vehicles			

Duty Cycle	Vocational LHD Vehicles	Vocational MHD and HHD Vehicles
Urban	48.6103	34.8824
Multi-Purpose	43.3217	31.3942
Regional	36.4577	28.2435

Model Years 2027 and later Standards for CI Vehicles

Duty Cycle	Vocational LHD Vehicles	Vocational MHD Vehicles	Vocational HHD Vehicles
Urban	36.0511	25.3438	26.4244
Multi-Purpose	32.4165	23.0845	22.5933
Regional	28.5855	21.4145	18.5658

Model Years 2027 and later Standards for SI Vehicles

Duty Cycle	Vocational LHD Vehicles	Vocational MHD and HHD Vehicles
Urban	46.4724	33.4196
Multi-Purpose	41.8589	30.1564
Regional	35.8951	27.7934

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(5) *Subfamily standards.* Manufacturers may specify a family emission limit (FEL) in terms of fuel consumption for each vehicle subfamily. The FEL may not be less than the result of fuel consumption modeling from 40 CFR 1037.520. The FELs is the fuel consumption standards for the vehicle subfamily instead of the standards specified in paragraph (b)(3) and (4) of this section and can be used for calculating fuel consumption credits in accordance with § 535.7.

(6) *Alternate standards for custom chassis vehicles for model years 2021 and later.* Manufacturers may elect to certify certain vocational vehicles to the alternate standards for custom chassis vehicles specified in this paragraph (b)(6) instead of the standards specified in paragraph (b)(4) of this section. Note that, although these standards were established for custom chassis vehicles, manufacturers may apply these provisions to any qualifying vehicle even though these standards were established for custom chassis vehicles. For example, large diversified vehicle manufacturers may certify vehicles to the refuse hauler standards of this section as long as the manufacturer ensures that those vehicles qualify as refuse haulers when placed into service. GEM simulates vehicle operation for each type of vehicle based on an assigned vehicle service class, independent of the vehicle's actual characteristics, as shown in Table 10 of this section; however, standards apply for the vehicle's useful life based on its actual characteristics as specified in paragraph (b)(10) of this section. Vehicles certified to these alternative standards must use engines certified to requirements under paragraph (d) of this section and 40 CFR part 1036 for the appropriate model year, except that motor homes and emergency vehicles may use engines certified with the loose-engine provisions of paragraph

(a)(7) of this section and 40 CFR 1037.150(m). This also applies for vehicles meeting standards under paragraphs (a)(6)(iv) through (vi) of this section. The fuel consumption standards for custom chassis vehicles are given in the following table:

TABLE 10—PHASE 2 CUSTOM CHASSIS FUEL CONSUMPTION STANDARDS

[Gallon per 1,000 ton-mile]

Vehicle type [1]	Assigned vehicle service class	MY 2021	MY 2027
School Bus	MHD Vehicle	28.5855	26.6208
Motor Home	MHD Vehicle	22.3969	22.2004
Coach Bus	HHD Vehicle	20.6287	20.1375
Other bus	HHD Vehicle	29.4695	28.0943
Refuse hauler	HHD Vehicle	30.7466	29.2731
Concrete mixer	HHD Vehicle	31.3360	31.0413
Mixed-use vehicle	HHD Vehicle	31.3360	31.0413
Emergency Vehicle	HHD Vehicle	31.8271	31.3360

[1] Vehicle types are generally defined in § 535.3. ''Other bus'' includes any bus that is not a school bus or a coach bus. A ''mixed-use vehicle'' is one that meets at least one of the criteria specified in 40 CFR 1037.631(a)(1) or at least one of the criteria in 40 CFR 1037.631(a)(2), but not both.

(i) Manufacturers may generate or use fuel consumption credits for averaging to demonstrate compliance with the alternative standards as described in § 535.7(c). This requires that manufacturers specify a Family Emission Limit (FEL) for fuel consumption for each vehicle subfamily. The FEL may not be less than the result of emission modeling as described in this paragraph (b). These FELs serve as the fuel consumption standards for the vehicle subfamily instead of the standards specified in this paragraph (b)(6). Manufacturers may only use fuel consumption credits for vehicles certified to the optional standards in this paragraph (b)(6) as specified in § 535.7(c)(6) through (8) and you may not bank or trade fuel consumption credits from any vehicles certified under this paragraph (b)(6).

(ii) For purposes of this paragraph (b)(6), each separate vehicle type identified in Table 10 of this section is in a separate averaging set.

(iii) For purposes of emission and fuel consumption modeling under 40 CFR 1037.520, consider motor homes and coach buses to be subject to the Regional duty cycle, and consider all other vehicles to be subject to the Urban duty cycle.

(iv) Emergency vehicles are deemed to comply with the standards of this paragraph (b)(6) if manufacturers use tires with TRRL at or below 8.4 kg/ton (8.7 g/ton for model years 2021 through 2026).

(v) Concrete mixers are deemed to comply with the standards of this paragraph (b)(6) if manufacturers use tires with TRRL at or below 7.1 kg/ton (7.6 g/ton for model years 2021 through 2026).

(vi) Motor homes are deemed to comply with the standards of this paragraph (b)(6) if manufacturers use the following technologies:

(A) Tires with TRRL at or below 6.0 kg/ton (6.7 g/ton for model years 2021 through 2026).

(B) Automatic tire inflation systems or tire pressure monitoring systems with wheels on all axles.

(C) Tire pressure monitoring systems must use low pressure warning and malfunction telltales in clear view of the driver as specified in S4.3 and S4.4 of 49 CFR 571.138.

(vii) Small business manufacturers using the alternative standards for custom chassis vehicles under this paragraph (b)(6) may use fuel consumption credits subject to the unique provisions in § 535.7(a)(9).

(7) *Advanced, innovative and off-cycle technologies.* For vocational vehicles subfamilies subject to Phase 1 standards, manufacturers must create separate vehicle subfamilies for vehicles that contain advanced or innovative technologies and group those vehicles together in a vehicle subfamily if they use the same advanced or innovative technologies. Manufacturers may generate separate credit allowances for advanced and innovative technologies as specified in § 535.7(f)(1) and (2). For vehicle subfamilies subject to Phase 2 standards, manufacturers may generate separate credit allowances for off-cycle technologies in accordance with § 535.7(f)(2). Separate credit allowances for advanced technology vehicles cannot be generated but instead manufacturers may use the credit multipliers specified in § 535.7(f)(1)(iv) through model year 2026.

(8) *Certifying across service classes.* A manufacturer may optionally certify vocational vehicle subfamilies to the standards and useful life applicable to a heavier vehicle service class (such as MHD vocational vehicles instead of LHD vocational vehicles). Provisions related to generating fuel consumption credits apply as follows:

(i) If a manufacturer certifies all its vehicles from a given vehicle service class in a given model year to the standards and useful life that applies for a heavier vehicle service class, it may generate credits as appropriate for the heavier service class.

(ii) Class 8 hybrid vehicles with light or medium heavy-duty engines may be certified to compression-ignition standards for the Heavy HDV service class. A manufacturer may generate and use credits as allowed for the Heavy HDV service class.

(iii) Except as specified in paragraphs (b)(8)(i) and (ii) of this section, a manufacturer may not generate credits with the vehicle. If you include lighter vehicles in a subfamily of heavier vehicles with an FEL below the standard, exclude the production volume of lighter vehicles from the credit calculation. Conversely, if a manufacturer includes lighter vehicles in a subfamily with an FEL above the standard, it must include the production volume of lighter vehicles in the credit calculation.

(9) *Off-road exemptions.* This section provides an exemption for heavy-duty vocational vehicle subfamilies, including vocational tractors that are intended to be used extensively in off-road environments such as forests, oil fields, and construction sites from the fuel consumption standards in this paragraph (b). Vehicle exempted by this part do not comply with vehicle standards in this paragraph (b), but the engines in these vehicles must meet the engine requirements of paragraph (d) of this section. Note that manufacturers may not include these exempted vehicles in any credit calculations under this part.

(i) Qualifying criteria. Vocational vehicles intended for off-road use are exempt without request, subject to the provisions of this section, if they are primarily designed to perform work off-road (such as in oil fields, mining, forests, or construction sites), and they meet at least one of the criteria of paragraph (b)(9)(i)(A) of this section and at least one of the criteria of paragraph (b)(9)(i)(B) of this section. See paragraph (b)(6) of this section for alternate standards that apply for vehicles meeting only one of these sets of criteria.

(A) The vehicle must have affixed components designed to work inherently in an off-road environment (such as hazardous material equipment or off-road drill equipment) or be designed to operate at low speeds such that it is unsuitable for normal highway operation.

(B) The vehicle must meet one of the following criteria:

(1) Have an axle that has a gross axle weight rating (GAWR) at or above 29,000 pounds.

(2) Have a speed attainable in 2.0 miles of not more than 33 mi/hr.

(3) Have a speed attainable in 2.0 miles of not more than 45 mi/hr, an unloaded vehicle weight that is not less than 95 percent of its gross vehicle weight rating, and no capacity to carry occupants other than the driver and operating crew.

(4) Have a maximum speed at or below 54 mi/hr. A manufacturer may consider the vehicle to be appropriately speed-limited if engine speed at 54 mi/hr is at or above 95 percent of the engine's maximum test speed in the highest available gear. A manufacturer may alternatively limit vehicle speed by programming the engine or vehicle's electronic control module in a way that is tamper-resistant.

(ii) Tractors. The provisions of this section may apply for tractors only if each tractor qualifies as a vocational tractor under paragraph (c)(9) of this section or is granted approval for the exemption as specified in paragraph (b)(9)(iii) of this section.

(iii) Preliminary Approval before Certification. If a manufacturer has unusual circumstances where it may be questionable whether its vehicles qualify for the off-road exemption of this part, the manufacturer may send the agencies information before finishing its application for certification (see 40 CFR 1037.205) for the applicable vehicles and ask for a preliminary informal approval. The agencies will review the request and make an appropriate determination in accordance with 40 CFR 1037.210. The agencies will generally not reverse a decision where they have given a manufacturer preliminary approval, unless the agencies find new information supporting a different decision. However, the agencies will normally not grant relief in cases where the vehicle manufacturer has credits or can otherwise comply with the applicable standards.

(iv) Recordkeeping and reporting. (A) A manufacturer must keep records to document that its exempted vehicle configurations meet all applicable requirements of this section. Keep these records for at least eight years after you stop producing the exempted vehicle model. The agencies may review these records at any time.

(B) A manufacturer must also keep records of the individual exempted vehicles you produce, including the vehicle identification number and a description of the vehicle configuration.

(C) Within 90 days after the end of each model year, manufacturers must send to EPA a report as specified in § 535.8(g)(7) and EPA will make the report available to NHTSA.

(v) Compliance. (A) Manufacturers producing vehicles meeting the off-road exemption criteria in paragraph (b)(9)(i) of this section or that are granted a preliminary approval comply with the standards of this part.

(B) In situations where a manufacturer would normally ask for a preliminary approval subject to paragraph (b)(9)(iii) of this section but introduces its vehicle into U.S. commerce without seeking approval first from the agencies, those vehicles violate compliance with the fuel consumption standards of this part and the EPA provisions under 40 CFR 1068.101(a)(1).

(C) If at any time, the agencies find new information that contradicts a manufacturer's use of the off-road exemption of this part, the manufacturers vehicles will be determined to be non-compliant with the regulations of this part and the manufacturer may be liable for civil penalties.

(10) *Useful life.* The following useful life values apply for the standards of this section:

(i) 110,000 miles or 10 years, whichever comes first, for vocational LHD vehicles certified to Phase 1 standards.

(ii) 150,000 miles or 15 years, whichever comes first, for vocational LHD vehicles certified to Phase 2 standards.

(iii) 185,000 miles or 10 years, whichever comes first, for vocational MHD vehicles for Phase 1 and 2.

(iv) 435,000 miles or 10 years, whichever comes first, for vocational HHD vehicles for Phase 1 and 2.

(v) For Phase 1 credits calculated based on a useful life of 110,000 miles, multiply any banked credits carried forward for use into the Phase 2 program by 1.36. For Phase 1 credit deficits generated based on a useful life of 110,000 miles multiply the credit deficit by 1.36, if offsetting the shortfall with Phase 2 credits.

(11) *Recreational vehicles.* Recreational vehicles manufactured after model year 2020 must comply with the fuel consumption standards of this section. Manufacturers producing these vehicles may also certify to fuel consumption standards from 2014 through model year 2020. Manufacturers may earn credits retroactively for early compliance with fuel consumption standards. Once selected, a manufacturer cannot reverse the decision and the manufacturer must continue to comply for each subsequent model year for all the vehicles it manufacturers in each regulatory subcategory for a given model year.

(12) *Loose engines.* Manufacturers may certify certain spark-ignition engines along with chassis-certified heavy-duty vehicles where there are identical engines used in those vehicles as described in 40 CFR 86.1819(k)(8) and 40 CFR 1037.150(m). Vehicles in which those engines are installed are subject to standards under this part.

(13) *Compliance with standards.* A manufacturer complies with the standards of this part as described in § 535.10.

(c) *Truck tractors.* Each manufacturer building truck tractors, except vocational tractors or vehicle constructed in accordance with § 571.7(e), with a GVWR above 26,000 pounds shall comply with the fuel consumption standards in this paragraph (c) expressed in gallons per 1000 ton-miles. Manufacturers must apply the fuel consumption standards in this paragraph (c) to the same vehicles using the same options used to comply with EPA in 40 CFR 1037.106. Engines used in heavy-duty truck tractors vehicles shall comply with the standards in paragraph (d) of this section. Each vehicle must be manufactured to comply for its full useful life. Standards apply to the vehicle subfamilies within each of the tractor vehicle regulatory subcategories in accordance with § 535.4 and 40 CFR 1037.230 and based upon the applicable modeling and testing specified in § 535.6. Determine the vehicles in each regulatory subcategory in accordance with 40 CFR 1037.140.

(1) *Mandatory standards.* For model years 2016 and later, each manufacturer's truck tractor subfamilies must comply with the fuel consumption standards in paragraph (c)(3) of this section.

(i) Based on the roof height and the design of the cab, the truck tractor category is divided into subcategories as described in § 535.4. The standards that apply to each regulatory subcategory are shown in paragraphs (c)(2) and (3) of this section, each with its own assigned standard.

(A) When calculating a vehicle's roof height and trailer's length should be determined from nominal design specifications, as provided in 40 CFR 1037.140.

(B) Specify design values for roof height and trailer length to the nearest inch.

(ii) For purposes of certifying vehicles to fuel consumption standards, manufacturers must divide their product lines in each regulatory subcategory into vehicles subfamilies that have similar emissions and fuel consumption features, as specified by EPA in 40 CFR 1037.230, and these subfamilies will be subject to the applicable standards. Each vehicle subfamily is limited to a single model year.

(iii) Standards for truck tractor engines are given in paragraph (d) of this section.

(2) *Voluntary compliance.* (i) For model years 2013 through 2015, a manufacturer may choose voluntarily to comply early with the fuel consumption standards provided in paragraph (c)(3) of this section. For example, a manufacturer may choose to comply early in order to begin accumulating credits through over-compliance with the applicable standards. A manufacturer choosing early compliance must comply with all the vehicles and engines it manufacturers in each regulatory category for a given model year.

(ii) A manufacturer must declare its intent to voluntarily comply with fuel consumption standards and identify its plans to comply before it submits its first application for a certificate of conformity for the respective model year as specified in § 535.8; and, once selected, the decision cannot be reversed and the manufacturer must continue to comply for each subsequent model year for all the vehicles and engines it manufacturers in each regulatory category for a given model year.

(3) *Regulatory subcategory standards.* The fuel consumption standards for truck tractors, except for vocational tractors, are given in the following table:

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Table 11 – Truck Tractor Fuel Consumption Standards (gallons per 1,000 ton-miles)

Phase 1 - Model Years 2013 to 2015 Voluntary Standards				
Regulatory Subcategories	Day Cab		Sleeper Cab	Heavy-Haul
	Class 7	Class 8	Class 8	
Low Roof	10.5108	7.9568	6.6798	
Mid Roof	11.6896	8.6444	7.4656	
High Roof	12.1807	9.0373	7.3674	
Phase 1 - Model Year 2016 Mandatory Standard				
Low Roof	10.5108	7.9568	6.6798	
Mid Roof	11.6896	8.6444	7.4656	
High Roof	12.1807	9.0373	7.3674	
Phase 1 - Model Years 2017 to 2020 Mandatory Standards				
Low Roof	10.2161	7.8585	6.4833	
Mid Roof	11.2967	8.4479	7.1709	
High Roof	11.7878	8.7426	7.0727	
Phase 2 - Model Years 2021 to 2023 Mandatory Standards				
Low Roof	10.36346	7.90766	7.10216	5.14735
Mid Roof	11.11984	8.38900	7.66208	
High Roof	11.14931	8.40864	7.43615	
Phase 2 - Model Years 2024 to 2026 Mandatory Standards				
Low Roof	9.80354	7.48527	6.67976	4.93124
Mid Roof	10.52063	7.94695	7.22004	
High Roof	10.47151	7.89784	6.94499	
Phase 2 - Model Years 2027 and later Mandatory Standards				
Low Roof	9.44990	7.21022	6.29666	4.74460
Mid Roof	10.15717	7.66208	6.83694	
High Roof	9.82318	7.43615	6.31631	

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(4) *Subfamily standards.* Manufacturers may generate or use fuel consumption credits for averaging, banking, and trading as described in § 535.7(c). This requires that manufacturers calculate a credit quantity if they specify a family emission limit (FEL) that is different than the standard specified in this section. The FEL may not be less than the result of emission and fuel consumption modeling from 40 CFR 1037.520. These FELs serve as the emission standards for the specific vehicle subfamily instead of the standards specified in paragraph (c)(2) of this section.

(5) *Alternate standards for tractors at or above 120,000 pounds GCWR.* Manufacturers may certify tractors at or above 120,000 pounds GCWR to the following fuel consumption standards in the following table:

TABLE 12—ALTERNATE FUEL CONSUMPTION STANDARDS FOR TRACTORS ABOVE 120,000 POUNDS GCWR FOR 2021 MY AND LATER

[Gallons per 1,000 ton-miles]

Regulatory subcategory	Model years 2021–2023	Model years 2024–2026	Model years 2026 and later
Heavy Class 8 Low-Roof Day Cab	5.25540	4.99018	4.80354
Heavy Class 8 Low-Roof Sleeper Cab	4.62672	4.37132	4.16503
Heavy Class 8 Mid-Roof Day Cab	5.46169	5.18664	4.99018
Heavy Class 8 Mid-Roof Sleeper Cab	4.87230	4.60707	4.39096
Heavy Class 8 High-Roof Day Cab	5.35363	5.04912	4.77407
Heavy Class 8 High-Roof Sleeper Cab	4.62672	4.34185	4.02750

(6) *Advanced, innovative and off-cycle technologies.* For tractors subject to Phase 1 standards, manufacturers must create separate vehicle subfamilies for vehicles that contain advanced or innovative technologies and group those vehicles together in a vehicle subfamily if they use the same advanced or innovative technologies. Manufacturers may generate separate credit allowances for advanced and innovative technologies as specified in § 535.7(f)(1) and (2). For vehicles subject to Phase 2 standards, manufacturers may generate separate credits allowance for off-cycle technologies in accordance with § 535.7(f)(2). Separate credit allowances for advanced technology vehicles cannot be generated but instead manufacturers may use the credit multipliers specified in § 535.7(f)(1)(iv) through model year 2026.

(7) *Certifying across service classes.* Manufacturers may certify Class 7 tractors to Class 8 tractors standards as follows:

(i) A manufacturer may optionally certify 4x2 tractors with heavy heavy-duty engines to the standards and useful life for Class 8 tractors, with no restriction on generating or using fuel consumption credits within the Class 8 averaging set.

(ii) A manufacturer may optionally certify a Class 7 tractor to the standards and useful life applicable to Class 8 tractors. Credit provisions apply as follows:

(A) If a manufacturer certifies all of its Class 7 tractors to Class 8 standards, it may use these Heavy HDV credits without restriction.

(B) This paragraph (c)(7)(ii)(B) applies if a manufacturer certifies some Class 7 tractors to Class 8 standards under this paragraph (c)(7)(ii) but not all of them. If a manufacturer includes Class 7 tractors in a subfamily of Class 8 tractors with an FEL below the standard, exclude the production volume of Class 7 tractors from the credit calculation. Conversely, if a manufacturer includes Class 7 tractors in a subfamily of Class 8 tractors with an FEL above the standard, it must include the production volume of Class 7 tractors in the credit calculation.

(8) *Expanded families.* Manufacturers may combine dissimilar vehicles into single vehicle subfamilies for applying standards and for testing in special circumstances as follows:

(i) For a Phase 1 vehicle model that straddles a roof-height, cab type, or GVWR division, manufacturers can include all the vehicles in the same vehicle family if it certifies the vehicle family to the more stringent standard. For roof height, the manufacturer must certify to the taller roof standard. For cab-type and GVWR, the manufacturers must certify to the numerically lower standard.

(ii) For a Phase 2 vehicle model that includes a range of GVWR values that straddle weight classes, manufacturers may include all the vehicles in the same vehicle family if it certifies the vehicle family to the numerically lower fuel consumption standard from the affected service classes. Vehicles that are optionally certified to a more stringent standard under this paragraph are subject to useful-life and all other provisions corresponding to the weight class with the numerically lower fuel consumption standard. For a Phase 2 tractor model that includes a range of roof heights that straddle subcategories, a manufacturer may include all the vehicles in the same vehicle family if it certifies the vehicle family to the appropriate subcategory as follows:

(A) A manufacturer may certify mid-roof tractors as high-roof tractors, but it may not certify high-roof tractors as mid-roof tractors.

(B) For tractor families straddling the low-roof/mid-roof division, a manufacturer may certify the family based on the primary roof-height as long as no more than 10 percent of the tractors are certified to the otherwise inapplicable subcategory. For example, if 95-percent of the tractors in the family are less than 120 inches tall, and the other 5 percent are 122 inches tall, a manufacturer may certify the tractors as a single family in the low-roof subcategory.

(C) Determine the appropriate aerodynamic bin number based on the actual roof height if the C_dA value is measured. However, use the GEM input for the bin based on the standards to which the manufacturer certifies. For example, of a manufacturer certifies as mid roof tractors some low-roof tractors with a measured C_dA value of 4.2 m^2, it qualifies as Bin IV; and must input into GEM the mid-roof Bin IV value of 5.85 m^2.

(9) *Vocational tractors.* Tractors meeting the definition of vocational tractors in 49 CFR 523.2 must comply with requirements for heavy-duty vocational vehicles specified in paragraphs (b) and (d) of this section. For Phase 1, Class 7 and Class 8 tractors certified or exempted as vocational tractors are limited in production to no more than 21,000 vehicles in any three consecutive model years. If a manufacturer is determined as not applying this allowance in good faith by

EPA in its applications for certification in accordance with 40 CFR 1037.205 and 1037.610, a manufacturer must comply with the tractor fuel consumption standards in paragraph (c)(3) of this section. No production limit applies for vocational tractors subject to Phase 2 standards.

(10) *Small business manufacturers converting to mid roof or high roof configurations.* Small manufacturers are to allowed convert low and mid roof tractors to high roof configurations without recertification, provided it is for the purpose of building a custom sleeper tractor or conversion to a natural gas tractor as specified in 40 CFR 1037.150(r).

(11) *Useful life.* The following useful life values apply for the standards of this section:

(i) 185,000 miles or 10 years, whichever comes first, for vehicles at or below 33,000 pounds GVWR.

(ii) 435,000 miles or 10 years, whichever comes first, for vehicles above 33,000 pounds GVWR.

(12) *Conversion to high-roof configurations.* Secondary vehicle manufacturers that qualify as small manufacturers may convert low- and mid-roof tractors to high-roof configurations without recertification for the purpose of building a custom sleeper tractor or converting it to run on natural gas, as follows:

(i) The original low- or mid-roof tractor must be covered by a valid certificate of conformity by EPA.

(ii) The modifications may not increase the frontal area of the tractor beyond the frontal area of the equivalent high-roof tractor with the corresponding standard trailer. If a manufacturer cannot use the original manufacturer's roof fairing for the high-roof tractor, use good engineering judgment to achieve similar or better aerodynamic performance.

(iii) The agencies may require that these manufacturers submit annual production reports as described in § 535.8 and 40 CFR 1037.250 indicating the original roof height for requalified vehicles.

(13) *Compliance with standards.* A manufacturer complies with the standards of this part as described in § 535.10.

(d) *Heavy-duty engines.* Each manufacturer of heavy-duty engines shall comply with the fuel consumption standards in this paragraph (d) expressed in gallons per 100 horsepower-hour. Manufacturers must apply the fuel consumption standards in this paragraph (d) to the same engines using the same options used to comply with EPA in 40 CFR 1036.108. Each engine must be manufactured to comply for its full useful life, expressed in service miles, operating hours, or calendar years, whatever comes first. The provisions of this part apply to all new 2014 model year and later heavy-duty engines fueled by conventional and alternative fuels and manufactured for use in heavy-duty tractors or vocational vehicles. Standards apply to the engine and powertrain families and sub-families based upon the primary intended service classes within each of the engine regulatory subcategories as described in§ 535.4 and based upon the applicable modeling and testing specified in § 535.6.

(1) *Mandatory standards.* Manufacturers of heavy-duty engine families shall comply with the mandatory fuel consumption standards in paragraphs (d)(3) through (6) of this section for model years 2017 and later for compression-ignition engines and for model years 2016 and later for spark-ignition engines.

(i) The heavy-duty engine regulatory category is divided into six regulatory subcategories, five compression-ignition subcategories and one spark-ignition subcategory, as shown in Table 14 of this section.

(ii) Separate standards exist for engine families manufactured for use in heavy-duty vocational vehicles and in truck tractors.

(iii) For purposes of certifying engines to fuel consumption standards, manufacturers must divide their product lines in each regulatory subcategory into engine families. Fuel consumption standards apply each model year to the same engine families used to comply with EPA standards in 40 CFR 1036.108 and 40 CFR 1037.230. An engine family is designated under the EPA program based upon testing specified in 40 CFR part 1036, subpart F, and the engine family's primary intended service class. Each engine family manufactured for use in a heavy-duty tractor or vocational vehicle must be certified to the primary intended service class that it is designed for in accordance with 40 CFR 1036.108 and 1036.140.

(2) *Voluntary compliance.* (i) For model years 2013 through 2016 for compression-ignition engine families, and for model year 2015 for spark-ignition engine families, a manufacturer may choose voluntarily to comply with the fuel consumption standards provided in paragraphs (d)(3) through (5) of this section. For example, a manufacturer may choose to comply early in order to begin accumulating credits through over-compliance with the applicable standards. A manufacturer choosing early compliance must comply with all the vehicles and engines it manufacturers in each regulatory category for a given model year except in model year 2013 the manufacturer may comply with individual engine families as specified in 40 CFR 1036.150(a)(2).

(ii) A manufacturer must declare its intent to voluntarily comply with fuel consumption standards and identify its plans to comply before it submits its first application for a certificate of conformity for the respective model year as specified in § 535.8; and, once selected, the decision cannot be reversed and the manufacturer must continue to comply for each subsequent model year for all the vehicles and engines it manufacturers in each regulatory category for a given model year.

(3) *Regulatory subcategory standards.* The primary fuel consumption standards for heavy-duty engine families are given in the following table:

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Table 13 – Primary Heavy-Duty Engine Fuel Consumption Standards (gallons per 100 hp-hr)

Phase 1 – Voluntary Standards						
Regulatory Subcategory	CI LHD Engines and all Other Engines	CI MHD Engines and all Other Engines		HHD CI Engines and all Other Engines		SI Engines
Application	Vocational	Vocational	Tractor	Vocational	Tractor	All
2015	-					7.0552
2013 to 2016	5.8939	5.8939	4.9312	5.5697	4.666	-
Phase 1 - Mandatory Standards						
Regulatory Subcategory	CI LHD Engines and all Other Engines	CI MHD Engines and all Other Engines		CI HHD Engines and all Other Engines		SI Engines
Application	Vocational	Vocational	Tractor	Vocational	Tractor	All
2016	-					7.0552
2017 to 2020	5.6582	5.6582	4.7839	5.4519	4.5187	7.0552
Phase 2 - Mandatory Standards						
Regulatory Subcategory	CI LHD Engines and all Other Engines	CI MHD Engines and all Other Engines		CI HHD Engines and all Other Engines		SI Engines (except HHD engines)
Application	Vocational	Vocational	Tractor	Vocational	Tractor	All
2021 to 2023	5.5305	5.3536	4.6464	5.0393	4.3910	7.0552
2024 to 2026	5.4519	5.2849	4.5285	4.9705	4.2829	7.0552
2027 and later	5.4224	5.2554	4.4892	4.9411	4.2436	7.0552

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(4) *Alternate subcategory standards.* The alternative fuel consumption standards for heavy-duty compression-ignition engine families are as follows:

(i) Manufacturers entering the voluntary program in model years 2014 through 2016, may choose to certify compression-ignition engine families unable to meet standards provided in paragraph (d)(3) of this section to the alternative fuel consumption standards of this paragraph (d)(4).

(ii) Manufacturers may not certify engines to these alternate standards if they are part of an averaging set in which they carry a balance of banked credits. For purposes of this section, manufacturers are deemed to carry credits in an averaging set if they carry credits from advance technology that are allowed to be used in that averaging set in accordance with § 535.7(d)(12).

(iii) The emission standards of this section are determined as specified by EPA in 40 CFR 1036.620(a) through (c) and should be converted to equivalent fuel consumption values.

(5) *Alternate phase-in standards.* Manufacturers have the option to comply with EPA emissions standards for compression-ignition engine families using an alternative phase-in schedule that correlates with EPA's OBD standards. If a manufacturer chooses to use the alternative phase-in schedule for meeting EPA standards and optionally chooses to comply early with the NHTSA fuel consumption program, it must use the same phase-in schedule beginning in model year 2013 for fuel consumption standards and must remain in the program for each model year thereafter until model year 2020. The fuel consumption standard for each model year of the alternative phase-in schedule is provided in Table 15 of this section. Note that engine families certified to these standards are not eligible for early credits under § 535.7.

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Table 14 – Phase 1 Alternative Phase-In CI Engine Fuel Consumption Standards (gallons per 100 hp-hr)

Tractors	LHD Engines	MHD Engines	HHD Engines
Model Years 2013 to 2015	NA	5.0295	4.7642
Model Years 2016 to 2020†	NA	4.7839	4.5187
Vocational	LHD Engines	MHD Engines	HHD Engines
Model Years 2013 to 2015	6.0707	6.0707	5.6680
Model Years 2016 to 2020†	5.6582	5.6582	5.4519

† Note: these alternate standards for 2016 and later are the same as the otherwise applicable standards for 2017 through 2020.

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(6) *Alternative fuel conversions.* Engines that have been converted to operate on alternative fuels may demonstrate compliance with the standards of this part or other alternative compliance approaches allowed by EPA in 40 CFR 85.525.

(7) *Optional certification under this section.* Manufacturers certifying spark-ignition engines to the compression-ignition standards for EPA must treat those engines as compression-ignition engines for all the provisions of this part.

(8) *Advanced, innovative and off-cycle technologies.* For engines subject to Phase 1 standards, manufacturers must create separate engine families for engines that contain advanced or innovative technologies and group those engines together in an engine family if they use the same advanced or innovative technologies. Manufacturers may generate separate credit allowances for advanced and innovative technologies as specified in § 535.7(f)(1) and (2). For engines subject to Phase 2 standards, manufacturers may generate separate credits allowance for off-cycle technologies in accordance with § 535.7(f)(2). Credit incentives for advanced technology engines do not apply during the Phase 2 period.

(9) *Useful life.* The exhaust emission standards of this section apply for the full useful life, expressed in service miles, operating hours, or calendar years, whichever comes first. The following useful life values apply for the standards of this section:

(i) 120,000 miles or 11 years, whichever comes first, for CI and SI LHD engines certified to Phase 1 standards.

(ii) 150,000 miles or 15 years, whichever comes first, for CI and SI LHD and spark-ignition engines certified to Phase 2 standards.

(iii) 185,000 miles or 10 years, whichever comes first, for CI MHD engines certified to Phase 1 and for Phase 2.

(iv) 435,000 miles or 10 years, whichever comes first, for CI HHD engines certified to Phase 1 and for Phase 2.

(v) For Phase 1 credits that manufacturers calculate based on a useful life of 110,000 miles, multiply any banked credits that it carries forward for use into the Phase 2 program by 1.36. For Phase 1 credit deficits that manufacturers generate based on a useful life of 110,000 miles multiply the credit deficit by 1.36, if offsetting the shortfall with Phase 2 credits.

(10) *Loose engines.* This paragraph (d)(10) describes alternate emission and fuel consumption standards for loose engines certified under. The standards of this paragraph (d) and 1036.108 do not apply for loose engines certified under paragraph (a) of this section and 40 CFR 86.1819- 14(k)(8). The standards in 40 CFR 1036.150(j) apply for the emissions and equivalent fuel consumption measured with the engine installed in a complete vehicle consistent with the provisions of 40 CFR 86.1819–14(k)(8)(vi).

(11) *Alternate transition option for Phase 2 engine standards.* (i) Manufacturers may optionally elect to comply with the model year 2021 primary (Phase 2) vocational vehicle and tractor engine standards in paragraph (d)(3) of this section beginning in model year 2020 (*e.g.,* comply with the more stringent standards one year early). The model year 2021 standard would apply to these manufacturers for model years 2020 through 2023. Manufacturers that voluntarily certify their engines to model year 2021 standards early would then be eligible for less stringent engine tractor standards in model years 2024 through 2026, as follows:

(A) 5.3242 gallons per 100 hp-hr for MHD vocational vehicle engines.

(B) 4.5874 gallons per 100 hp-hr for MHD tractor engines.

(C) 5.0098 gallons per 100 hp-hr for HHD vocational vehicle engines.

(D) 4.3418 gallons per 100 hp-hr for HHD tractor engines.

(ii) The primary standard in paragraph (d)(3) of this section applies for all manufacturers in model year 2027 and later years.

(iii) Manufacturers may apply these provisions separately for medium heavy-duty engines and heavy heavy-duty engines. This election applies to all engines in each segment. For example, if a manufacturer elects this alternate option for its medium heavy-duty engines, all of the manufacturer's medium heavy-duty vocational and tractor engines must comply. Engine fuel consumption credits generated under § 535.7(d) for manufacturers complying early with the model year 2021 standards follow the temporary extended credit life allowance in § 535.7(d)(9).

(12) *Compliance with standards.* A manufacturer complies with the standards of this part as described in § 535.10.

§ 535.6 Measurement and calculation procedures.

This part describes the measurement and calculation procedures manufacturers use to determine annual fuel consumption performance results. Manufacturers use the fuel consumption results determined in this part for calculating credit balances specified in § 535.7 and then determine whether they comply with standards as specified in § 535.10. Manufacturers must use EPA emissions test results for deriving NHTSA's fuel consumption performance rates. Consequently, manufacturers conducting testing for certification or annual demonstration testing and providing CO_2 emissions data to EPA must also provide equivalent fuel consumption results to NHTSA for all values. NHTSA and EPA reserve the right to verify separately or in coordination the results of any testing and measurement established by manufacturers in complying with the provisions of this program and as specified in 40 CFR 1037.301 and § 535.9. Any carry over data from the Phase 1 program may be carried into the Phase 2 only with approval from EPA and by using good engineering judgment considering differences in testing protocols between test procedures.

(a) *Heavy-duty pickup trucks and vans.* This section describes the method for determining the fuel consumption performance rates for test groups and for fleets of complete heavy-duty pickup trucks and vans each model year. The NHTSA heavy-duty pickup truck and van fuel consumption performance rates correspond to the same requirements for EPA as specified in 40 CFR 86.1819–14.

(1) For the Phase 1 program, if the manufacturer's fleet includes conventional vehicles (gasoline, diesel and alternative fueled vehicles) and advanced technology vehicles (hybrids with powertrain designs that include energy storage systems, vehicles with waste heat recovery, electric vehicles and fuel cell vehicles), it may divide its fleet into two separate fleets each with its own separate fleet average fuel consumption performance rate. For Phase 2, manufacturers may calculate their fleet average fuel consumption rates for a conventional fleet and separate advanced technology vehicle fleets. Advanced technology vehicle fleets should be separated into plug-in hybrid electric vehicles, electric vehicles and fuel cell vehicles.

(2) Vehicles in each fleet should be selected and divided into test groups or subconfigurations according to EPA in 40 CFR 86.1819–14(d).

(3) Use the EPA CO2 emissions test results for each test group, in grams per mile, for the selected vehicles.

(i) Use CO_2 emissions test results for vehicles fueled by conventional and alternative fuels, including dedicated and dual-fueled (multi-fuel and flexible-fuel) vehicles using each fuel type as specified in 40 CFR 86.1819–14(d)(10).

(ii) Use CO_2 emissions test results for dual-fueled vehicles using a weighted average of the manufacturer's emission results as specified in 40 CFR 600.510–12(k) for light-duty trucks.

(iii) All electric vehicles are deemed to have zero emissions of CO_2, CH_4, and N_2O. No emission testing is required for such electric vehicles. Assign the fuel consumption test group result to a value of zero gallons per 100 miles in paragraph (a)(4) of this section.

(iv) Use CO_2 emissions test results for cab-complete and incomplete vehicles based upon the applicable complete sister vehicles as determined in 40 CFR 1819–14(j)(2).

(v) Use CO_2 emissions test results for loose engines using applicable complete vehicles as determined in 40 CFR 86.1819–14(k)(8).

(vi) Manufacturers can choose to analytically derive CO_2 emission rates (ADCs) for test groups or subconfigurations. Use ADCs for test groups or subconfigurations in accordance with 40 CFR 86.1819–14 (d) and (g).

(4) Calculate equivalent fuel consumption results for all test groups, in gallons per 100 miles, from CO_2emissions test group results, in grams per miles, and round to the nearest 0.001 gallon per 100 miles.

(i) Calculate the equivalent fuel consumption test group results as follows for compression-ignition vehicles and alternative fuel compression-ignition vehicles. CO_2 emissions test group result (grams per mile)/10,180 grams per gallon of diesel fuel) $\times (10^2)$ = Fuel consumption test group result (gallons per 100 mile).

(ii) Calculate the equivalent fuel consumption test group results as follows for spark-ignition vehicles and alternative fuel spark-ignition vehicles. CO_2emissions test group result (grams per mile)/8,877 grams per gallon of gasoline fuel) × (10^2) = Fuel consumption test group result (gallons per 100 mile).

(5) Calculate the fleet average fuel consumption result, in gallons per 100 miles, from the equivalent fuel consumption test group results and round the fuel consumption result to the nearest 0.001 gallon per 100 miles. Calculate the fleet average fuel consumption result using the following equation.

$$Fleet\ Average\ Fuel\ Consumption = \frac{\sum[Fuel\ Consumption\ Test\ Group\ Result_i \times Volume_i]}{\sum Volume_i}$$

Where:
Fuel Consumption Test Group Result*i* = fuel consumption performance for each test group as defined in 49 CFR 523.4.
Volume*i* = production volume of each test group.

(6) Compare the fleet average fuel consumption standard to the fleet average fuel consumption performance. The fleet average fuel consumption performance must be less than or equal to the fleet fuel consumption standard to comply with standards in § 535.5(a).

(b) *Heavy-duty vocational vehicles and tractors.* This section describes the method for determining the fuel consumption performance rates for vehicle families of heavy-duty vocational vehicles and tractors. The NHTSA heavy-duty vocational vehicle and tractor fuel consumption performance rates correspond to the same requirements for EPA as specified in 40 CFR 1037, subpart F.

(1) Select vehicles and vehicle family configurations as specified in 40 CFR 1037.150 and 1037.230 for vehicles that make up each of the manufacturer's regulatory subcategories of vocational vehicles and tractors. For the Phase 2 program, select powertrain, axle and transmission families in accordance with 40 CFR 1037.231 and 1037.232.

(2) Follow the EPA testing requirements in 40 CFR 1037.230 and 1037.501 to derive inputs for the Greenhouse gas Emissions Model (GEM).

(3) Enter inputs into GEM, in accordance with 40 CFR 1037.520, to derive the emissions and fuel consumption performance results for all vehicles (conventional, alternative fueled and advanced technology vehicles).

(4) For Phase 1 and 2, all of the following GEM inputs apply for vocational vehicles and other tractor regulatory subcategories, as follows:

(i) Model year and regulatory subcategory (see § 535.3 and 40 CFR 1037.230).

(ii) Coefficient of aerodynamic drag (C_dA) or drag area, as described in 40 CFR 1037.520(b), 40 CFR 1037.525, 1037.527 and 1037.528. Alternatively, manufacturers may use C_dA values as specified in 40 CFR 1037.530, 1037.532 or 1037.534 if used for determining CO_2 compliance for EPA. Manufacturers must use the same compliance approach for determining C_dA values in GEM for the NHTSA and EPA programs.

(iii) Steer and drive tire rolling resistance, as described in 40 CFR 1037.520(c).

(iv) Vehicle speed limiters, as described in 40 CFR 1037.520(d) (tractors only).

(v) Vehicle weight reduction, as described in 40 CFR 1037.520(e) (tractors only for Phase 1).

(vi) Automatic engine shutdown systems, as described in 40 CFR 1037.660 (only for Phase 1 Class 8 sleeper cabs). For Phase 1, enter a GEM input value of 5.0 g/ton-mile, or an adjusted value as specified in 40 CFR 1037.660.

(5) For Phase 2 vehicles, the GEM inputs described in paragraphs (b)(4)(i) through (v) of this section continue to apply. Note that the provisions related to vehicle speed limiters and automatic engine shutdown systems are available for vocational vehicles in Phase 2. The additional GEM inputs that apply for vocational vehicles and other tractor regulatory subcategories for demonstrating compliance with Phase 2 standards are as follows:

(i) *Engine characteristics.* Enter information from the engine manufacturer to describe the installed engine and its operating parameters as described in 40 CFR 1036.503 and 1037.520(f).

(ii) *Vehicle information.* Enter information in accordance with 40 CFR 1037.520(g) for the vehicle and its operating parameters including:

(A) Transmission make, model and type;

(B) Drive axle configuration;

(C) Drive axle ratio, *ka;*

(D) For Phase 2, GEM inputs associated with powertrain testing include powertrain family, transmission calibration identifier, test data from 40 CFR 1037.550 and 1037.551, and the powertrain test configuration (dynamometer connected to transmission output or wheel hub). Test Phase 1 hybrid systems according to 40 CFR 1037.555 to determine GEM inputs.

(iii) *Idle-reduction technologies.* Identify whether the manufacturer's vehicle has qualifying idle- reduction technologies, subject to the qualifying criteria in 40 and 1037.660 and enter values for stop start and neutral idle technologies as specified in 40 CFR 1037.520(h).

(iv) *Axle and transmission efficiency.* Manufacturers may use axle efficiency maps as described in 40 CFR 1037.560 and transmission efficiency maps as described in 40 CFR 1037.565 to replace the default values in GEM.

(v) *Additional reduction technologies.* Enter input values in GEM as follows to characterize the percentage CO_2 emission reduction corresponding to certain technologies and vehicle configurations, or enter 0 as specified in 40 CFR 1037.520(j):

(A) Intelligent controls

(B) Accessory load

(C) Tire-pressure systems

(D) Extended-idle reduction

(E) Additional GEM inputs may apply as follows:

(1) Enter 1.7 and 0.9, respectively, for school buses and coach buses that have at least seven available forward gears.

(2) If the agencies approve an off-cycle technology under § 535.7(f) and 40 CFR 1037.610 in the form of an improvement factor, enter the improvement factor expressed as a percentage reduction in CO_2 emissions. (Note: In the case of approved off-cycle technologies whose benefit is quantified as a g/ton-mile credit, apply the credit to the GEM result, not as a GEM input value.)

(3) Manufacturers may use values to characterize torque converters as inputs to GEM as specified in the procedure defined in 40 CFR 1037.570.

(4) Vocational vehicle manufacturers may optionally use values for neutral coasting in GEM as in 40 CFR 1037.520

(vi) *Vehicles with hybrid power take-off (PTO).* For vocational vehicles, determine the delta PTO emission result of the manufacturer's engine and hybrid power take-off system as described in 40 CFR 1037.540.

(vii) *Aerodynamic improvements for vocational vehicles.* For vocational vehicles certified using the Regional duty cycle, enter $\Delta C_d A$ values to account for using rear fairings and a reduced minimum frontal area as specified in 40 CFR 1037.520(m) and 1037.527.

(viii) *Alternate fuels.* For fuels other than those identified in GEM, perform the simulation by identifying the vehicle as being diesel-fueled if the engine is subject to the compression-ignition standard, or as being gasoline-fueled if the engine is subject to the spark-ignition standards. Correct the engine or powertrain fuel map for mass-specific net energy content as described in 40 CFR 1036.535(b).

(ix) *Custom Chassis Vehicles.* A simplified version of GEM applies for custom chassis vehicle subject § 535.5(b)(6) in accordance with 40 CFR 1037.520(a)(2)(ii).

(6) In unusual circumstances, manufacturers may ask EPA to use weighted average results of multiple GEM runs to represent special technologies for which no single GEM run can accurately reflect.

(7) From the GEM results, select the CO_2 family emissions level (FEL) and equivalent fuel consumption values for vocational vehicle and tractor families in each regulatory subcategory for each model year. Equivalent fuel consumption FELs are derived in GEM and expressed to the nearest 0.0001 gallons per 1000 ton-mile. For families containing multiple subfamilies, identify the FELs for each subfamily.

(8) The fuel consumption of electric vehicles (as defined in § 1037.801) are deemed to be zero. No emission testing is required for electric vehicles. Use good engineering judgment to apply other requirements of this part to electric vehicles.

(c) [Reserved]

(d) *Heavy-duty engines.* This section describes the method for determining equivalent fuel consumption family certification level (FCL) values for engine and powertrain families and subfamilies of heavy-duty truck tractors and vocational vehicles. The NHTSA heavy-duty engine fuel consumption FCLs are determined from the EPA FCLs tested in accordance with 40 CFR 1036, subpart F. Each engine and powertrain family must use the same primary intended service class as designated for EPA in accordance with 40 CFR 1036.140.

(1) Manufacturers must select emission-data engines representing the tested configuration of each engine family specified in 40 CFR 1036.501 for engines in heavy-duty truck tractors and vocational vehicles that make up each of the manufacturer's regulatory subcategories.

(2) Standards in § 535.5(d) apply to the CO_2 emissions rates for each emissions-data engine in an engine or powertrain family subject to the procedures and equipment specified in 40 CFR part 1036, subpart F. Determine equivalent fuel consumptions rates using CO_2 emissions rates in grams per hp-hr measured to at least one more decimal place than that of the applicable EPA standard in 40 CFR 1036.108.

(i) Use the CO_2 emissions test results for engines running on each fuel type for conventional, dedicated, multi -fueled (dual-fuel, and flexible-fuel) engines as specified in 40 CFR part 1036, subpart F.

(ii) Use the CO_2 emissions result for multi-fueled engines using the same weighted fuel mixture emission results as specified in 40 CFR 1036.235 and 40 CFR part 1036, subpart F.

(iii) Use the CO_2 emissions test results for hybrid engines as described in 40 CFR 1036.525.

(iv) All electric vehicles are deemed to have zero emissions of CO_2 and zero fuel consumption. No emission or fuel consumption testing is required for such electric vehicles.

(3) Use the CO_2 emissions test results for medium and heavy heavy-duty engines certified as tractor and other line haul engine families using the steady-state duty cycle specified in § 1036.501 (referred to as the Supplementary Emissions Test, or SET) and as both tractor and vocational engines using the steady-state duty cycle and the transient duty cycle (sometimes referred to as the FTP engine cycle)-for each model year. Use the CO_2 emissions test results for all other engines (including engines meeting spark-ignition standards) using the appropriate transient duty cycle specified in 40 CFR 1036.501.

(i) If a manufacturer certifies an engine family for use both as a vocational engine and as a tractor engine, the manufacturer must split the family into two separate subfamilies in accordance with 40 CFR 1036.230. The manufacturer may assign the numbers and configurations of engines within the respective subfamilies at any time prior to the submission of the end-of-year report required by 40 CFR 1036.730 and § 535.8. The manufacturer must track into which type of vehicle each engine is installed, although EPA may allow the manufacturer to use statistical methods to determine this for a fraction of its engines.

(ii) The following engines are excluded from the engine and powertrain families and subfamilies used to determine fuel consumption FCL values and the benefit for these engines is determined as an advanced technology credit under the ABT provisions provided in § 535.7(e); these provisions apply only for the Phase 1 program:

(A) Engines certified as hybrid engines or power packs.

(B) Engines certified as hybrid engines designed with PTO capability and that are sold with the engine coupled to a transmission.

(C) Engines with Rankine cycle waste heat recovery.

(4) Manufacturers generating CO_2 emissions rates to demonstrate compliance to EPA vehicle standards for model years 2021 and later, using engine fuel maps determined in accordance with 40 CFR 1036.535 and 1036.540 or engine powertrain results in accordance with 40 CFR 1036.630 and 40 CFR 1037.550 for each engine configuration, must use the same compliance pathway and model years for certifying under the NHTSA program. Manufacturers may omit providing equivalent fuel consumption FCLs under this section if all of its engines will be installed in vehicles that are certified based on powertrain testing as described in 40 CFR 1037.550.

(5) Calculate equivalent fuel consumption values from the emissions CO_2 FCLs levels for certified engines, in gallons per 100 hp-hr and round each fuel consumption value to the nearest 0.0001 gallon per 100 hp-hr.

(i) Calculate equivalent fuel consumption FCL values for compression-ignition engines and alternative fuel compression-ignition engines. CO_2 FCL value (grams per hp-hr)/10,180 grams per gallon of diesel fuel) $\times (10^2)$ = Fuel consumption FCL value (gallons per 100 hp-hr).

(ii) Calculate equivalent fuel consumption FCL values for spark-ignition engines and alternative fuel spark-ignition engines. CO_2 FCL value (grams per hp-hr)/8,877 grams per gallon of gasoline fuel) $\times (10^2)$ = Fuel consumption FCL value (gallons per 100 hp-hr).

(iii) Manufacturers may carryover fuel consumption data from a previous model year if allowed to carry over emissions data for EPA in accordance with 40 CFR 1036.235.

(iv) If a manufacturer uses an alternate test procedure under 40 CFR 1065.10

and subsequently the data is rejected by EPA, NHTSA will also reject the data.

§ 535.7 Averaging, banking, and trading (ABT) credit program.

(a) General provisions. After the end of each model year, manufacturers must comply with the fuel consumption standards in § 535.5 for averaging, banking and trading credits. Manufacturers comply with standards if the sum of averaged, banked and traded credits generate a ''zero'' credit balance or a credit surplus within an averaging set of vehicles or engines. Manufacturers fail to comply with standards if the sum of the credit flexibilities generate a credit deficit (or shortfall) in an averaging set. Credit shortfalls must be offset by banked or traded credits within three model years after the shortfall is incurred. These processes are hereafter referenced as the NHTSA ABT credit program. The following provisions apply to all fuel consumption credits.

(1) *Credits (or fuel consumption credits (FCCs)).* Credits in this part mean a calculated weighted value representing the difference between the fuel consumption performance and the standard of a vehicle or engine family or fleet within a particular averaging set. Positive credits represent cases where a vehicle or engine family or fleets perform better than the applicable standard (the fuel consumption performance is less than the standard) whereas negative credits represent underperforming cases. The value of a credit is calculated according to paragraphs (b) through (e) of this section. FCCs are only considered earned or useable for averaging, banking or trading after EPA and NHTSA have verified the information in a manufacturer's final reports required in § 535.8. Types of FCCs include the following:

(i) *Conventional credits.* Credits generated by vehicle or engine families or fleets containing conventional vehicles (*i.e.,* gasoline, diesel and alternative fueled vehicles).

(ii) *Early credits.* Credits generated by vehicle or engine families or fleets produced for model year 2013. Early credits are multiplied by an incentive factor of 1.5 times.

(iii) *Advanced technology credits.* Credits generated by vehicle or engine families or subconfigurations containing vehicles with advanced technologies (*i.e.,* hybrids with regenerative braking, vehicles equipped with Rankine-cycle engines, electric and fuel cell vehicles) and incentivized under this ABT credit program in paragraph (f)(1) of this section and by EPA under 40 CFR 86.1819–14(d)(7), 1036.615, and 1037.615.

(iv) *Innovative and off-cycle technology credits.* Credits can be generated by vehicle or engine families or subconfigurations having fuel consumption reductions resulting from technologies not reflected in the GEM simulation tool or in the FTP chassis dynamometer and that were not in common use with heavy-duty vehicles or engines before model year 2010 that are not reflected in the specified test procedure. Manufacturers should prove that these technologies were not in common use in heavy-duty vehicles or engines before model year 2010 by demonstrating factors such as the penetration rates of the technology in the market. NHTSA will not approve any request if it determines that these technologies do not qualify. The approach for determining innovative and off-cycle technology credits under this fuel consumption program is described in paragraph (f)(2) of this section and by EPA under 40 CFR 86.1819–14(d)(13), 1036.610, and 1037.610.

(2) *Averaging.* Averaging is the summing of a manufacturer's positive and negative FCCs for engines or vehicle families or fleets within an averaging set. The principle averaging sets are defined in § 535.4.

(i) A credit surplus occurs when the net sum of the manufacturer's generated credits for engines or vehicle families or fleets within an averaging set is positive (a zero-credit balance is when the sum equals zero).

(ii) A credit deficit occurs when the net sum of the manufacturer's generated credits for engines or vehicle families or fleets within an averaging set is negative.

(iii) Positive credits, other than advanced technology credits, generated and calculated within an averaging set may only be used to offset negative credits within the same averaging set.

(iv) Manufacturers may certify one or more vehicle families (or subfamilies) to an FEL above the applicable fuel consumption standard, subject to any applicable FEL caps and other provisions allowed by EPA in 40 CFR parts 1036 and 1037, if the manufacturer shows in its application for certification to EPA that its projected balance of all FCC transactions in that model year is greater than or equal to zero or that a negative balance is allowed by EPA under 40 CFR 1036.745 and 1037.745.

(v) If a manufacturer certifies a vehicle family to an FEL that exceeds the otherwise applicable standard, it must obtain enough FCC to offset the vehicle family's deficit by the due date of its final report required in § 535.8. The emission credits used to address the deficit may come from other vehicle families that generate FCCs in the same model year (or from the next three subsequent model years), from banked FCCs from previous model years, or from FCCs generated in the same or previous model years that it obtained through trading.

(vi) Manufacturers may certify a vehicle or engine family using an FEL (as described in § 535.6) below the fuel consumption standard (as described in § 535.5) and choose not to generate conventional fuel consumption credits for that family. Manufacturers do not need to calculate fuel consumption credits for those families and do not need to submit or keep the associated records described in § 535.8 for these families. Manufacturers participating in NHTSA's FCC program must provide reports as specified in § 535.8.

(3) *Banking.* Banking is the retention of surplus FCC in an averaging set by the manufacturer for use in future model years for the purpose of averaging or trading.

(i) Surplus credits may be banked by the manufacturer for use in future model years, or traded, given the restriction that the credits have an expiration date of five model years after the year in which the credits are generated. For example, banked credits earned in model year 2014 may be utilized through model year 2019. Surplus credits will become banked credits unless a manufacturer contacts NHTSA to expire its credits.

(ii) Surplus credits become earned or usable banked FCCs when the manufacturer's final report is approved by both agencies. However, the agencies may revoke these FCCs at any time if they are unable to verify them after reviewing the manufacturer's reports or auditing its records.

(iii) Banked FCC retain the designation from the averaging set and model year in which they were generated.

(iv) Banked credits retain the designation of the averaging set in which they were generated.

(4) Trading. Trading is a transaction that transfers banked family regulatory subcategory or averaging set fuel consumption credits. Tractor, vocational vehicle and engine manufacturers may trade credits generated for vehicle or engine families or subfamilies while manufacturers of heavy-duty pickup trucks and vans certified as complete vehicles may trade credit credits generated for averaging sets. A manufacturer may use traded FCCs for

averaging, banking, or further trading transactions.

(i) Manufacturers may only trade banked credits to other manufacturers to use for compliance with fuel consumption standards. Traded FCCs, other than advanced technology credits, may be used only within the averaging set in which they were generated. Manufacturers may only trade credits to other entities for the purpose of expiring credits.

(ii) Advanced technology credits can be traded across different averaging sets.

(iii) The agencies may revoke traded FCCs at any time if they are unable to verify them after reviewing the manufacturer's reports or auditing its records.

(iv) If a negative FCC balance results from a transaction, both the buyer and seller are liable, except in cases the agencies deem to involve fraud. See § 535.9 for cases involving fraud. EPA also may suspend, revoke or void the certificates of all vehicle families participating in a trade that results in a manufacturer having a negative balance of emission credits. See 40 CFR 1037.745 and § 535.3(j).

(v) Manufacturers with deficits or projecting deficits before or during a production model year may not trade credits until its available credits exceed the deficit. Manufacturers with a deficit may not trade credits if the deadline to offset that credit deficit has passed.

(5) *Credit deficit (or credit shortfall).* A credit shortfall or deficit occurs when the sum of the manufacturer's generated credits for engines or vehicle families or fleets within an averaging set is negative. Credit shortfalls must be offset by an available credit surplus within three model years after the shortfall was incurred. If the shortfall cannot be offset, the manufacturer is liable for civil penalties as discussed in § 535.9.

(6) *FCC credit plan.* (i) Each model year manufacturers submit credit plan in their certificates of conformity as required in 40 CFR 1036.725(b)(2) and 40 CFR 1037.725(b)(2). The plan is required to contain equivalent fuel consumption information in accordance § 535.8(c). The plan must include:

(A) Detailed calculations of projected emission and fuel consumption credits (positive or negative) based on projected U.S.-directed production volumes. The agencies may require a manufacturer to include similar calculations from its other engine or vehicle families to project its net credit balances for the model year. If a manufacturer projects negative emission and/or fuel consumption credits for a family, it must state the source of positive emission and/or fuel consumption credits it expects to use to offset the negative credits demonstrating how it plans to resolve any credit deficits that might occur for a model year within a period of up to three model years after that deficit has occurred.

(B) Actual emissions and fuel consumption credit balances, credit transactions, and credit trades.

(i) Manufacturers are required to provide updated credit plans after receiving their final verified reports from EPA and NHTSA after the end of each model year.

(ii) The agencies may determine that a manufacturer's plan is unreasonable or unrealistic based on a consideration of past and projected use of specific technologies, the historical sales mix of its vehicle models, subsequent failure to follow any submitted plans, and limited expected access to traded credits.

(iii) The agencies may also consider the plan unreasonable if the manufacturer's credit deficit increases from one model year to the next. The agencies may require that the manufacturers must send interim reports describing its progress toward resolving its credit deficit over the course of a model year.

(iv) If NHTSA determines that a manufacturers plan is unreasonable or unrealistic, the manufacturer is deemed as not comply with fuel consumption standards as specified in § 535.10(c) and the manufacturer may be liable for civil penalties.

(7) *Revoked credits.* NHTSA may revoke fuel consumption credits if unable to verify any information after auditing reports or records or conducting confirmatory testing. In the cases where EPA revokes emissions CO_2 credits, NHTSA will revoke the equivalent amount of fuel consumption credits.

(8) *Transition to Phase 2 standards.* The following provisions allow for enhanced use of fuel consumption credits from Phase 1 tractors and vocational vehicles for meeting the Phase 2 standards:

(i) Fuel consumption credits a manufacturer generates for light and medium heavy-duty vocational vehicles in model years 2018 through 2021 may be used through model year 2027, instead of being limited to a five-year credit life as specified in this part.

(ii) The manufacturer may use the off-cycle provisions of paragraph (f) of this section to apply technologies to Phase 1 vehicles as follows:

(A) A manufacturer may apply an improvement factor of 0.988 for tractors and vocational vehicles with automatic tire inflation systems on all axles.

(B) For vocational vehicles with automatic engine shutdown systems that conform with 40 CFR 1037.660, a manufacturer may apply an improvement factor of 0.95.

(C) For vocational vehicles with stop-start systems that conform with 40 CFR 1037.660, a manufacturer may apply an improvement factor of 0.92.

(D) For vocational vehicles with neutral-idle systems conforming with 40 CFR 1037.660, manufacturers may apply an improvement factor of 0.98. Manufacturers may adjust this improvement factor if we approve a partial reduction under 40 CFR 1037.660(a)(2); for example, if the manufacturer's design reduces fuel consumption by half as much as shifting to neutral, it may apply an improvement factor of 0.99.

(9) *Credits for small business manufacturers.* Small manufacturers may generate fuel consumption credits for natural gas-fueled vocational vehicles as follows:

(i) Small manufacturers may certify their vehicles instead of relying on the exemption of § 535.3.

(ii) Use Phase 1 GEM to determine a fuel consumption level for vehicle, then multiply this value by the engine's FCL for fuel consumption and divide by the engine's applicable fuel consumption standard.

(iii) Use the value determined in paragraph (a)(ii) of this section in the credit equation specified in paragraph (c) of this section in place of the term (Std –FEL)

(iv) The following provisions apply uniquely to small businesses under the custom-chassis standards of § 535.5(b)(6):

(A) Manufacturers may use fuel consumption credits generated under paragraph (c) of this section, including banked or traded credits from any averaging set. Such credits remain subject to other limitations that apply under this part.

(B) Manufacturers may produce up to 200 drayage tractors in a given model year to the standards described in § 535.5(b)(6) for ''other buses''. Treat these drayage tractors as being in their own averaging set. This limit applies with respect to vehicles produced by the parent manufacturer and its owned subordinate companies.

(10) *Certifying non-gasoline engines.* A manufacturer producing non-gasoline engines complying with model year 2021 or later medium heavy-duty spark-ignition standards may not generate fuel consumption credits. Only manufacturers producing gasoline engines certifying to spark-ignition standards can generate fuel

consumption credits under paragraph (d) of this section.

(11) Unless the regulations explicitly allow it, manufacturers may not calculate Phase 1 fuel consumption credits more than once for compliance. For example, if a manufacturer generates Phase 1 fuel consumption credits for a given hybrid vehicle under this part, no one may generate fuel consumption credits for the associated hybrid engine under 40 CFR part 1036. However, Phase 1 credits could be generated for identical engines used in vehicles that did not generate engine credits.

(b) *ABT provisions for heavy-duty pickup trucks and vans.* (1) Calculate fuel consumption credits in a model year for one fleet of conventional heavy-duty pickup trucks and vans and if designated by the manufacturer another consisting of advance technology vehicles for the averaging set as defined in § 535.4. Calculate credits for each fleet separately using the following equation:

$$\text{Total MY Fleet FCC (gallons)} = (\text{Std} - \text{Act}) \times (\text{Volume}) \times (\text{UL}) \times (10^2)$$

Where:

Std = Fleet average fuel consumption standard (gal/100 mile).

Act = Fleet average actual fuel consumption value (gal/100 mile).

Volume = the total U.S.-directed production of vehicles in the regulatory subcategory.

UL = the useful life for the regulatory subcategory.

The useful life value for heavy-pickup trucks and vans manufactured for model years 2013 through 2020 is equal to the 120,000 miles. The useful life for model years 2021 and later is equal to 150,000 miles.

(2) Adjust the fuel consumption performance of subconfigurations with advanced technology for determining the fleet average actual fuel consumption value as specified in paragraph (f)(1) of this section and 40 CFR 86.1819–14(d)(7). Advanced technology vehicles can be separated in a different fleet for the purpose of applying credit incentives as described in paragraph (f)(1) of this section.

(3) Adjust the fuel consumption performance for subconfigurations with innovative technology. A manufacturer is eligible to increase the fuel consumption performance of heavy-duty pickup trucks and vans in accordance with procedures established by EPA set forth in 40 CFR part 600. The eligibility of a manufacturer to increase its fuel consumption performance through use of an off-cycle technology requires an application request made to EPA and NHTSA in accordance with 40 CFR 86.1869–12 and an approval granted by the agencies. For off-cycle technologies that are covered under 40 CFR 86.1869–12, NHTSA will collaborate with EPA regarding NHTSA's evaluation of the specific off-cycle technology to ensure its impact on fuel consumption and the suitability of using the off-cycle technology to adjust fuel consumption performance. NHTSA will provide its views on the suitability of the technology for that purpose to EPA. NHTSA will apply the criteria in paragraph (f)(2) of this section in granting or denying off- cycle requests.

(4) Fuel consumption credits may be generated for vehicles certified in model year 2013 to the model year 2014 standards in § 535.5(a). If a manufacturer chooses to generate CO_2 emission credits under EPA's provisions in 40 CFR part 86, it may also voluntarily generate early credits under the NHTSA fuel consumption program. To do so, a manufacturer must certify its entire U.S.-directed production volume of vehicles in its fleet. The same production volume restrictions specified in 40 CFR 1037.150(a)(2) relating to when test groups are certified apply to the NHTSA early credit provisions. Credits are calculated as specified in paragraph (b)(3) of this section relative to the fleet standard that would apply for model year 2014 using the model year 2013 production volumes. Surplus credits generated under this paragraph (b)(4) are available for banking or trading. Credit deficits for an averaging set prior to model year 2014 do not carry over to model year 2014. These credits may be used to show compliance with the standards of this part for 2014 and later model years. Once a manufacturer opts into the NHTSA program, they must stay in the program for all of the optional model years and remain standardized with the same implementation approach being followed to meet the EPA CO_2 emission program.

(5) Calculate the averaging set credit value by summing together the fleet credits for conventional and advanced technology vehicles including any adjustments for innovative technologies. Manufacturers may sum conventional and innovative technology credits before adding any advanced technology credits in each averaging set.

(6) For credits that manufacturers calculate based on a useful life of 120,000 miles, multiply any banked credits carried forward for use in model year 2021 and later by 1.25. For credit deficits that a manufacturer calculates based on a useful life of 120,000 miles and that it offsets with credits originally earned in model year 2021 and later, it multiplies the credit deficit by 1.25.

(c) *ABT provisions for vocational vehicles and tractors.* (1) Calculate the fuel consumption credits in a model year for each participating family or subfamily consisting of conventional vehicles in each averaging set (as defined in § 535.4) using the equation in this section. Each designated vehicle family or subfamily has a ''family emissions limit'' (FEL) that is compared to the associated regulatory subcategory standard. An FEL that falls below the regulatory subcategory standard creates ''positive credits,'' while fuel consumption level of a family group above the standard creates a ''negative credits.'' The value of credits generated for each family or subfamily in a model year is calculated as follows and must be rounded to nearest whole number:

$$\text{Vehicle Family FCC (gallons)} = (\text{Std} - \text{FEL}) \times (\text{Payload}) \times (\text{Volume}) \times (\text{UL}) \times (10^3)$$

Where:

Std = the standard for the respective vehicle family regulatory subcategory (gal/1000 ton-mile).

FEL = family emissions limit for the vehicle family (gal/1000 ton-mile).

Payload = the prescribed payload in tons for each regulatory subcategory as shown in the following table:

Regulatory subcategory	Payload (tons)
Vocational LHD Vehicles	2.85
Vocational MHD Vehicles	5.60
Vocational HHD Vehicles	7.5
MDH MHD Tractors	12.50
HHD Tractors, other than heavy-haul Tractors	19.00
Heavy-haul Tractors	43.00

Volume = the number of U.S.-directed production volume of vehicles in the corresponding vehicle family.

UL = the useful life for the regulatory subcategory (miles) as shown in the following table:

Regulatory subcategory	UL (miles)
LHD Vehicles	110,000 (Phase 1). 150,000 (Phase 2).
Vocational MHD Vehicles and tractors at or below 33,000 pounds GVWR	185,000.
Vocation HHD Vehicles and tractors at or above 33,000 pounds GVWR	435,000.

(i) Calculate the value of credits generated in a model year for each family or subfamily consisting of vehicles with advanced technology vehicles in each averaging set using the equation above and the guidelines provided in paragraph (f)(1) of this section. Manufacturers may generate credits for advanced technology vehicles using incentives specified in paragraph (f)(1) of this section.

(ii) Calculate the value of credits generated in a model year for each family or subfamily consisting of vehicles with off-cycle technology vehicles in each averaging set using the equation above and the guidelines provided in paragraph (f)(2) of this section.

(2) Manufacturers must sum all negative and positive credits for each vehicle family within each applicable averaging set to obtain the total credit balance for the model year before rounding. The sum of fuel consumptions credits must be rounded to the nearest gallon. Calculate the total credits generated in a model year for each averaging set using the following equation:

Total averaging set MY credits = Σ Vehicle family credits within each averaging set

(3) Manufacturers can sum conventional and innovative technology credits before adding any advanced technology credits in each averaging set.

(4) If a manufacturer chooses to generate CO_2 emission credits under EPA provisions of 40 CFR 1037.150(a), it may also voluntarily generate early credits under the NHTSA fuel consumption program as follows:

(i) Fuel consumption credits may be generated for vehicles certified in model year 2013 to the model year 2014 standards in § 535.5(b) and (c). To do so, a manufacturer must certify its entire U.S.-directed production volume of vehicles. The same production volume restrictions specified in 40 CFR 1037.150(a)(1) relating to when test groups are certified apply to the NHTSA early credit provisions. Credits are calculated as specified in paragraph (c)(11) of this section relative to the standards that would apply for model year 2014. Surplus credits generated under this paragraph (c)(4) may be increased by a factor of 1.5 for determining total available credits for banking or trading. For example, if a manufacturer has 10 gallons of surplus credits for model year 2013, it may bank 15 gallons of credits. Credit deficits for an averaging set prior to model year 2014 do not carry over to model year 2014. These credits may be used to show compliance with the standards of this part for 2014 and later model years. Once a manufacturer opts into the NHTSA program they must stay in the program for all of the optional model years and remain standardized with the same implementation approach being followed to meet the EPA CO_2 emission program.

(ii) A tractor manufacturer may generate fuel consumption credits for the number of additional SmartWay designated tractors (relative to its MY 2012 production), provided that credits are not generated for those vehicles under paragraph (c)(4)(i) of this section. Calculate credits for each regulatory sub-category relative to the standard that would apply in model year 2014 using the equations in paragraph (c)(2) of this section. Use a production volume equal to the number of verified model year 2013 SmartWay tractors minus the number of verified model year 2012 SmartWay tractors. A manufacturer may bank credits equal to the surplus credits generated under this paragraph multiplied by 1.50. A manufacturer's 2012 and 2013 model years must be equivalent in length. Once a manufacturer opts into the NHTSA program they must stay in the program for all of the optional model years and remain standardized with the same implementation approach being followed to meet the EPA CO_2 emission program.

(5) If a manufacturer generates credits from vehicles certified for advanced technology in accordance with paragraph (e)(1) of this section, a multiplier of 1.5 can be used, but this multiplier cannot be used on the same credits for which the early credit multiplier is used.

(6) For model years 2012 and later, manufacturers may generate or use fuel consumption credits for averaging to demonstrate compliance with the alternative standards as described in § 535.5(b)(6) of this part. Manufacturers can specify a Family Emission Limit (FEL) for fuel consumption for each vehicle subfamily. The FEL may not be less than the result of emissions and fuel consumption modeling as described in 40 CFR 1037.520 and § 535.6. These FELs serve as the fuel consumption standards for the vehicle subfamily instead of the standards specified in this § 535.5(b)(6). Manufacturers may not use averaging for motor homes, coach buses, emergency vehicles or concrete mixers meeting standards under § 535.5(b)(5).

(7) Manufacturers may not use averaging for vehicles meeting standards § 535.5(b)(6)(iv) through (vi), and manufacturers may not use fuel consumption credits for banking or trading for any vehicles certified under § 535.5(b)(6).

(8) Manufacturers certifying any vehicles under § 535.5(b)(6) must consider each separate vehicle type (or group of vehicle types) as a separate averaging set.

(d) ABT provisions for heavy-duty engines. (1) Calculate the fuel consumption credits in a model year for each participating family or subfamily consisting of engines in each averaging set (as defined in § 535.4) using the equation in this section. Each designated engine family has a ''family certification level'' (FCL) which is compared to the associated regulatory subcategory standard. A FCL that falls below the regulatory subcategory standard creates ''positive credits,'' while fuel consumption level of a family group above the standard creates a ''credit shortfall.'' The value of credits generated in a model year for each engine family or subfamily is calculated as follows and must be rounded to nearest whole number:

$$\text{Engine Family FCC (gallons)} = (\text{Std} - \text{FCL}) \times (\text{CF}) \times (\text{Volume}) \times (\text{UL}) \times (10^2)$$

Where:

Std = the standard for the respective engine regulatory subcategory (gal/100 hp-hr).
FCL = family certification level for the engine family (gal/100 hp-hr).
CF= a transient cycle conversion factor in hp-hr/mile which is the integrated total cycle horsepower-hour divided by the equivalent mileage of the applicable test cycle. For engines subject to spark-ignition heavy-duty standards, the equivalent mileage is 6.3 miles. For engines subject to compression-ignition heavy-duty standards, the equivalent mileage is 6.5 miles.
Volume = the number of engines in the corresponding engine family.
UL = the useful life of the given engine family (miles) as shown in the following table:

Regulatory subcategory	UL (miles)
SI and CI LHD Engines	120,000 (Phase 1). 150,000 (Phase 2).
CI MHD Engines	185,000.
CI HHD Engines	435,000.

(i) Calculate the value of credits generated in a model year for each family or subfamily consisting of engines with advanced technology vehicles in each averaging set using the equation above and the guidelines provided in paragraph (f)(1) of this section. Manufacturers may generate credits for advanced technology vehicles using incentives specified in paragraph (f)(1) of this section.

(ii) Calculate the value of credits generated in a model year for each family or subfamily consisting of engines with off-cycle technology vehicles in each averaging set using the equation above and the guidelines provided in paragraph (f)(2) of this section.

(2) Manufacturers shall sum all negative and positive credits for each engine family within the applicable averaging set to obtain the total credit balance for the model year before rounding. The sum of fuel consumptions credits should be rounded to the nearest gallon.

Calculate the total credits generated in a model year for each averaging set using the following equation:

Total averaging set MY credits = Σ Engine family credits within each averaging set

(3) The provisions of this section apply to manufacturers utilizing the compression-ignition engine voluntary alternate standard provisions specified in § 535.5(d)(4) as follows:

(i) Manufacturers may not certify engines to the alternate standards if they are part of an averaging set in which they carry a balance of banked credits. For purposes of this section, manufacturers are deemed to carry credits in an averaging set if they carry credits from advance technology that are allowed to be used in that averaging set.

(ii) Manufacturers may not bank fuel consumption credits for any engine family in the same averaging set and model year in which it certifies engines to the alternate standards. This means a manufacturer may not bank advanced technology credits in a model year it certifies any engines to the alternate standards.

(iii) Note that the provisions of paragraph (d)(10) of this section apply with respect to credit deficits generated while utilizing alternate standards.

(4) Where a manufacturer has chosen to comply with the EPA alternative compression-ignition engine phase-in standard provisions in 40 CFR 1036.150(e), and has optionally decided to follow the same path under the NHTSA fuel consumption program, it must certify all of its model year 2013 compression-ignition engines within a given averaging set to the applicable alternative standards in § 535.5(d)(5). Engines certified to these standards are not eligible for early credits under paragraph (d)(14) of this section. Credits are calculated using the same equation provided in paragraph (d)(11) of this section.

(5) If a manufacturer chooses to generate early CO_2 emission credits under EPA provisions of 40 CFR 1036.150, it may also voluntarily generate early credits under the NHTSA fuel consumption program. Fuel consumption credits may be generated for engines certified in model year 2013 (2015 for spark-ignition engines) to the standards in § 535.5(d). To do so, a manufacturer must certify its entire U.S.-directed production volume of engines except as specified in 40 CFR 1036.150(a)(2). Credits are calculated as specified in paragraph (d)(11) of this section relative to the standards that would apply for model year 2014 (2016 for spark-ignition engines). Surplus credits generated under this paragraph (d)(3) may be increased by a factor of 1.5 for determining total available credits for banking or trading. For example, if a manufacturer has 10 gallons of surplus credits for model year 2013, it may bank 15 gallons of credits. Credit deficits for an averaging set prior to model year 2014 (2016 for spark-ignition engines) do not carry over to model year 2014 (2016 for spark-ignition engines). These credits may be used to show compliance with the standards of this part for 2014 and later model years. Once a manufacturer opts into the NHTSA program they must stay in the program for all of the optional model years and remain standardized with the same implementation approach being followed to meet the EPA CO_2 emission program.

(6) Manufacturers may generate fuel consumption credits from an engine family subject to spark-ignition standards for exchanging with other engine families only if the engines in the family are gasoline-fueled.

(7) Engine credits generated for compression-ignition engines in the 2020 and earlier model years may be used in model year 2021 and later as follows:

(i) For credit-generating engines certified to the tractor engine standards in § 535.5(d), you may use credits calculated relative to the tractor engine standards.

(ii) For credit-generating engines certified to the vocational engine standards in § 535.5(d), you may use credits calculated relative to the following fuel consumption levels:

(A) Medium Heavy-Duty Engines = 5.4813 gallons/100 hp-hr.

(B) Heavy Heavy-Duty Engines = 5.1572 gallons/100 hp-hr.

(C) To transfer Phase 1 credits for use in the Phase 2 fuel consumption program, manufacturers must recalculate credit values for the Phase 1 model years by substituting the standards in paragraphs (d)(7)(ii)(A) and (B) of this section in the credit equation specified in § 535.5(d)(1).

(8) Engine families manufacturers certify with a nonconformance penalty under 40 CFR part 86, subpart L, and may not generate fuel consumption credits.

(9) *Alternate transition option for Phase 2 engine standards.* The following provisions allow for enhanced generation and use of fuel consumption credits for manufacturers complying

with engines standards in accordance with § 535.7(d)(11):

(i) If a manufacturer is eligible to certify all of its model year 2020 engines within the averaging set to the tractor and vocational vehicle engine standards in § 535.5(d)(11) and the requirements applicable to model year 2021 engines, the banked and traded fuel consumption credits generated for model year 2018 through 2024 engines may be used through model year 2030 as specified in paragraph (d)(9)(ii) of this section or through a five-year credit life, whichever is later.

(ii) Banked and traded fuel consumption credits generated under this paragraph (d)(9) for model year 2018 through 2024 engines may be used through model year 2030 with the extended credit life values shown in the table:

Model year	Credit life for transition option for Phase 2 engine standards (years)
2018	12
2019	11
2020	10
2021	9
2022	8
2023	7
2024	6
2025 and later	5

(e) *Additional credit provisions.*

(1) *Advanced technology credits.*

(i) For the Phase 1 program, manufacturers of heavy-duty pickup trucks and vans, vocational vehicles, tractors and the associated engines showing improvements in CO_2 emissions and fuel consumption using hybrid vehicles with regenerative braking, vehicles equipped with Rankine-cycle engines, electric vehicles and fuel cell vehicles are eligible for advanced technology credits. Manufacturers shall use sound engineering judgment to determine the performance of the vehicle or engine with advanced technology. Advanced technology credits for vehicles or engines complying with Phase 1 standards may be increased by a 1.5 multiplier. Manufacturers may not apply this multiplier in addition to any early-credit multipliers. The maximum amount of credits a manufacturer may bring into the service class group that contains the heavy-duty pickup and van averaging set is $5.89 \cdot 10^6$ gallons (for advanced technology credits based upon compression-ignition engines) or $6.76 \cdot 10^6$ gallons (for advanced technology credits based upon spark-ignition engines) per model year as specified in 40 CFR part 86 for heavy-duty pickup trucks and vans, 40 CFR 1036.740 for engines and 40 CFR 1037.740 for tractors and vocational vehicles. The specified limit does not cap the amount of advanced technology credits that can be used across averaging sets within the same service class group. Advanced technology credits can be used to offset negative credits in the same averaging set or other averaging sets. A manufacturer must first apply advanced technology credits to any deficits in the same averaging set before applying them to other averaging.

(A) *Heavy-duty pickup trucks and vans.* For advanced technology systems (hybrid vehicles with regenerative braking, vehicles equipped with Rankine-cycle engines and fuel cell vehicles), calculate fleet-average performance rates consistent with good engineering judgment and the provisions of 40 CFR 86.1819–14 and 86.1865.

(B) *Tractors and vocational vehicles.* For advanced technology system (hybrid vehicles with regenerative braking, vehicles equipped with Rankine-cycle engines and fuel cell vehicles), calculate the advanced technology credits as follows:

(1) Measure the effectiveness of the advanced system by conducting A to B testing a vehicle equipped with the advanced system and an equivalent conventional system in accordance with 40 CFR 1037.615.

(2) For purposes of this paragraph (e), a conventional vehicle is considered to be equivalent if it has the same footprint, intended vehicle service class, aerodynamic drag, and other relevant factors not directly related to the advanced system powertrain. If there is no equivalent vehicle, the manufacturer may create and test a prototype equivalent vehicle. The conventional vehicle is considered Vehicle A, and the advanced technology vehicle is considered Vehicle B.

(3) The benefit associated with the advanced system for fuel consumption is determined from the weighted fuel consumption results from the chassis tests of each vehicle using the following equation:

$$\text{Benefit (gallon/1000 ton mile)} = \text{Improvement Factor} \times \text{GEM Fuel Consumption Result\_B}$$

Where:

$$\text{Improvement Factor} = (\text{Fuel Consumption\_A} - \text{Fuel Consumption\_B})/(\text{Fuel Consumption\_A})$$

Fuel Consumption Rates A and B are the gallons per 1000 ton-mile of the conventional and advanced vehicles, respectively as measured under the test procedures specified by EPA. GEM Fuel Consumption Result B is the estimated gallons per 1000 ton-mile rate resulting from emission modeling of the advanced vehicle as specified in 40 CFR 1037.520 and § 535.6(b).

(4) Calculate the benefit in credits using the equation in paragraph (c) of this section and replacing the term (Std-FEL) with the benefit.

(5) For electric vehicles calculate the fuel consumption credits using an FEL of 0 g/1000ton-mile.

(C) *Heavy-duty engines.* This section specifies how to generate advanced technology-specific fuel consumption credits for hybrid powertrains that include energy storage systems and regenerative braking (including regenerative engine braking) and for engines that include Rankine-cycle (or other bottoming cycle) exhaust energy recovery systems.

(*1*) Pre-transmission hybrid powertrains are those engine systems that include features that recover and store energy during engine motoring operation but not from the vehicle wheels. These powertrains are tested using the hybrid engine test procedures of 40 CFR part 1065 or using the post-transmission test procedures.

(*2*) Post-transmission hybrid powertrains are those powertrains that include features that recover and store energy from braking at the vehicle wheels. These powertrains are tested by simulating the chassis test procedure applicable for hybrid vehicles under 40 CFR 1037.550.

(*3*) Test engines that include Rankine-cycle exhaust energy recovery systems according to the test procedures specified in 40 CFR part 1036, subpart F, unless EPA approves the manufacturer's alternate procedures.

(D) *Credit calculation.* Calculate credits as specified in paragraph (c) of this section. Credits generated from engines and powertrains certified under this section may be used in other averaging sets as described in 40 CFR 1036.740(d).

(ii) There are no separate credit allowances for advanced technology vehicles in the Phase 2 program. Instead, vehicle families containing plug-in battery electric hybrids, all-electric, and fuel cell vehicles certifying to Phase 2 vocational and tractor standards may multiply credits by a multiplier of:

(A) 3.5 times for plug-in hybrid electric vehicles;

(B) 4.5 times for all-electric vehicles; and

(C) 5.5 times for fuel cell vehicles.

(D) Incentivized credits for vehicles equipped with advanced technologies maintain the same credit flexibilities and restrictions as conventional credits

specified in paragraph (a) of this section during the Phase 2 program.

(E) For vocational vehicles and tractors subject to Phase 2 standards, create separate vehicle families if there is a credit multiplier for advanced technology; group those vehicles together in a vehicle family if they use the same multiplier.

(F) For Phase 2 plug-in hybrid electric vehicles and for fuel cells powered by any fuel other than hydrogen, calculate fuel consumption credits using an FEL based on equivalent emission measurements from powertrain testing. Phase 2 advanced-technology credits do not apply for hybrid vehicles that have no plug-in capability.

(2) *Innovative and off-cycle technology credits.* This provision allows fuel saving innovative and off-cycle engine and vehicle technologies to generate fuel consumption credits comparable to CO_2 emission credits consistent with the provisions of 40 CFR 86.1819–14(d)(13) (for heavy-duty pickup trucks and vans), 40 CFR 1036.610 (for engines), and 40 CFR 1037.610 (for vocational vehicles and tractors).

(i) For model years 2013 through 2020, manufacturers may generate innovative technology credits for introducing technologies that were not in-common use for heavy-duty tractor, vocational vehicles or engines before model year 2010 and that are not reflected in the EPA specified test procedures. Upon identification and joint approval with EPA, NHTSA will allow equivalent fuel consumption credits into its program to those allowed by EPA for manufacturers seeking to obtain innovative technology credits in a given model year. Such credits must remain within the same regulatory subcategory in which the credits were generated. NHTSA will adopt fuel consumption credits depending upon whether—

(A) The technology has a direct impact upon reducing fuel consumption performance; and

(B) The manufacturer has provided sufficient information to make sound engineering judgments on the impact of the technology in reducing fuel consumption performance.

(ii) For model years 2021 and later, manufacturers may generate off-cycle technology credits for introducing technologies that are not reflected in the EPA specified test procedures. Upon identification and joint approval with EPA, NHTSA will allow equivalent fuel consumption credits into its program to those allowed by EPA for manufacturers seeking to obtain innovative technology credits in a given model year. Such credits must remain within the same regulatory subcategory in which the credits were generated. NHTSA will adopt fuel consumption credits depending upon whether—

(A) The technology meets paragraph (f)(2)(i)(A) and (B) of this section.

(B) For heavy-duty pickup trucks and vans, manufacturers using the 5-cycle test to quantify the benefit of a technology are not required to obtain approval from the agencies to generate results.

(iii) The following provisions apply to all innovative and off-cycle technologies:

(A) Technologies found to be defective, or identified as a part of NHTSA's safety defects program, and technologies that are not performing as intended will have the values of approved off-cycle credits removed from the manufacturer's credit balance.

(B) Approval granted for innovative and off-cycle technology credits under NHTSA's fuel efficiency program does not affect or relieve the obligation to comply with the Vehicle Safety Act (49 U.S.C. Chapter 301), including the ''make inoperative'' prohibition (49 U.S.C. 30122), and all applicable Federal motor vehicle safety standards issued thereunder (FMVSSs) (49 CFR part 571). In order to generate off-cycle or innovative technology credits manufacturers must state—

(1) That each vehicle equipped with the technology for which they are seeking credits will comply with all applicable FMVSS(s); and

(2) Whether or not the technology has a fail-safe provision. If no fail-safe provision exists, the manufacturer must explain why not and whether a failure of the innovative technology would affect the safety of the vehicle.

(C) Manufacturers requesting approval for innovative technology credits are required to provide documentation in accordance with 40 CFR 86.1869–12, 1036.610, and 1037.610.

(D) Credits will be accepted on a one-for-one basis expressed in terms of gallons in comparison to those approved by EPA.

(E) For the heavy-duty pickup trucks and vans, the average fuel consumption will be calculated as a separate credit amount (rounded to the nearest whole number) using the following equation:

$$\text{Off-cycle FC credits} = (CO_2\ \text{Credit/CF}) \times 100 \times \text{Production} \times \text{VLM}$$

Where:

CO_2 Credits = the credit value in grams per mile determined in 40 CFR 86.1869–12(c)(3), (d)(1), (d)(2) or (d)(3).

CF = conversion factor, which for spark-ignition engines is 8,887 and for compression-ignition engines is 10,180.

Production = the total production volume for the applicable category of vehicles.

VLM = vehicle lifetime miles, which for 2b–3 vehicles shall be 150,000 for the Phase 2 program.

The term (CO_2 Credit/CF) should be rounded to the nearest 0.0001

(F) NHTSA will not approve innovative technology credits for technology that is related to crash-avoidance technologies, safety critical systems or systems affecting safety-critical functions, or technologies designed for the purpose of reducing the frequency of vehicle crashes.

(iv) Manufacturers normally may not calculate off-cycle credits or improvement factors under this section for technologies represented by GEM, but the agencies may allow a manufacturer to do so by averaging multiple GEM runs for special technologies for which a single GEM run cannot accurately reflect in-use performance. For example, if a manufacturer use an idle-reduction technology that is effective 80 percent of the time, the agencies may allow a manufacturer to run GEM with the technology active and with it inactive, and then apply an 80% weighting factor to calculate the off-cycle credit or improvement factor. A may need to perform testing to establish proper weighting factors or otherwise quantify the benefits of the special technologies.

(vi) *Carry-over Approval.* Manufacturers may carry-over these credits into future model years as described below:

(A) For model years before 2021, manufacturers may continue to use an approved improvement factor or credit for any appropriate engine or vehicle family in future model years through 2020.

(B) For model years 2021 and later, manufacturers may not rely on an approval for model years before 2021. Manufacturers must separately request the agencies approval before applying an improvement factor or credit under this section for 2021 and later engines and vehicle, even if the agencies approve the improvement factor or credit for similar engine and vehicle models before model year 2021.

(C) The following restrictions also apply to manufacturers seeking to continue to carryover the improvement factor (not the credit value) if—

(1) The FEL is generated by GEM or 5-cycle testing;

(2) The technology is not changed or paired with any other off-cycle technology;

(3) The improvement factor only applies to approved vehicle or engine families;

(4) The agencies do not expect the technology to be incorporated into GEM at any point during the Phase 2 program; and

(D) The documentation to carryover credits that would primarily justify the difference in fuel efficiency between real world and compliance protocols is the same for both Phase 1 and Phase 2 compliance protocols. The agencies must approve the justification. If the agencies do not approve the justification, the manufacturer must recertify.

§ 535.8 Reporting and recordkeeping requirements.

(a) *General requirements.* Manufacturers producing heavy-duty vehicles and engines applicable to fuel consumption standards in § 535.5, for each given model year, must submit the required information as specified in paragraphs (b) through (h) of this section.

(1) The information required by this part must be submitted by the deadlines specified in this section and must be based upon all the information and data available to the manufacturer 30 days before submitting information.

(2) Manufacturers must submit information electronically through the EPA database system as the single point of entry for all information required for this national program and both agencies will have access to the information. In special circumstances, data may not be able to be received electronically (*i.e.,* during database system development work). The agencies will inform manufacturer of the alternatives can be used for submitting information. The format for the required information will be specified by EPA in coordination with NHTSA.

(3) Manufacturers providing incomplete reports missing any of the required information or providing untimely reports are considered as not complying with standards (*i.e.,* if good-faith estimates of U.S.-directed production volumes for EPA certificates of conformity are not provided) and are liable to pay civil penalties in accordance with 49 U.S.C. 32912.

(4) Manufacturers certifying a vehicle or engine family using an FEL or FCL below the applicable fuel consumption standard as described in § 535.5 may choose not to generate fuel consumption credits for that family. In which case, the manufacturer is not required to submit reporting or keep the associated records described in this part for that family.

(5) Manufacturers must use good engineering judgment and provide comparable fuel consumption information to that of the information or data provided to EPA under 40 CFR 86.1865, 1036.250, 1036.730, 1036.825 1037.250, 1037.730, and 1037.825.

(6) Any information that must be sent directly to NHTSA. In instances in which EPA has not created an electronic pathway to receive the information, the information should be sent through an electronic portal identified by NHTSA or through the NHTSA CAFE database (*i.e.,* information on fuel consumption credit transactions). If hardcopy documents must be sent, the information should be sent to the Associate Administrator of Enforcement at 1200 New Jersey Avenue SE, NVS–200, Office W45–306EOY, Washington, DC 20590.

(b) *Pre-model year reports.* Manufacturers producing heavy-duty pickup trucks and vans must submit reports in advance of the model year providing early estimates demonstrating how their fleet(s) would comply with GHG emissions and fuel consumption standards. Note, the agencies understand that early model year reports contain estimates that may change over the course of a model year and that compliance information manufacturers submit prior to the beginning of a new model year may not represent the final compliance outcome. The agencies view the necessity for requiring early model reports as a manufacturer's good faith projection for demonstrating compliance with emission and fuel consumption standards.

(1) *Report deadlines.* For model years 2013 and later, manufacturer of heavy-duty pickup trucks and vans complying with voluntary and mandatory standards must submit a pre-model year report for the given model year as early as the date of the manufacturer's annual certification preview meeting with EPA and NHTSA, or prior to submitting its first application for a certificate of conformity to EPA in accordance with 40 CFR 86.1819–14(d). For example, a manufacturer choosing to comply in model year 2014 could submit its pre-model year report during its precertification meeting which could occur before January 2, 2013, or could provide its pre-model year report any time prior to submitting its first application for certification for the given model year.

(2) *Contents.* Each pre-model year report must be submitted including the following information for each model year.

(i) A list of each unique subconfiguration in the manufacturer's fleet describing the make and model designations, attribute based-values (*i.e.,* GVWR, GCWR, Curb Weight and drive configurations) and standards;

(ii) The emission and fuel consumption fleet average standard derived from the unique vehicle configurations;

(iii) The estimated vehicle configuration, test group and fleet production volumes;

(iv) The expected emissions and fuel consumption test group results and fleet average performance;

(v) If complying with MY 2013 fuel consumption standards, a statement must be provided declaring that the manufacturer is voluntarily choosing to comply early with the EPA and NHTSA programs. The manufacturers must also acknowledge that once selected, the decision cannot be reversed and the manufacturer will continue to comply with the fuel consumption standards for subsequent model years for all the vehicles it manufacturers in each regulatory category for a given model year;

(vi) If complying with MYs 2014, 2015 or 2016 fuel consumption standards, a statement must be provided declaring whether the manufacturer will use fixed or increasing standards in accordance with § 535.5(a). The manufacturer must also acknowledge that once selected, the decision cannot be reversed and the manufacturer must continue to comply with the same alternative for subsequent model years for all the vehicles it manufacturers in each regulatory category for a given model year;

(vii) If complying with MYs 2014 or 2015 fuel consumption standards, a statement must be provided declaring that the manufacturer is voluntarily choosing to comply with NHTSA's voluntary fuel consumption standards in accordance with § 535.5(a)(4). The manufacturers must also acknowledge that once selected, the decision cannot be reversed and the manufacturer will continue to comply with the fuel consumption standards for subsequent model years for all the vehicles it manufacturers in each regulatory category for a given model year;

(viii) The list of Class 2b and 3 incomplete vehicles (cab-complete or chassis complete vehicles) and the method used to certify these vehicles as complete pickups and vans identifying the most similar complete sister- or other complete vehicles used to derive the target standards and performance test results;

(ix) The list of Class 4 and 5 incomplete and complete vehicles and the method use to certify these vehicles as complete pickups and vans identifying the most similar complete or

sister vehicles used to derive the target standards and performance test results;

(x) List of loose engines included in the heavy-duty pickup and van category and the list of vehicles used to derive target standards and performance test results;

(xi) Copy of any notices a vehicle manufacturer sends to the engine manufacturer to notify the engine manufacturers that their engines are subject to emissions and fuel consumption standards and that it intends to use their engines in excluded vehicles;

(xii) A fuel consumption credit plan as specified § 535.7(a) identifying the manufacturers estimated credit balances, planned credit flexibilities (*i.e.,* credit balances, planned credit trading, innovative, advanced and early credits and etc.) and if needed a credit deficit plan demonstrating how it plans to resolve any credit deficits that might occur for a model year within a period of up to three model years after that deficit has occurred; and

(xiii) The supplemental information specified in paragraph (h) of this section. [Note: NHTSA may also ask a manufacturer to provide additional information, if necessary, to verify compliance with the fuel consumption requirements of this regulation.]

(c) *Applications for certificate of conformity.* Manufacturers producing vocational vehicles, tractors and heavy-duty engines are required to submit applications for certificates of conformity to EPA in accordance with 40 CFR 1036.205 and 1037.205 in advance of introducing vehicles for commercial sale. Applications contain early model year information demonstrating how manufacturers plan to comply with GHG emissions. For model years 2013 and later, manufacturers of vocational vehicles, tractors and engine complying with NHTSA's voluntary and mandatory standards must submit applications for certificates of conformity in accordance through the EPA database including both GHG emissions and fuel consumption information for each given model year.

(1) *Submission deadlines.* Applications are primarily submitted in advance of the given model year to EPA but cannot be submitted any later than December 31 of the given model year.

(2) *Contents.* Each application for certificates of conformity submitted to EPA must include the following equivalent fuel consumption.

(i) Equivalent fuel consumption values for emissions CO_2 FCLs values used to certify each engine family in accordance with 40 CFR 1036.205(e). This provision applies only to manufacturers producing heavy-duty engines.

(ii) Equivalent fuel consumption values for emission CO_2 data engines used to comply with emission standards in 40 CFR 1036.108. This provision applies only to manufacturers producing heavy-duty engines.

(iii) Equivalent fuel consumption values for emissions CO_2 FELs values used to certify each vehicle families or subfamilies in accordance with 40 CFR 1037.205(k). This provision applies only to manufacturers producing vocational vehicles and tractors.

(iv) Report modeling results for ten configurations in terms of CO_2 emissions and equivalent fuel consumption results in accordance with 40 CFR 1037.205(o). Include modeling inputs and detailed descriptions of how they were derived. This provision applies only to manufacturers producing vocational vehicles and tractors.

(v) Credit plans including the fuel consumption credit plan described in § 535.7(a).

(3) *Additional supplemental information.* Manufacturers are required to submit additional information as specified in paragraph (h) of this section for the NHTSA program before or at the same time it submits its first application for a certificate of conformity to EPA. Under limited conditions, NHTSA may also ask a manufacturer to provide additional information directly to the Administrator, if necessary, to verify the fuel consumption requirements of this regulation.

(d) *End of the Year (EOY) and Final reports.* Heavy-duty vehicle and engine manufacturers participating in the ABT program are required to submit EOY and final reports containing information for NHTSA as specified in paragraph (d)(2) of this section and in accordance with 40 CFR 86.1865, 1036.730, and 1037.730. Only manufacturers without credit deficits may decide not to participate in the ABT or may waive the requirement to send an EOY report. The EOY and final reports are used to review a manufacturer's preliminary or final compliance information and to identify manufacturers that might have a credit deficit for the given model year. For model years 2013 and later, heavy-duty vehicle and engine manufacturers complying with NHTSA's voluntary and mandatory standards must submit EOY and final reports through the EPA database including both GHG emissions and fuel consumption information for each given model year.

(1) *Report deadlines.* (i) For model year 2013 and later, heavy-duty vehicle and engine manufacturers complying with NHTSA voluntary and mandatory standards must submit EOY reports through the EPA database including both GHG emissions and fuel consumption information within 90 days after the end of the given model year and no later than March 31 of the next calendar year.

(ii) For model year 2013 and later, heavy-duty vehicle and engine manufacturers complying with NHTSA voluntary and mandatory standards must submit final reports through the EPA database including both GHG emissions and fuel consumption information within 270 days after the end of the given model year and no later than September 30 of the next calendar year.

(iii) A manufacturer may ask NHTSA and EPA to extend the deadline of a final report by up to 30 days. A manufacturer unable to provide and requesting to omit an emissions rate or fuel consumption value from a final report must obtain approval from the agencies prior to the submission deadline of its final report.

(iv) If a manufacturer expects differences in the information reported between the EOY and the final year report specified in 40 CFR 1036.730 and 1037.730, it must provide the most up-to-date fuel consumption projections in its final report and identify the information as preliminary.

(v) If the manufacturer cannot provide any of the required fuel consumption information, it must state the specific reason for the insufficiency and identify the additional testing needed or explain what analytical methods are believed by the manufacturer will be necessary to eliminate the insufficiency and certify that the results will be available for the final report.

(2) Contents. Each EOY and final report must be submitted including the following fuel consumption information for each model year. EOY reports contain preliminary final estimates and final reports must include the manufacturer's final compliance information.

(i) Engine and vehicle family designations and averaging sets.

(ii) Engine and vehicle regulatory subcategory and fuel consumption standards including any alternative standards used.

(iii) Engine and vehicle family FCLs and FELs in terms of fuel consumption.

(iv) Production volumes for engines and vehicles.

(v) A summary as specified in paragraph (g)(7) of this section describing the vocational vehicles and vocational tractors that were exempted

as heavy-duty off-road vehicles. This applies to manufacturers participating and not participating in the ABT program.

(vi) A summary describing any advanced or innovative technology engines or vehicles including alternative fueled vehicles that were produced for the model year identifying the approaches used to determinate compliance and the production volumes.

(vii) A list of each unique subconfiguration included in a manufacturer's fleet of heavy-duty pickup trucks and vans identifying the attribute based-values (GVWR, GCWR, Curb Weight, and drive configurations) and standards. This provision applies only to manufacturers producing heavy-duty pickup trucks and vans.

(viii) The fuel consumption fleet average standard derived from the unique vehicle configurations. This provision applies only to manufacturers producing heavy-duty pickup trucks and vans.

(ix) The subconfiguration and test group production volumes. This provision applies only to manufacturers producing heavy-duty pickup trucks and vans.

(x) The fuel consumption test group results and fleet average performance. This provision applies only to manufacturers producing heavy-duty pickup trucks and vans.

(xi) Manufacturers may correct errors in EOY and final reports as follows:

(A) Manufacturers may correct any errors in their end-of-year report when preparing the final report, as long as manufacturers send us the final report by the time it is due.

(B) If manufacturers or the agencies determine within 270 days after the end of the model year that errors mistakenly decreased he manufacturer's balance of fuel consumption credits, manufacturers may correct the errors and recalculate the balance of its fuel consumption credits. Manufacturers may not make any corrections for errors that are determined more than 270 days after the end of the model year. If manufacturers report a negative balance of fuel consumption credits, NHTSA may disallow corrections under this paragraph (d)(2)(xi)(B).

(C) If manufacturers or the agencies determine any time that errors mistakenly increased its balance of fuel consumption credits, manufacturers must correct the errors and recalculate the balance of fuel consumption credits.

(xii) Under limited conditions, NHTSA may also ask a manufacturer to provide additional information directly to the Administrator, if necessary, to verify the fuel consumption requirements of this regulation.

(e) *Amendments to applications for certification.* At any time, a manufacturer modifies an application for certification in accordance with 40 CFR 1036.225 and 1037.225, it must submit GHG emissions changes with equivalent fuel consumption values for the information required in paragraphs (b) through (e) and (h) of this section.

(f) *Confidential information.* Manufacturers must submit a request for confidentiality with each electronic submission specifying any part of the for information or data in a report that it believes should be withheld from *public* disclosure as trade secret or other confidential business information. Information submitted to EPA should follow EPA guidelines for treatment of confidentiality. Requests for confidential treatment for information submitted to NHTSA must be filed in accordance with the requirements of 49 CFR part 512, including submission of a request for confidential treatment and the information for which confidential treatment is requested as specified by part 512. For any information or data requested by the manufacturer to be withheld under 5 U.S.C. 552(b)(4) and 49 U.S.C. 32910(c), the manufacturer shall present arguments and provide evidence in its request for confidentiality demonstrating that—

(1) The item is within the scope of 5 U.S.C. 552(b)(4) and 49 U.S.C. 32910(c);

(2) The disclosure of the information at issue would cause significant competitive damage;

(3) The period during which the item must be withheld to avoid that damage; and

(4) How earlier disclosure would result in that damage.

(g) *Additional required information.* The following additional information is required to be submitted through the EPA database. NHTSA reserves the right to ask a manufacturer to provide additional information, if necessary, to verify the fuel consumption requirements of this regulation.

(1) *Small businesses.* For model years 2013 through 2020, vehicles and engines produced by small business manufacturers meeting the criteria in 13 CFR 121.201 are exempted from the requirements of this part. Qualifying small business manufacturers must notify EPA and NHTSA Administrators before importing or introducing into U.S. commerce exempted vehicles or engines. This notification must include a description of the manufacturer's qualification as a small business under 13 CFR 121.201. Manufacturers must submit this notification to EPA, and EPA will provide the notification to NHTSA. The agencies may review a manufacturer's qualification as a small business manufacturer under 13 CFR 121.201.

(2) *Emergency vehicles.* For model years 2021 and later, emergency vehicles produced by heavy-duty pickup truck and van manufacturers are exempted except those produced by manufacturers voluntarily complying with standards in § 535.5(a). Manufacturers must notify the agencies in writing if using the provisions in § 535.5(a) to produce exempted emergency vehicles in a given model year, either in the report specified in 40 CFR 86.1865 or in a separate submission.

(3) *Early introduction.* The provision applies to manufacturers seeking to comply early with the NHTSA's fuel consumption program prior to model year 2014. The manufacturer must send the request to EPA before submitting its first application for a certificate of conformity.

(4) *NHTSA voluntary compliance model years.* Manufacturers must submit a statement declaring whether the manufacturer chooses to comply voluntarily with NHTSA's fuel consumption standards for model years 2014 through 2015. The manufacturers must acknowledge that once selected, the decision cannot be reversed and the manufacturer will continue to comply with the fuel consumption standards for subsequent model years. The manufacturer must send the statement to EPA before submitting its first application for a certificate of conformity.

(5) *Alternative engine standards.* Manufacturers choosing to comply with the alternative engine standards must notify EPA and NHTSA of their choice and include in that notification a demonstration that it has exhausted all available credits and credit opportunities. The manufacturer must send the statement to EPA before submitting its EOY report.

(6) *Alternate phase-in.* Manufacturers choosing to comply with the alternative engine phase-in must notify EPA and NHTSA of their choice. The manufacturer must send the statement to EPA before submitting its first application for a certificate of conformity.

(7) *Off-road exclusion (tractors and vocational vehicles only).* (i) Tractors and vocational vehicles primarily designed to perform work in off-road environments such as forests, oil fields, and construction sites may be exempted without request from the requirements of this regulation as specified in 49 CFR

523.2 and § 535.5(b). Within 90 days after the end of each model year, manufacturers must send EPA and NHTSA through the EPA database a report with the following information:

(A) A description of each excluded vehicle configuration, including an explanation of why it qualifies for this exclusion.

(B) The number of vehicles excluded for each vehicle configuration.

(ii) A manufacturer having an off-road vehicle failing to meet the criteria under the agencies' off-road exclusions will be allowed to request an exclusion of such a vehicle from EPA and NHTSA. The approval will be granted through the certification process for the vehicle family and will be done in collaboration between EPA and NHTSA in accordance with the provisions in 40 CFR 1037.150, 1037.210, and 1037.631.

(8) *Vocational tractors.* Tractors intended to be used as vocational tractors may comply with vocational vehicle standards in § 535.5(b) of this regulation. Manufacturers classifying tractors as vocational tractors must provide a description of how they meet the qualifications in their applications for certificates of conformity as specified in 40 CFR 1037.205.

(9) *Approval of alternate methods to determine drag coefficients (tractors only).* Manufacturers seeking to use alternative methods to determine aerodynamic drag coefficients must provide a request and gain approval by EPA in accordance with 40 CFR 1037.525. The manufacturer must send the request to EPA before submitting its first application for a certificate of conformity.

(10) *Innovative and off-cycle technology credits.* Manufacturers pursuing innovative and off-cycle technology credits must submit information to the agencies and may be subject to a public evaluation process in which the public would have opportunity for comment if the manufacturer is not using a test procedure in accordance with 40 CFR 1037.610(c). Whether the approach involves on-road testing, modeling, or some other analytical approach, the manufacturer would be required to present a final methodology to EPA and NHTSA. EPA and NHTSA would approve the methodology and credits only if certain criteria were met. Baseline emissions and fuel consumption and control emissions and fuel consumption would need to be clearly demonstrated over a wide range of real-world driving conditions and over a sufficient number of vehicles to address issues of uncertainty with the data. Data would need to be on a vehicle model-specific basis unless a manufacturer demonstrated model-specific data was not necessary. The agencies may publish a notice of availability in the **Federal Register** notifying the public of a manufacturer's proposed alternative off-cycle credit calculation methodology and provide opportunity for comment. Any notice will include details regarding the methodology, but not include any Confidential Business Information.

(11) *Credit trades.* If a manufacturer trades fuel consumption credits, it must send EPA and NHTSA a fuel consumption credit plan as specified in § 535.7(a) and provide the following additional information:

(i) As the seller, the manufacturer must include the following information:

(A) The corporate names of the buyer and any brokers.

(B) A copy of any contracts related to the trade.

(C) The averaging set corresponding to the engine and powertrain families and sub-families that generated fuel consumption credits for the trade, including the number of fuel consumption credits from each averaging set.

(ii) As the buyer, the manufacturer or entity must include the following information in its report:

(A) The corporate names of the seller and any brokers.

(B) A copy of any contracts related to the trade.

(C) How the manufacturer or entity intends to use the fuel consumption credits, including the number of fuel consumption credits it intends to apply for each averaging set.

(D) A copy of the contract with signatures from both the buyer and the seller.

(12) *Production reports.* Within 90 days after the end of the model year and no later than March 31st, manufacturers participating and not-participating in the ABT program must send to EPA and NHTSA a report including the total U.S.-directed production volume of vehicles it produced in each vehicle and engine family during the model year (based on information available at the time of the report) as required by 40 CFR 1036.250 and 1037.250. Each manufacturer shall report by vehicle or engine identification number and by configuration and identify the subfamily identifier. Report uncertified vehicles sold to secondary vehicle manufacturers. Small business manufacturers may omit reporting. Identify any differences between volumes included for EPA but excluded for NHTSA.

(13) *Transition to engine-based model years.* The following provisions apply for production and ABT reports during the transition to engine-based model year determinations for tractors and vocational vehicles in 2020 and 2021:

(i) If a manufacturer installs model year 2020 or earlier engines in the manufacturer's vehicles in calendar year 2020, include all those Phase 1 vehicles in its production and ABT reports related to model year 2020 compliance, although the agencies may require the manufacturer to identify these separately from vehicles produced in calendar year 2019.

(ii) If a manufacturer installs model year 2020 engines in its vehicles in calendar year 2021, submit production and ABT reports for those Phase 1 vehicles separate from the reports it submits for Phase 2 vehicles with model year 2021 engines.

(h) *Public information.* Based upon information submitted by manufacturers and EPA, NHTSA will publish fuel consumption standards and performance results.

(i) *Information received from EPA.* NHTSA will receive information from EPA as specified in 40 CFR 1036.755 and 1037.755. If NHTSA or EPA finds that information is provided fraudulent or grossly negligent or otherwise provided in bad faith, the manufacturer may be liable to civil penalties in accordance with each agency's authority.

(j) *Recordkeeping.* NHTSA has the same recordkeeping requirements as the EPA, specified in 40 CFR 86.1865–12(k), 1036.250, 1036.735, 1036.825, 1037.250, 1037.735, and 1037.825. The agencies each reserve the right to request information contained in reports separately.

(1) Manufacturers must organize and maintain records for NHTSA as described in this section. NHTSA in conjunction or separately from EPA may review a manufacturers records at any time.

(2) Keep the records required by this section for at least eight years after the due date for the end-of-year report. Manufacturers may not use fuel consumption credits for any engines if it does not keep all the records required under this section. Manufacturers must therefore keep these records to continue to bank valid credits. Store these records in any electronic format and on any media, as long as the manufacturer can promptly send the agencies organized records in English if the agencies ask for them. Manufacturers must keep these records readily available. NHTSA may review them at any time.

(3) Keep a copy of the reports required in § 535.8 and 40 CFR 1036.725,1036.730, 1037.725 and 1037.730.

(4) Keep records of the vehicles and engine identification number (usually the serial number) for each vehicle and engine produced that generates or uses fuel consumption credits under the ABT program. Manufacturers may identify these numbers as a range. If manufacturers change the FEL after the start of production, identify the date started using each FEL/FCL and the range of vehicles or engine identification numbers associated with each FEL/FCL. Manufacturers must also identify the purchaser and destination for each vehicle and engine produced to the extent this information is available.

(5) The agencies may require manufacturers to keep additional records or to send relevant information not required by this section in accordance with each agency's authority.

(6) If collected separately and NHTSA finds that information is provided fraudulent or grossly negligent or otherwise provided in bad faith, the manufacturer may be liable to civil penalties in accordance with each agency's authority.

§ 535.9 Enforcement approach.

(a) *Compliance.* (1) Each year NHTSA will assess compliance with fuel consumption standards as specified in § 535.10.

(i) NHTSA may conduct audits or confirmatory testing prior to first sale throughout a given model year or after the model year in order to validate data received from manufacturers and will discuss any potential issues with EPA and the manufacturer. NHTSA will perform confirmatory testing as specified in the EPA requirements defined in 40 CFR 1037.150, 1037.201 and 1037.235. Audits may periodically be performed to confirm manufacturers' credit balances, or other credit transactions or other information submitted to EPA and NHTSA.

(ii) NHTSA may also conduct field inspections either at manufacturing plants or at new vehicle dealerships to validate data received from manufacturers. Field inspections will be carried out in order to validate the condition of vehicles, engines or technology prior to first commercial sale to verify each component's certified configuration as initially built. NHTSA reserves the right to conduct inspections at other locations but will target only those components for which a violation would apply to OEMs and not the fleets or vehicle owners. Compliance inspections could be carried out through a number of approaches including during safety inspections or during compliance safety testing.

(iii) NHTSA will conduct audits and inspections in the same manner and, when possible, in conjunction with EPA. NHTSA will also attempt to coordinate inspections with EPA and share results.

(iv) Documents collected under NHTSA safety authority may be used to support fuel efficiency audits and inspections.

(v) NHTSA may require a manufacturer to perform selective enforcement audits with respect to any GEM inputs in its application for certification or in the end of the year ABT final reports. Selective enforcement audits will be conducted similar to EPA's as defined in 40 CFR 1037.301, 40 CFR 1037.305 and 1037.320.

(2) At the end of each model year NHTSA will confirm a manufacturer's fleet or family performance values against the applicable standards and, if a manufacturer uses a credit flexibility, the amount of credits in each averaging set. The averaging set balance is based upon the engines or vehicles performance above or below the applicable regulatory subcategory standards in each respective averaging set and any credits that are traded into or out of an averaging set during the model year.

(i) If the balance is positive, the manufacturer is designated as having a credit surplus.

(ii) If the balance is negative, the manufacturer is designated as having a credit deficit.

(iii) NHTSA will provide notification to each manufacturer confirming its credit balance(s) after the end of each model year directly or through EPA.

(3) Manufacturer are required to confirm the negative balance and submit a fuel consumption credit plan as specified in § 535.7(a) along with supporting documentation indicating how it will allocate existing credits or earn (providing information on future vehicles, engines or technologies), and/or acquire credits, or else be liable for a civil penalty as determined in paragraph (b) of this section. The manufacturer must submit the information within 60 days of receiving agency notification.

(4) Credit shortfall within an averaging set may be carried forward only three years, and if not offset by earned or traded credits, the manufacturer may be liable for a civil penalty as described in paragraph (b) of this section.

(5) Credit allocation plans received from a manufacturer will be reviewed and approved by NHTSA. NHTSA will approve a credit allocation plan unless it determines that the proposed credits are unavailable or that it is unlikely that the plan will result in the manufacturer earning or acquiring sufficient credits to offset the subject credit shortfall. In the case where a manufacturer submits a plan to acquire future model year credits earned by another manufacturer, NHTSA will require a signed agreement by both manufacturers to initiate a review of the plan. If a plan is approved, NHTSA will revise the respective manufacturer's credit account accordingly by identifying which existing or traded credits are being used to address the credit shortfall, or by identifying the manufacturer's plan to earn future credits for addressing the respective credit shortfall. If a plan is rejected, NHTSA will notify the respective manufacturer and request a revised plan. The manufacturer must submit a revised plan within 14 days of receiving agency notification. The agency will provide a manufacturer one opportunity to submit a revised credit allocation plan before it initiates civil penalty proceedings.

(6) For purposes of this regulation, NHTSA will treat the use of future credits for compliance, as through a credit allocation plan, as a deferral of civil penalties for non-compliance with an applicable fuel consumption standard.

(7) If NHTSA receives and approves a manufacturer's credit allocation plan to earn future credits within the following three model years in order to comply with regulatory obligations, NHTSA will defer levying civil penalties for non-compliance until the date(s) when the manufacturer's approved plan indicates that credits will be earned or acquired to achieve compliance, and upon receiving confirmed CO_2 emissions and fuel consumption data from EPA. If the manufacturer fails to acquire or earn sufficient credits by the plan dates, NHTSA will initiate civil penalty proceedings.

(8) In the event that NHTSA fails to receive or is unable to approve a plan for a non-compliant manufacturer due to insufficiency or untimeliness, NHTSA may initiate civil penalty proceedings.

(9) In the event that a manufacturer fails to report accurate fuel consumption data for vehicles or engines covered under this rule, noncompliance will be assumed until corrected by submission of the required data, and NHTSA may initiate civil penalty proceedings.

(10) If EPA suspends or revoke a certificate of conformity as specified in 40 CFR 1036.255 or 1037.255, and a manufacturer is unable to take a corrective action allowed by EPA, noncompliance will be assumed, and NHTSA may initiate civil penalty proceedings or revoke fuel consumption credits.

(b) *Civil penalties.* (1) *Generally.* NHTSA may assess a civil penalty for any violation of this part under 49 U.S.C. 32902(k). This section states the procedures for assessing civil penalties for violations of § 535.3(h). The provisions of 5 U.S.C. 554, 556, and 557 do not apply to any proceedings conducted pursuant to this section.

(2) *Initial determination of noncompliance.* An action for civil penalties is commenced by the execution of a Notice of Violation. A determination by NHTSA's Office of Enforcement of noncompliance with applicable fuel consumption standards utilizing the certified and reported CO_2 emissions and fuel consumption data provided by the Environmental Protection Agency as described in this part, and after considering all the flexibilities available under § 535.7, underlies a Notice of Violation. If NHTSA Enforcement determines that a manufacturer's averaging set of vehicles or engines fails to comply with the applicable fuel consumption standard(s) by generating a credit shortfall, the incomplete vehicle, complete vehicle or engine manufacturer, as relevant, shall be subject to a civil penalty.

(3) *Numbers of violations and maximum civil penalties.* Any violation shall constitute a separate violation with respect to each vehicle or engine within the applicable regulatory averaging set. The maximum civil penalty is not more than $37,500.00 per vehicle or engine. The maximum civil penalty under this section for a related series of violations shall be determined by multiplying $37,500.00 times the vehicle or engine production volume for the model year in question within the regulatory averaging set. NHTSA may adjust this civil penalty amount to account for inflation.

(4) *Factors for determining penalty amount.* In determining the amount of any civil penalty proposed to be assessed or assessed under this section, NHTSA shall take into account the gravity of the violation, the size of the violator's business, the violator's history of compliance with applicable fuel consumption standards, the actual fuel consumption performance related to the applicable standards, the estimated cost to comply with the regulation and applicable standards, the quantity of vehicles or engines not complying, and the effect of the penalty on the violator's ability to continue in business. The ''estimated cost to comply with the regulation and applicable standards,'' will be used to ensure that penalties for non-compliance will not be less than the cost of compliance.

(5) *NHTSA enforcement report of determination of non-compliance.* (i) If NHTSA Enforcement determines that a violation has occurred, NHTSA Enforcement may prepare a report and send the report to the NHTSA Chief Counsel.

(ii) The NHTSA Chief Counsel will review the report prepared by NHTSA Enforcement to determine if there is sufficient information to establish a likely violation.

(iii) If the Chief Counsel determines that a violation has likely occurred, the Chief Counsel may issue a Notice of Violation to the party.

(iv) If the Chief Counsel issues a Notice of Violation, he or she will prepare a case file with recommended actions. A record of any prior violations by the same party shall be forwarded with the case file.

(6) *Notice of violation.* (i) The Notice of Violation will contain the following information:

(A) The name and address of the party;

(B) The alleged violation(s) and the applicable fuel consumption standard(s) violated;

(C) The amount of the proposed penalty and basis for that amount;

(D) The place to which, and the manner in which, payment is to be made;

(E) A statement that the party may decline the Notice of Violation and that if the Notice of Violation is declined within 30 days of the date shown on the Notice of Violation, the party has the right to a hearing, if requested within 30 days of the date shown on the Notice of Violation, prior to a final assessment of a penalty by a Hearing Officer; and

(F) A statement that failure to either pay the proposed penalty or to decline the Notice of Violation and request a hearing within 30 days of the date shown on the Notice of Violation will result in a finding of violation by default and that NHTSA will proceed with the civil penalty in the amount proposed on the Notice of Violation without processing the violation under the hearing procedures set forth in this subpart.

(ii) The Notice of Violation may be delivered to the party by—

(A) Mailing to the party (certified mail is not required);

(B) Use of an overnight or express courier service; or

(C) Facsimile transmission or electronic mail (with or without attachments) to the party or an employee of the party.

(iii) At any time after the Notice of Violation is issued, NHTSA and the party may agree to reach a compromise on the payment amount.

(iv) Once a penalty amount is paid in full, a finding of ''resolved with payment'' will be entered into the case file.

(v) If the party agrees to pay the proposed penalty, but has not made payment within 30 days of the date shown on the Notice of Violation, NHTSA will enter a finding of violation by default in the matter and NHTSA will proceed with the civil penalty in the amount proposed on the Notice of Violation without processing the violation under the hearing procedures set forth in this subpart.

(vi) If within 30 days of the date shown on the Notice of Violation a party fails to pay the proposed penalty on the Notice of Violation, and fails to request a hearing, then NHTSA will enter a finding of violation by default in the case file, and will assess the civil penalty in the amount set forth on the Notice of Violation without processing the violation under the hearing procedures set forth in this subpart.

(vii) NHTSA's order assessing the civil penalty following a party's default is a final agency action.

(7) *Hearing Officer.* (i) If a party timely requests a hearing after receiving a Notice of Violation, a Hearing Officer shall hear the case.

(ii) The Hearing Officer will be appointed by the NHTSA Administrator, and is solely responsible for the case referred to him or her. The Hearing Officer shall have no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties. The Hearing Officer shall have no duties related to the light-duty fuel economy or medium- and heavy-duty fuel efficiency programs.

(iii) The Hearing Officer decides each case on the basis of the information before him or her.

(8) *Initiation of action before the Hearing Officer.* (i) After the Hearing Officer receives the case file from the Chief Counsel, the Hearing Officer notifies the party in writing of—

(A) The date, time, and location of the hearing and whether the hearing will be conducted telephonically or at the DOT Headquarters building in Washington, DC;

(B) The right to be represented at all stages of the proceeding by counsel as set forth in paragraph (b)(9) of this section; and

(C) The right to a free copy of all written evidence in the case file.

(ii) On the request of a party, or at the Hearing Officer's direction, multiple proceedings may be consolidated if at any time it appears that such consolidation is necessary or desirable.

(9) *Counsel.* A party has the right to be represented at all stages of the proceeding by counsel. A party electing to be represented by counsel must notify the Hearing Officer of this election in writing, after which point the Hearing Officer will direct all further communications to that counsel. A party represented by counsel bears all of its own attorneys' fees and costs.

(10) *Hearing location and costs.* (i) Unless the party requests a hearing at which the party appears before the Hearing Officer in Washington, DC, the hearing may be held telephonically. In Washington, DC, the hearing is held at the headquarters of the U.S. Department of Transportation.

(ii) The Hearing Officer may transfer a case to another Hearing Officer at a party's request or at the Hearing Officer's direction.

(iii) A party is responsible for all fees and costs (including attorneys' fees and costs, and costs that may be associated with travel or accommodations) associated with attending a hearing.

(11) *Hearing procedures.* (i) There is no right to discovery in any proceedings conducted pursuant to this subpart.

(ii) The material in the case file pertinent to the issues to be determined by the Hearing Officer is presented by the Chief Counsel or his or her designee.

(iii) The Chief Counsel may supplement the case file with information prior to the hearing. A copy of such information will be provided to the party no later than three business days before the hearing.

(iv) At the close of the Chief Counsel's presentation of evidence, the party has the right to examine respond to and rebut material in the case file and other information presented by the Chief Counsel. In the case of witness testimony, both parties have the right of cross- examination.

(v) In receiving evidence, the Hearing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Hearing Officer must give due consideration to the reliability and relevance of each item of evidence.

(vi) At the close of the party's presentation of evidence, the Hearing Officer may allow the introduction of rebuttal evidence that may be presented by the Chief Counsel.

(vii) The Hearing Officer may allow the party to respond to any rebuttal evidence submitted.

(viii) After the evidence in the case has been presented, the Chief Counsel and the party may present arguments on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer and for further review. If granted, the Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the time prescribed, or within the limits of any extension of time granted by the Hearing Officer, it need not be considered by the Hearing Officer.

(ix) A verbatim transcript of the hearing will not normally be prepared. A party may, solely at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made, the party shall submit two copies to the Hearing Officer not later than 15 days after the hearing. The Hearing Officer shall include such transcript in the record.

(12) *Determination of violations and assessment of civil penalties.* (i) Not later than 30 days following the close of the hearing, the Hearing Officer shall issue a written decision on the Notice of Violation, based on the hearing record. This may be extended by the Hearing officer if the submissions by the Chief Counsel or the party are voluminous. The decision shall address each alleged violation, and may do so collectively. For each alleged violation, the decision shall find a violation or no violation and provide a basis for the finding. The decision shall set forth the basis for the Hearing Officer's assessment of a civil penalty, or decision not to assess a civil penalty. In determining the amount of the civil penalty, the gravity of the violation, the size of the violator's business, the violator's history of compliance with applicable fuel consumption standards, the actual fuel consumption performance related to the applicable standard, the estimated cost to comply with the regulation and applicable standard, the quantity of vehicles or engines not complying, and the effect of the penalty on the violator's ability to continue in business. The assessment of a civil penalty by the Hearing Officer shall be set forth in an accompanying final order. The Hearing Officer's written final order is a final agency action.

(ii) If the Hearing Officer assesses civil penalties in excess of $1,000,000, the Hearing Officer's decision shall contain a statement advising the party of the right to an administrative appeal to the Administrator within a specified period of time. The party is advised that failure to submit an appeal within the prescribed time will bar its consideration and that failure to appeal on the basis of a particular issue will constitute a waiver of that issue in its appeal before the Administrator.

(iii) The filing of a timely and complete appeal to the Administrator of a Hearing Officer's order assessing a civil penalty shall suspend the operation of the Hearing Officer's penalty, which shall no longer be a final agency action.

(iv) There shall be no administrative appeals of civil penalties assessed by a Hearing Officer of less than $1,000,000.

(13) *Appeals of civil penalties in excess of $1,000,000.* (i) A party may appeal the Hearing Officer's order assessing civil penalties over $1,000,000 to the Administrator within 21 days of the date of the issuance of the Hearing Officer's order.

(ii) The Administrator will review the decision of the Hearing Officer de novo, and may affirm the decision of the hearing officer and assess a civil penalty, or

(iii) The Administrator may—

(A) Modify a civil penalty;

(B) Rescind the Notice of Violation; or

(C) Remand the case back to the Hearing Officer for new or additional proceedings.

(iv) In the absence of a remand, the decision of the Administrator in an appeal is a final agency action.

(14) *Collection of assessed or compromised civil penalties.* (i) Payment of a civil penalty, whether assessed or compromised, shall be made by check, postal money order, or electronic transfer of funds, as provided in instructions by the agency. A payment of civil penalties shall not be considered a request for a hearing.

(ii) The party must remit payment of any assessed civil penalty to NHTSA within 30 days after receipt of the Hearing Officer's order assessing civil penalties, or, in the case of an appeal to the Administrator, within 30 days after receipt of the Administrator's decision on the appeal.

(iii) The party must remit payment of any compromised civil penalty to NHTSA on the date and under such terms and conditions as agreed to by the party and NHTSA. Failure to pay may result in NHTSA entering a finding of violation by default and assessing a civil penalty in the amount proposed in the Notice of Violation without processing

the violation under the hearing procedures set forth in this part.

(c) *Changes in corporate ownership and control.* Manufacturers must inform NHTSA of corporate relationship changes to ensure that credit accounts are identified correctly and credits are assigned and allocated properly.

(1) In general, if two manufacturers merge in any way, they must inform NHTSA how they plan to merge their credit accounts. NHTSA will subsequently assess corporate fuel consumption and compliance status of the merged fleet instead of the original separate fleets.

(2) If a manufacturer divides or divests itself of a portion of its automobile manufacturing business, it must inform NHTSA how it plans to divide the manufacturer's credit holdings into two or more accounts. NHTSA will subsequently distribute holdings as directed by the manufacturer, subject to provision for reasonably anticipated compliance obligations.

(3) If a manufacturer is a successor to another manufacturer's business, it must inform NHTSA how it plans to allocate credits and resolve liabilities per 49 CFR part 534.

§ 535.10 How do manufacturers comply with fuel consumption standards?

(a) Pre-certification process. (1) Regulated manufacturers determine eligibility to use exemptions or exclusions in accordance with § 535.3.

(2) Manufacturers may seek preliminary approvals as specified in 40 CFR 1036.210 and 40 CFR 1037.210 from EPA and NHTSA, if needed. Manufacturers may request to schedule pre- certification meetings with EPA and NHTSA prior to submitting approval requests for certificates of conformity to address any joint compliance issues and gain informal feedback from the agencies.

(3) The requirements and prohibitions required by EPA in special circumstances in accordance with 40 CFR 1037.601 and 40 CFR part 1068 apply, except for the warranty provisions in 40 CFR 1037.601(a)(5), to manufacturers for the purpose of complying with fuel consumption standards. Manufacturers should use good judgment when determining how EPA requirements apply in complying with the NHTSA program. Manufacturers may contact NHTSA and EPA for clarification about how these requirements apply to them.

(4) In circumstances in which EPA provides multiple compliance approaches manufacturers must choose the same compliance path to comply with NHTSA's fuel consumption standards that they choose to comply with EPA's greenhouse gas emission standards.

(5) Manufacturers may not introduce new vehicles into commerce without a certificate of conformity from EPA. Manufacturers must attest to several compliance standards in order to obtain a certificate of conformity. This includes stating comparable fuel consumption results for all required CO_2 emissions rates. Manufacturers not completing these steps do not comply with the NHTSA fuel consumption standards.

(6) Manufacturers apply the fuel consumption standards specified in § 535.5 to vehicles, engines and components that represent production units and components for vehicle and engine families, sub-families and configurations consistent with the EPA specifications in 40 CFR 86.1819, 1036.230, and 1037.230. Vehicles required to meet the fuel consumption standards of this part must also comply with the same requirements as specified in 40 CFR 1037.115.

(7) Only certain vehicles and engines are allowed to comply differently between the NHTSA and EPA programs as detailed in this section. These vehicles and engines must be identified by manufacturers in the ABT and production reports required in § 535.8.

(b) *Model year compliance.* Manufacturers are required to conduct testing to demonstrate compliance with CO_2 exhaust emissions standards in accordance with EPA's provisions in 40 CFR part 600, subpart B, 40 CFR 1036, subpart F, 40 CFR part 1037, subpart R, and 40 CFR part 1066. Manufacturers determine equivalent fuel consumption performance values for CO_2 results as specified in § 535.6 and demonstrate compliance by comparing equivalent results to the applicable fuel consumption standards in § 535.5.

(c) *End-of-the-year process.* Manufacturers comply with fuel consumption standards after the end of each model year, if—

(1) For heavy-duty pickup trucks and vans, the manufacturer's fleet average performance, as determined in § 535.6, is less than the fleet average standard; or

(2) For truck tractors, vocational vehicles and engines the manufacturer's fuel consumption performance for each vehicle or engine family (or sub-family), as determined in § 535.6, is lower than the applicable regulatory subcategory standards in § 535.5.

(4) NHTSA will use the EPA final verified values as specified in 40 CFR 86.1819, 40 CFR 1036.755, and 1037.755 for making final determinations on whether vehicles and engines comply with fuel consumption standards.

(5) A manufacturer fails to comply with fuel consumption standards if its final reports are not provided in accordance with § 535.8 and 40 CFR 86.1865, 1036.730, and 1037.730. Manufacturers not providing complete or accurate final reports or any plans by the required deadlines do not comply with fuel consumption standards. A manufacturer that is unable to provide any emissions results along with comparable fuel consumption values must obtain permission for EPA to exclude the results prior to the deadline for submitting final reports.

(6) A manufacturer that would otherwise fail to directly comply with fuel consumption standards as described in paragraphs (c)(1) through (3) of this section may use one or more of the credit flexibilities provided under the NHTSA averaging, banking and trading program, as specified in § 535.7, but must offset all credit deficits in its averaging sets to achieve compliance.

(7) A manufacturer failing to comply with the provisions specified in this part may be liable to pay civil penalties in accordance with § 535.9.

(8) A manufacturer may also be liable to pay civil penalties if found by EPA or NHTSA to have provided false information as identified through NHTSA or EPA enforcement audits or new vehicle verification testing as specified in § 535.9 and 40 CFR parts 86, 1036, and 1037.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 49 CFR 501.5.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–17134 Filed 9–12–22; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL REGISTER

Vol. 87 Tuesday,
No. 176 September 13, 2022

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plans for Puerto Rico, St. Croix, and St. Thomas and St. John; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 220825–0173]

RIN 0648–BD32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plans for Puerto Rico, St. Croix, and St. Thomas and St. John

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations to implement management measures in three new fishery management plans (FMPs), as prepared and submitted by the Caribbean Fishery Management Council (Council). This final rule replaces regulations implementing the U.S. Caribbean region-wide FMPs with regulations implementing the approved island-based FMPs. The purpose of the island-based FMPs is to update management of Federal fisheries in the U.S. Caribbean. NMFS expects these management measures will better account for differences among the U.S. Caribbean islands with respect to culture, markets, fishing gear used, seafood preferences, and ecological impacts.

DATES: This final rule is effective October 13, 2022. The Director approves the redesignation of the incorporation by reference from § 622.413 to § 622.19 as of October 13, 2022.

ADDRESSES: Electronic copies of the island-based FMPs may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/caribbean-island-based-fishery-management-plans.* Each island-based FMP includes an environmental assessment (EA), regulatory impact review, and fishery impact statement. A Regulatory Flexibility Act (RFA) analysis for each island-based FMP has also been prepared and is available at the Southeast Regional Office website.

FOR FURTHER INFORMATION CONTACT: María del Mar López-Mercer, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Council and NMFS manage fishery resources in the U.S. Caribbean exclusive economic zone (EEZ) around Puerto Rico, St. Croix, and St. Thomas and St. John through FMPs prepared by the Council and NMFS, and through implementing regulations promulgated by NMFS at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 26, 2020, NMFS published a notice of availability for the island-based FMPs and requested public comment (85 FR 38350). On September 22, 2020, the Secretary of Commerce approved the island-based FMPs under section 304(a)(3) of the Magnuson-Stevens Act. On May 19, 2022, NMFS published a proposed rule for the island-based FMPs and requested public comment (87 FR 30730). The proposed rule and the island-based FMPs outline the rationale for the actions contained in this final rule. A summary of the management measures described in the island-based FMPs and implemented by this final rule is described below.

Background

The Council and NMFS currently manage fisheries under four U.S. Caribbean-wide FMPs for Puerto Rico and the U.S. Virgin Islands (USVI). These are the FMPs for the Reef Fish Fishery of Puerto Rico and the USVI (Reef Fish FMP), the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP), the FMP for the Queen Conch Resources of Puerto Rico and the USVI (Queen Conch FMP), and the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP). Upon implementation, the island-based FMPs will replace the U.S. Caribbean-wide FMPs.

Under these FMPs and implementing regulations, the Council and NMFS conduct management in the U.S. Caribbean Exclusive Economic Zone (EEZ). However, the Council established certain management measures that apply separately within Federal waters off Puerto Rico, St. Croix, and St. Thomas and St. John, based on the availability of island-specific data. For example, Amendment 5 to the Reef Fish FMP and Amendment 2 to the Queen Conch FMP (2010 Caribbean Annual Catch Limit Amendment; 76 FR 82404; December 30, 2011), defined the fishery management boundaries of the U.S. Caribbean EEZ around Puerto Rico, St. Croix, and St. Thomas and St. John. Those FMP amendments, and later amendments, established separate, island-specific annual catch limits (ACLs) and accountability measures (AMs) for almost all species under management.

In 2012, the Council initiated public discussion of an island-based approach to the management of fisheries in the U.S. Caribbean EEZ to address requests from fishermen, fishing community representatives, and the governments of Puerto Rico and the USVI that the Council consider the differences among the islands when addressing fisheries management in the U.S. Caribbean. These entities highlighted the unique characteristics of the fishery resources within each island or island group, and the communities that are dependent on those resources. NMFS and the Council expect that the island-based FMPs will better account for differences among the U.S. Caribbean islands with respect to culture, markets, fishing gear used, seafood preferences, and the ecological impacts.

In response to these public requests, the Council decided to shift from a U.S. Caribbean-wide management approach to an island-based management approach, and began developing FMPs for Puerto Rico, St. Croix, and St. Thomas and St. John, respectively. An EA, completed in 2014, analyzed transitioning from U.S. Caribbean-wide to island-based management and evaluated the impact of incorporating the management measures in effect at that time under the U.S. Caribbean-wide FMPs into FMPs for different island management areas. Based on the 2014 EA, the Council proceeded with developing FMPs for three island areas. The island-based FMPs are the Comprehensive FMP for the Puerto Rico EEZ (Puerto Rico FMP), the Comprehensive FMP for the St. Croix EEZ (St. Croix FMP), and the Comprehensive FMP for the St. Thomas and St. John EEZ (St. Thomas and St. John FMP). Each of these FMPs is evaluated in three additional, separate EAs, which were finalized in 2020.

Through this rulemaking, the management measures contained in the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas and St. John FMP, in combination, will replace management measures in the U.S. Caribbean-wide FMPs. The U.S. Caribbean EEZ, also referred to as Federal waters, begins 9 nautical miles (nmi) from shore off Puerto Rico and 3 nmi from shore off the USVI, and the U.S. Caribbean EEZ extends up to 200 nmi from shore, except where the principle of equidistance is applied for conformance to the maritime boundaries of neighboring nations. Federal waters around Puerto Rico, St. Croix, and St. Thomas and St. John are defined as the respective island management areas under the island-based FMPs. Each of the island-based FMPs retain most of

the management measures established under the U.S. Caribbean-wide FMPs that apply to the respective island management area, including seasonal and area closures, minimum size limits, and recreational bag limits. The island-based FMPs also revise certain management measures, such as the species included for Federal management, and ACLs and AMs. This final rule establishes regulations specifically applicable to each island management area under three separate subparts to 50 CFR part 622, and fisheries management will be adapted to the individual characteristics of Puerto Rico, St. Croix, and St. Thomas and St. John.

Management Measures Contained in This Final Rule

The island-based FMPs incorporate fishery management measures included in the U.S. Caribbean-wide Spiny Lobster, Reef Fish, Queen Conch, and Coral FMPs that are applicable to the EEZ around each of the island management areas. This final rule reorganizes the current regulations into island-specific subparts. For example, each island-based FMP retains the aggregate recreational bag limit established in the Reef Fish FMP for groupers, snappers, and parrotfish, and the regulations restate the bag limit in each of the island-specific subparts, though in each island management area, some species may have been added to or removed from management. Restrictions established under the Reef Fish FMP that only applied to a particular management area, such as the minimum size limits for parrotfish off St. Croix, are included in the St. Croix subpart only. The island-based FMPs revise the list of species managed and modify the stock or stock complexes under which those species are managed; revise and specify ACLs; establish annual catch targets (ACTs) for pelagic stocks; revise AMs; and update the FMP framework procedures. These measures are being implemented in regulations specific to each island management area. Certain management reference points, such as stock and stock complex status determination criteria (SDC), are not codified and therefore are not included in this final rule. Those measures are contained in the island-based FMPs.

The management measures under each island-based FMP that will be implemented by this final rule are described in the following sections. For each type of management action, information applicable to all three island management areas is described first, followed by island area-specific modifications, where applicable.

Island-Based Management

This final rule restructures the regulations at 50 CFR part 622 from four subparts corresponding to the U.S. Caribbean-wide FMPs (Reef Fish, Spiny Lobster, Corals and Reef Associated Plants and Invertebrates, and Queen Conch) to three subparts corresponding to island-based FMPs (Puerto Rico, St. Croix, and St. Thomas and St. John) and incorporates U.S. Caribbean-wide management measures, as appropriate, into the appropriate island-specific subpart. In addition, this final rule implements other management measures in the approved island-based FMPs, as discussed further in this final rule.

Selection of Species To Be Managed

The Reef Fish, Spiny Lobster, Queen Conch, and Coral FMPs and the regulations implementing those FMPs include 81 species of reef fish, 58 species of aquarium trade fish, spiny lobster, queen conch, 94 genera or species of corals, and 63 genera or species of aquarium trade invertebrates (see current Table 1 to appendix A of 50 CFR part 622). The Council's Scientific and Statistical Committee (SSC) and the District Advisory Panel from each island management area provided recommendations on the criteria used for the Council to select the species to be managed under each island-based FMP. This final rule specifies the unique list of managed species in each island management area under the respective island-based FMP.

Puerto Rico Species for Management

Spiny lobster, queen conch, 63 species of fish, and all species of corals, sea urchins, and sea cucumbers that occur within the Puerto Rico management area are included for management in the Puerto Rico FMP and in this final rule. Of the 63 species of fish included for management in the EEZ around Puerto Rico, 18 species are new to management.

St. Croix Species for Management

Spiny lobster, queen conch, 43 species of fish, and all species of corals, sea urchins, and sea cucumbers that occur within the St. Croix management area are included for management in the St. Croix FMP and in this final rule. Of the 43 species of fish included for management in the EEZ around St. Croix, 2 species are new to management.

St. Thomas and St. John Species for Management

Spiny lobster, queen conch, 47 species of fish, and all species of corals, sea urchins, and sea cucumbers that occur within the St. Thomas and St. John management area are included for management in the St. Thomas and St. John FMP and in this final rule. Of the 47 species of fish included for management in the EEZ around St. Thomas and St. John, 3 species are new to management.

Stock Complex Organization and Selection of Indicator Stocks

After establishing the species to be managed under each island-based FMP, the Council determined whether to manage those species as individual stocks or in stock complexes. For those managed in stock complexes, the Council determined if one or more indicator stocks should be assigned to the species groups. An indicator stock is a stock with measurable and objective SDC that can be used to help manage and evaluate more poorly known stocks that are in a stock complex (50 CFR 600.310(d)(2)(ii)(A)). In the island-based FMPs, this action resulted in a different organization of stocks than under the U.S. Caribbean-wide FMPs. Thus, under the island-based FMPs and this final rule, a new number of stocks and stock complexes will be managed relative to the U.S. Caribbean-wide FMPs.

Puerto Rico Stock Organization

The Puerto Rico FMP and this final rule apply to species as 18 individual stocks and 19 stock complexes and include 7 indicator stocks.

St. Croix Stock Organization

The St. Croix FMP and this final rule apply to species as 13 individual stocks and 13 stock complexes and includes 6 indicator stocks.

St. Thomas and St. John Stock Organization

The St. Thomas and St. John FMP and this final rule apply to species as 12 individual stocks and 14 stock complexes and includes 9 indicator stocks.

Status Determination Criteria and Other Management Reference Points

The Magnuson-Stevens Act requires that FMPs specify a number of reference points for managed fish stocks, including maximum sustainable yield (MSY) or MSY proxy, as well as stock SDC, including overfished and overfishing thresholds, and acceptable biological catch (ABC).

The ABC control rule contained in each island-based FMP replaces the ABC control rules included in the 2010 Caribbean ACL Amendment and 2011 Caribbean ACL Amendment, as applicable. The island-based FMPs establish SDC and other management reference points for all stocks and stock complexes to be included for island-based management, which were defined following a 3-step process.

Step 1 adopts and applies a 4-tiered ABC control rule to specify MSY, SDC, and ABC depending on differing levels of data availability. Step 2 establishes a proxy to use when the fishing mortality that would produce MSY (F_{MSY}) cannot be determined. Step 3 applies a reduction factor, reflecting the Council's estimate of management uncertainty, to the ABC for each stock or stock complex to specify the ACL for the stock or stock complex. The optimum yield (OY) would be set equal to the ACL for each stock or stock complex.

Under the ABC control rule in each island-based FMP, Tier 1 applies to stocks with the most data available, while each subsequent tier operates with less available data than the preceding tier. Tier 4, the final tier, is the most data limited and applies when no accepted quantitative assessment is available. The tiered approached to the ABC control rule positions the Council to take advantage of future improvements in data and analytical methodologies. The higher tiers of the ABC control rule (*i.e.,* 1, 2, or 3) require inputs from a quantitative stock assessment, which in turn require additional data than were available at the time the island-based FMPs were under development. Establishing those tiers now, in anticipation of improvements in data, allows the Council to act more quickly when those data become available than if the Council adopts an ABC control rule that encompasses the Tier 4 process alone.

In Tier 4, the most data-limited of the options, an MSY proxy and maximum fishing mortality threshold (MFMT), are defined with respect to assumptions made in Step 2 about fishing mortality rate, but cannot be quantified due to data limitations. In addition, Tier 4 introduces a new reference point, the sustainable yield level (SYL), which is determined under one of two sub-tiers, Tier 4a and Tier 4b, based on the SSC's understanding of the stock's vulnerability to fishing pressure. Tier 4a is less conservative and is applicable when the stock has a relatively low or moderate vulnerability to fishing pressure. Tier 4b is more conservative and is applicable when the stock has relatively high vulnerability to fishing pressure. The SYL is a quantitative estimate of the level of landings that can be sustained over the long term. SYL is intended to be used when quantitative information with which to set MSY or an MSY proxy based on fishing mortality rate is not available. The SYL serves as a proxy for the overfishing limit (OFL) and a minimum estimate of MSY where MSY is greater than or equal to SYL. Thus, SYL also is an MSY proxy. The ABC is reduced from the SYL depending on the SSC's determination of scientific uncertainty.

When the island-based FMPs were under development, all stocks and stock complexes fell under Tier 4 of the ABC control rule (Step 1). Under the definitions in Tier 4, the MSY proxy is equal to the long-term yield F_{MSY} proxy, the MFMT is equal to F_{MSY} proxy, and the minimum stock size threshold (MSST) is equal to 75 percent of the spawning stock biomass at MFMT. Under Step 2, for all stocks and stock complexes across all island-areas, the Council established a F_{MSY} proxy equal to 30 percent of the maximum spawning potential of a stock under conditions of no fishing mortality ($F_{30\ percent\ SPR}$).

Applying Tier 4 of the ABC control rule (Step 1), the SSC derived SYLs from a period of stable and sustainable landings, and recommended ABCs based on those SYLs, with certain exceptions discussed in the island-specific sections later in this preamble. Revising or establishing the SDC and other reference points under Tier 4 ensures, based on the best scientific information available, that the SDC and reference points prevent overfishing and achieve OY.

Finally, under Step 3, the Council applied a management uncertainty buffer to the ABCs to specify the ACLs, where the ACL for the stock or stock complex equals OY, as discussed in the island-specific ACL sections later in this preamble.

NMFS notes that except for ACLs, SDC and other management reference points are not codified in this final rule, but are described in each island-based FMP.

Puerto Rico Stock Evaluation

For the Puerto Rico FMP, landings data for Council-managed reef fish, pelagic fish, and rays were available for the commercial and recreational fishing sectors operating in state and Federal waters around Puerto Rico. The Council's SSC relied on landings data to determine an SYL, as a proxy for MSY and OFL, and ABC for most fish stocks and stock complexes, with ACLs set by sector. For spiny lobster, only commercial landings data are collected. Because recreational landings data are not available, the SYL, ABC, and ACL for spiny lobster are based on commercial landings. The SSC determined that some species included for management under the Puerto Rico FMP were more vulnerable to overfishing and recommended that the ABC be set at zero. Stocks with an ABC of zero pounds include queen conch, Nassau grouper (Grouper 1), goliath grouper (Grouper 2), giant manta ray (Rays 1), spotted eagle ray (Rays 2), and southern stingray (Rays 3). Stock complexes with an ABC of zero pounds include Parrotfish 1 (blue parrotfish, midnight parrotfish, and rainbow parrotfish), Sea Cucumbers, Sea Urchins, and Corals. The description of the process for determining the ACLs is discussed below.

St. Croix Stock Evaluation

For the St. Croix FMP, recreational landings data were not available, thus SYL, as proxy for both MSY and OFL, ABC, and ACL for most stocks and stock complexes to be included for management were derived using commercial landings. The SSC determined that some species included for management under the St. Croix FMP were more vulnerable to overfishing and recommended that the ABC be set at zero. Stocks with an ABC of zero pounds include Nassau grouper (Grouper 1) and goliath grouper (Grouper 2). Stock complexes with an ABC of zero pounds include Parrotfish 1 (blue parrotfish, midnight parrotfish, and rainbow parrotfish), Sea Cucumbers, Sea Urchins, and Corals. The SSC deviated from the ABC control rule and recommended an *ad hoc* SYL for queen conch at 107,720 lb (kg 48,861 kg) and recommended an *ad hoc* ABC of 50,000 lb (22,680 kg) in the portion of the EEZ around St. Croix from which harvest is allowed. Given difficulties interpreting queen conch catch data, the SSC recommended retaining the OFL (now SYL) and ABC specified under the Queen Conch FMP. The SSC confirmed these measures are still protective of queen conch stock status. The SSC noted that the seasonal closure for queen conch in state waters is 5 months each year, and that an area in Federal waters is closed to harvest year-round. At Council meetings, including the August 2018 meeting, the Council and SSC agreed that these measures and others, including the availability of in-season conch landings data, sufficiently address the management certainty associated with the recommended ABC. The description of the process for determining the ACLs is discussed later in the preamble to this final rule.

St. Thomas and St. John Stock Evaluation

For the St. Thomas and St. John FMP, recreational landings data were not available, thus SDC and other management reference points (*e.g.,* SYL, as a proxy for both MSY and OFL, ABC, and ACL) for the stocks and stock complexes proposed for management were derived using commercial landings. The SSC determined that some species included for management under the St. Thomas and St. John FMP were more vulnerable to overfishing and recommended that the ABC be set at zero pounds. Stocks with an ABC of zero pounds include queen conch, Nassau grouper (Grouper 1), and goliath grouper (Grouper 2). Stock complexes with an ABC of zero pounds include Parrotfish 1 (blue parrotfish, midnight parrotfish, and rainbow parrotfish), Sea Cucumbers, Sea Urchins, and Corals. The description of the process for determining the ACLs is discussed below.

Annual Catch Limits

This final rule specifies ACLs for all stocks and stock complexes in each island-based FMP. The island-based FMPs establish management reference points (*i.e.,* SYL and ABC) from which the ACLs are derived. This final rule also specifies ACTs for pelagic stocks and stock complexes managed under each island-based FMP.

Puerto Rico ACLs

For the Puerto Rico FMP, landings data for reef fish, pelagic fish, and rays were available for the commercial and recreational fishing sectors operating in state and Federal waters around Puerto Rico. As described previously, the Council relied on landings data to determine ACLs by sector for managed stocks or stock complexes. For spiny lobster and queen conch, only commercial landings data are collected and available. Because recreational landings data are not available for invertebrates, the spiny lobster ACL and the queen conch ACL are based on commercial landings and each ACL applies to all harvest for the stock, whether commercial or recreational.

To determine the ACL, the ABC for each stock or stock complex, including stocks or stock complexes with an ABC of zero, was multiplied by the Council's management uncertainty buffer. For all stocks and stock complexes, except for the angelfish, parrotfish, and surgeonfish stock complexes, the Council adopted a management uncertainty buffer of 0.95, based on their assumption that the buffer from SYL to ABC accounted for much of the limitation in landings information. For this reason, they believed a smaller buffer from ABC to ACL would be adequate to constrain catch to the ACL. For the angelfish, parrotfish, and surgeonfish stock complexes, the Council adopted a management uncertainty buffer of 0.85 to provide additional protection to the stock complexes.

In the event that landings for one sector are not available for comparison to the sector-specific ACL, the sectors will not be separately managed; the ACL for the sector with available data will be the applicable ACL for the entire stock or stock complex. Recreational data collection in Puerto Rico ceased following the 2017 hurricane season. Efforts are underway to resume the recreational data collection. If recreational landings are unavailable, the ACL for the commercial sector will be the ACL for the stock or stock complex.

St. Croix ACLs

For the St. Croix FMP, recreational landings data are not available, thus the Council relied on commercial landings data to determine ACLs for stocks and stock complexes. These ACLs apply to all harvest of St. Croix stocks and stock complexes, whether commercial or recreational.

To determine the ACL, the ABC for each stock or stock complex, including stocks or stock complexes with an ABC of zero, was multiplied by the Council's management uncertainty buffer. For all stocks and stock complexes, except for queen conch and the angelfish, parrotfish, and surgeonfish stock complexes, the Council adopted a management uncertainty buffer of 0.95, based on their assumption that the buffer from SYL to ABC accounted for much of the limitation in landings information. For this reason, the Council believed a smaller buffer from ABC to ACL would be adequate to constrain catch to the ACL. For the angelfish, parrotfish, and surgeonfish stock complexes, which perform an essential ecological function in the coral reef ecosystem, the Council adopted a management uncertainty buffer of 0.85 to provide additional protection to the stock complexes. For queen conch, the Council did not apply a management uncertainty buffer, as this stock is managed with in-season data and additional regulations, such as a commercial and recreational daily quota and bag limit and the 5-month seasonal closure, which the Council considered sufficient to constrain landings to the ACL.

St. Thomas and St. John ACLs

For the St. Thomas and St. John FMP, recreational landings data are not available, thus commercial landings data were used to set ACLs for stocks and stock complexes. These ACLs apply to all harvest of St. Thomas and St. John stocks and stock complexes, whether commercial or recreational.

To determine the ACL, the ABC for each stock or stock complex, including stocks or stock complexes with an ABC of zero, was multiplied by the Council's management uncertainty buffer. For all stocks and stock complexes, except for the angelfish, parrotfish, and surgeonfish stock complexes, the Council adopted a management uncertainty buffer of 0.95, based on their assumption that the buffer from SYL to ABC accounted for much of the limitation in landings information. For this reason, the Council believed a smaller buffer from ABC to ACL would be adequate to constrain catch to the ACL. For the angelfish, parrotfish, and surgeonfish stock complexes, which perform an essential ecological function in the coral reef ecosystem, the Council adopted a management uncertainty buffer of 0.85 to provide additional protection to these stock complexes.

Accountability Measures

This final rule implements the AMs specified in the island-based FMPs and replaces the AMs from the U.S. Caribbean-wide FMPs. For the AMs specified in the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs, reef fish and spiny lobster landings data for each island management area are evaluated relative to the applicable ACL based on a moving 3-year average of landings, using the most recent, complete 3 years of landings data available. For reef fish stocks or stock complexes in the EEZ around Puerto Rico, ACLs are specified by sector and an AM is triggered if both the sector-specific ACL and total ACL (commercial plus recreational) are exceeded, unless NMFS determines that either the sector-specific ACL or the total ACL exceedance resulted from enhanced data collection and monitoring efforts. For reef fish stocks or stock complexes in the EEZ around the USVI and for spiny lobster in all management areas, an AM is triggered if commercial landings exceed the ACL for the stock or stock complex, unless NMFS determines that the ACL was exceeded because of enhanced data collection and monitoring efforts.

Under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs, if NMFS determines that the ACL exceedance

resulted from increased catch rather than enhanced data collection and monitoring efforts, NMFS will reduce the length of the fishing season for that stock or stock complex, by sector where applicable, by the amount necessary to ensure that landings would not exceed the applicable ACL in the following fishing year. Under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs, NMFS applies any fishing season reduction starting from September 30 and moving earlier toward the beginning of the fishing year (January 1). If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction necessary is applied in the same fishing year from October 1 and moving later toward the end of the fishing year (December 31). The Council adopted this approach in Amendment 8 to their Reef Fish FMP, and Amendment 7 to their Spiny Lobster FMP, to minimize adverse socioeconomic effects from the implementation of AMs, while still helping to ensure that AM-based closures constrain harvest to the ACL and prevent overfishing. (82 FR 21475; May 9, 2017)

For the AMs under the Reef Fish FMP for the prohibited reef fish species (*e.g.,* Nassau grouper), under the Coral FMP for the prohibited coral species, and under the Queen Conch FMP for queen conch in Puerto Rico and St. Thomas and St. John, where harvest of queen conch is prohibited, those harvest prohibitions serve as the AM. The AM specified for St. Croix in the Queen Conch FMP provides that when the ACL is reached or projected to be reached prior to the end of the fishing season, the Regional Administrator will close the area east of 64°34′ W in the EEZ off St. Croix to the harvest and possession of queen conch. All other Federal waters off St. Croix are closed year-round to queen conch harvest.

This final rule replaces the AMs established under the U.S. Caribbean-wide FMPs and specifies AMs for all managed stocks and stock complexes in each island management area, as detailed in the following island-specific sections.

Puerto Rico AMs

The AM for spiny lobster under the Puerto Rico FMP is the same as the AM for spiny lobster under the U.S. Caribbean-wide Spiny Lobster FMP, with minor changes to the years of landings evaluated as the AM trigger. In addition, NMFS has clarified language to implement the AM to reflect that the AM trigger evaluation occurs at or near the beginning of the fishing year when necessary data are available. This change is consistent with the Council's intent, which is to establish an AM that relies on the best available data to prevent ACL exceedances.

Under the Puerto Rico FMP, the AM for spiny lobster provides that at or near the beginning of the fishing year, available landings of spiny lobster (*i.e.,* commercial landings) would be evaluated relative to the spiny lobster ACL based on a moving multi-year average of landings, as described below in the *AM Trigger and ACL Monitoring* section. If the ACL is exceeded, and NMFS determines that the ACL overage resulted from improved data collection or monitoring rather than from increased catch, the AM would not be triggered and NMFS would not reduce the length of the fishing season for spiny lobster. If, however, NMFS determines that the ACL overage resulted from increased catch rather than from improved data collection or monitoring, the AM would be triggered and NMFS would reduce the length of the fishing season for spiny lobster by the amount necessary to prevent landings from exceeding the ACL.

The AM under the Puerto Rico FMP contains the same exception from the AM trigger as the AM under the Spiny Lobster FMP for ACL exceedances based on improved data collection and monitoring. The regulations clarify that the AM trigger evaluation (*i.e.,* the comparison of landings to the ACL) is made at or near the beginning of the fishing year, not necessarily at the end of the prior year. This change is necessary because complete data on landings often are not available by the end of the fishing year, but rather are available early in the subsequent year, or later. Often there is a 1 to 2 year data lag as well, which is discussed later in the section on the AM trigger and ACL monitoring. Therefore, NMFS clarifies that it would make the AM trigger determination as soon as landings data are available, *i.e.,* at or near the beginning of the fishing year, and that any required fishing season reduction would occur as soon as possible thereafter.

Under the U.S. Caribbean-wide Spiny Lobster FMP, any required fishing season reduction would be applied starting from September 30 and moving earlier toward the beginning of the fishing year (January 1). If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction necessary would be applied in the same fishing year, starting from October 1 and moving later toward the end of the fishing year (December 31).

The Puerto Rico FMP provides for management of reef fish stocks and stock complexes by sector when data are available to set an ACL by sector, and the corresponding AM operates in the same manner as the AM under the U.S. Caribbean-wide Reef Fish FMP, with minor changes. The changes reflect the transition to management with indicator stocks, an update to the years of landings used as the AM trigger, and clarification of when the AM trigger evaluation occurs.

For reef fish stocks and stock complexes managed under the Puerto Rico FMP, commercial and recreational landings of the stock, stock complex, or indicator stock would be evaluated relative to the corresponding commercial, recreational, or total ACLs for the stock or stock complex, as applicable, based on a moving multi-year average of landings as described below. For those stock complexes managed with an indicator stock, the ACLs (commercial, recreational, and total) for the stock complex are based on landings of the indicator stock. Therefore, the AM trigger evaluation compares indicator stock landings to the ACL. An AM would be triggered for a stock or stock complex if a sector's landings exceeded the sector-specific ACL and if the total (commercial plus recreational) landings exceeded the total (commercial plus recreational) ACL. An AM would not be triggered if NMFS determines that either ACL overage (sector-specific ACL or total ACL) resulted from improved data collection or monitoring rather than from increased catch increased. Once triggered, the AM would be applied only for the sector that exceeded its ACL.

Unlike the U.S. Caribbean-wide Reef Fish FMP, the Puerto Rico FMP provides that if landings for one sector are not available for evaluation to the sector-specific ACL, then the sectors would not be separately managed. The ACL for the sector with available data would be the ACL for that stock or stock complex. If NMFS estimates that available landings for the stock, stock complex, or indicator stock exceeded the ACL for the stock or stock complex, and if the exceedance was not due to improvements in data collection or monitoring, the AM would be triggered. Any required fishing season reduction would apply to all harvest of the stock or stock complex, whether commercial or recreational. The Puerto Rico FMP and this final rule add this authority.

As with the AM for spiny lobster under the Puerto Rico FMP, the

regulatory text clarifies that the AM trigger evaluation for managed reef fish stocks and stock complexes occurs at or near the beginning of the fishing year, when landings from prior fishing years are available, and that any required fishing season reduction occurs as soon as possible thereafter. Any required fishing season reduction would be applied starting with September 30 and moving earlier towards the beginning of the fishing year (January 1), adding additional time, as necessary, from October 1, toward the end of the fishing year (December 31).

Pelagic stocks and stock complexes are not managed under the U.S. Caribbean-wide FMPs, but are managed under the Puerto Rico FMP by sector where sector-specific data are available. The Puerto Rico FMP establishes an AM for these stocks or stock complexes. For each pelagic stock and stock complex, the final rule codifies an ACT as 90 percent of the ACL that serves as the AM trigger.

Commercial and recreational landings of the pelagic stock, stock complex, or indicator stock would be evaluated relative to the commercial and recreational ACTs based on a moving multi-year average of landings as described below. The AM would be applied on a sector basis, and would be triggered when a sector's landings exceeds its ACT. The Puerto Rico FMP and these regulations provide for the unavailability of sector-specific landings. When landings for one sector are not available for comparison to that sector's ACT, the ACT for the sector with available landings would be the ACT for the stock or stock complex. Available landings would be evaluated relative to the ACT for the stock or stock complex. If NMFS estimates that available landings for the stock, stock complex, or indicator stock exceeded the ACT for the stock or stock complex, the AM would apply to all harvest of the stock or stock complex, whether commercial or recreational. If an AM is triggered, NMFS in consultation with the Council would determine appropriate corrective action, including whether corrective action is needed. Corrective action could include actions such as fishing season reductions or modifications to the ACL and would depend on many factors, including an evaluation of the cause of the exceedance and the best way to protect against future ACL exceedances.

Recreational data collection in Puerto Rico was disrupted in 2017, following Hurricanes Irma and Maria, and has not resumed. Since 2018, recreational landings for the reef fish and pelagic stocks, stock complexes, and indicator stocks are not available for comparison to the recreational ACLs and ACTs for each stock and stock complex. Thus, as described in the Puerto Rico FMP and in this final rule, the commercial ACLs and ACTs for the reef fish and pelagic stocks and stock complexes would function as the ACLs and ACTs for the stocks and stock complexes until sufficient recreational landings become available.

For stocks (queen conch, Nassau grouper, goliath grouper, giant manta ray, spotted eagle ray, and southern stingray) and stock complexes (Parrotfish 1 (blue parrotfish, midnight parrotfish, and rainbow parrotfish), Sea Cucumbers, Sea Urchins, and Corals) with harvest prohibitions in EEZ around Puerto Rico, those prohibitions serve as the AMs under the final rule. This is the same approach to management for queen conch, Nassau grouper, goliath grouper, the species in the Parrotfish 1 stock complex, and the coral species that are managed under the U.S. Caribbean-wide FMPs. The Puerto Rico FMP adopts this AM for the rays, which are new to management, and for the Sea Urchins and Sea Cucumbers stock complexes.

St. Croix AMs

The AMs for reef fish stocks and stock complexes and for spiny lobster under the St. Croix FMP are the same as the AMs for reef fish and spiny lobster under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs, with minor changes to the years of landings evaluated as the AM trigger. In addition, NMFS revised language to implement the AM to reflect and clarify that the AM trigger evaluation occurs at or near the beginning of the fishing year when necessary data are available. This change is consistent with the Council's intent, which is to establish an AM that relies on the best available data to prevent ACL exceedances.

Under the St. Croix FMP for reef fish stocks and stock complexes and for spiny lobster, at or near the beginning of the fishing year, landings for each stock, stock complex, or indicator stock(s) would be evaluated relative to the ACL for the stock or stock complex based on a moving multi-year average of landings, as described below. If the ACL is exceeded, and NMFS determines that the ACL overage resulted from improved data collection or monitoring rather than from increased catch, the AM would not be triggered and NMFS would not reduce the length of the fishing season for the applicable stock or stock complex. If, however, NMFS determines that the ACL overage resulted from increased catch rather than from improved data collection or monitoring, the AM would be triggered and NMFS would reduce the length of the fishing season for the applicable stock or stock complex by the amount necessary to prevent landings from exceeding the ACL.

The AMs for reef fish stocks and stock complexes and spiny lobster under the St. Croix FMP contain the same exception from the AM trigger for ACL exceedances based on improved data collection and monitoring as the AMs under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs. The implementing regulations clarify that the AM trigger evaluation (*i.e.,* the comparison of landings to the ACL) is made at or near the beginning of the fishing year to better reflect when landings data are available.

As under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs, any required fishing season reduction would be applied starting from September 30 and moving earlier toward the beginning of the fishing year (January 1). If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction necessary would be applied in the same fishing year, starting from October 1 and moving later toward the end of the fishing year (December 31).

Pelagic stocks are not managed under the U.S. Caribbean-wide FMPs, but are managed under the St. Croix FMP. For each pelagic stock, this final rule codifies an ACT as 90 percent of the ACL that would serve as the AM trigger. An AM would be triggered if the landings for the pelagic stock exceed the ACT based on a moving multi-year average of annual landings, as described below. If an AM is triggered, NMFS in consultation with the Council would determine appropriate corrective action, including whether corrective action is needed. Corrective action could include actions such as fishing season reductions or modifications to the ACL and would depend on many factors, including an evaluation of the cause of the exceedance and the best way to protect against future ACL exceedances.

For queen conch, as under the U.S. Caribbean-wide Queen Conch FMP, harvest would continue to be allowed in the EEZ around St. Croix east of 64°34′ W longitude during the open fishing season, November 1 through May 31. This measure was established in the 2005 Caribbean Sustainable Fisheries Act Amendment to the Queen Conch FMP (70 FR 62073; October 28, 2005). The rest of the U.S. Caribbean EEZ will continue to be closed to the harvest of queen conch. Under the St. Croix FMP,

the AM for queen conch would continue to be triggered if, based on in-season monitoring, NMFS determines the queen conch ACL is reached or is projected to be reached prior to the end of the fishing season. If the AM is triggered, NMFS would close the EEZ around St. Croix east of 64°34′ W longitude to the harvest and possession of queen conch for the remainder of the fishing season. During any such closure, no person would be allowed to fish for or possess a queen conch in or from Federal waters off St. Croix.

For stocks (Nassau grouper and goliath grouper) and stock complexes (Parrotfish 1 (blue parrotfish, midnight parrotfish, and rainbow parrotfish), Sea Cucumbers, Sea Urchins, and Corals) with harvest prohibitions in the EEZ around St. Croix, those prohibitions serve as the AMs under the final rule. This is the same approach to management for Nassau grouper, goliath grouper, the species in the Parrotfish 1 stock complex, and the coral species that are managed under the U.S. Caribbean-wide FMPs. The St. Croix FMP adopts this AM for the Sea Urchins and Sea Cucumber stock complexes.

St. Thomas and St. John AMs

The AMs for reef fish stocks and stock complexes and for spiny lobster under the St. Thomas and St. John FMP are the same as the AMs for reef fish and spiny lobster under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs, with minor changes to the years of landings evaluated as the AM trigger. In addition, NMFS is clarifying language to implement the AM to reflect that the AM trigger evaluation occurs at or near the beginning of the fishing year when necessary data are available. This change is consistent with the Council's intent, which is to establish an AM that relies on the best available data to prevent ACL exceedances.

Under the St. Thomas and St. John FMP for reef fish stocks and stock complexes and for spiny lobster, at or near the beginning of the fishing year, landings for each stock, stock complex, or indicator stock(s) would be evaluated relative to the ACL for the stock or stock complex based on a moving multi-year average of landings, as described later. If the ACL is exceeded, and NMFS determines that the ACL overage resulted from improved data collection or monitoring rather than from increased catch, the AM would not be triggered and NMFS would not reduce the length of the fishing season for the applicable stock or stock complex. If, however, NMFS determines that the ACL overage resulted from increased catch rather than from improved data collection or monitoring, the AM would be triggered and NMFS would reduce the length of the fishing season for the applicable stock or stock complex by the amount necessary to prevent landings from exceeding the ACL.

The AMs for reef fish stocks and stock complexes and spiny lobster under the St. Thomas and St. John FMP contain the same exception from the AM trigger for ACL exceedances based on improved data collection and monitoring as the AMs under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs. The implementing regulations clarify that the AM trigger evaluation (*i.e.,* the comparison of landings to the ACL) is made at or near the beginning of the fishing year to better reflect when landings data are available.

As under the U.S. Caribbean-wide Reef Fish and Spiny Lobster FMPs, any required fishing season reduction would be applied starting from September 30 and moving earlier toward the beginning of the fishing year (January 1). If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction necessary would be applied in the same fishing year, starting from October 1 and moving later toward the end of the fishing year (December 31).

Pelagic stocks are not managed under the U.S. Caribbean-wide FMPs, but are managed under the St. Thomas and St. John FMP. For each pelagic stock, this final rule codifies an ACT as 90 percent of the ACL that serves as the AM trigger. An AM would be triggered if the landings for the pelagic stock exceed ACT based on a moving multi-year average of annual landings, as described below. If an AM is triggered, NMFS in consultation with the Council would determine appropriate corrective action, including whether corrective action is needed. Corrective action could include actions such as fishing season reductions or modifications to the ACL and would depend on many factors, including an evaluation of the cause of the exceedance and the best way to protect against future ACL exceedances.

For stocks (queen conch, Nassau grouper, and goliath grouper) and stock complexes (Parrotfish 1 (blue parrotfish, midnight parrotfish, and rainbow parrotfish), Sea Cucumbers, Sea Urchins, and Corals) with harvest prohibitions in the EEZ around St. Thomas and St. John, those prohibitions serve as the AMs under this final rule. This is the same approach to management for queen conch, Nassau grouper, goliath grouper, the species in the Parrotfish 1 stock complex, and the coral species that are managed under the U.S. Caribbean-wide FMPs. The St. Thomas and St. John FMP adopts this AM for the Sea Urchins and Sea Cucumber stock complexes.

AM Trigger and ACL Monitoring

Each of the island-based FMPs specify the moving multi-year average of landings to be used to monitor compliance with the ACLs and ACTs under the AM trigger. The FMPs state that in the first year of FMP implementation, ACL and ACTs will be monitored using a single year of landings from 2018; then a single year of landings from 2019; then a 2-year average of landings from 2019 and 2020; then a 3-year average of landings from 2019 to 2021; and thereafter a progressive running 3-year average of landings. As specified in the island-based FMPs, the Regional Administrator in consultation with the Council may deviate from the specific time sequences based on data availability. The specified years could also be updated to account for periods where landings data may be incomplete, such as for years when hurricanes impact the ability to obtain a complete set of data.

Landings data from Puerto Rico and the USVI generally are not available for comparison to the ACLs or ACTs until 1 to 2 years after the year in which the fishing activity occurred. During this transition period to management under the island-based FMPs, until available landings reflect fishing under the island-specific FMPs as opposed to under the U.S. Caribbean-wide FMPs, NMFS would evaluate if the landings available for each stock, stock complex, or indicator stock(s) would exceed the ACLs or ACTs for the stock or stock complex specified in the island-based FMPs as the AM trigger. Once landings data from 3 years from when the island-based FMPs and ACLs are in place are available, NMFS would evaluate whether landings for each stock, stock complex, or indicator stock(s) exceeded the ACL or ACT for each stock or stock complex specified under the island-based FMPs. In all cases, if an AM is triggered, the AM would be applied as described previously.

Essential Fish Habitat

In addition to the management measures that this final rule implements through the regulations, the island-based FMPs include actions to identify essential fish habitat (EFH) for species new to management that NMFS will implement but not codify through regulations.

The EFH designations for species and species groups that were managed under the U.S. Caribbean-wide FMPs and are

included for management under the respective Puerto Rico FMP, St. Croix FMP, and St. Thomas and St. John FMP remain as currently described in the 2005 Caribbean Sustainable Fisheries Act Amendment. These descriptions are included in each of the island-based FMPs. For species new to management, each island-based FMP describes and identifies EFH according to functional relationships between life history stages of the species and marine and estuarine habitats, based on best scientific information available.

Framework Procedures

The framework procedures for the U.S. Caribbean-wide Reef Fish, Spiny Lobster, Queen Conch, and Coral FMPs provided the Council and NMFS the flexibility to expeditiously adjust management options to respond to changing fishery conditions or new scientific information. This final rule updates the framework procedures under each island-based FMP to establish the basis for a broader range of management measures that can be approved by the Council and implemented by NMFS through the framework process. The framework procedures for each island-based FMP and in this final rule are identical for each island management area. Certain future proposed actions could be implemented either by an open abbreviated framework, an open standard framework, or through a closed framework procedure, as applicable. Each island-based FMP describes and provides the open and closed framework procedures and the differences from a full FMP amendment process. Some of the management measures to be adjusted through framework procedures include re-specification of SDC and other management reference points, modification of seasonal, year-round, or area closures, commercial trip limits, recreational bag and possession limits, size limits, or allowable fishing gear.

Additional Changes to Codified Text Not in the Island-Based FMPs

NMFS is revising the authorized gear table in 50 CFR 600.725(v) under V. Caribbean Fishery Management Council, to incorporate changes to the organization of federally managed fisheries and gear descriptions under the island-based FMPs.

Currently, the authorized gear table at 50 CFR 600.725(v) under V subdivides the U.S. Caribbean fisheries by whether the fishery is managed under an FMP or not. Each fishery is then subdivided into fishery components by fishing gear type (*e.g.,* trap/pot, longline/hook and line, etc.) or sector (*i.e.,* commercial or recreational), and the authorized gear types are specified for these fishery components.

NMFS is revising the gear table to reflect the transition to island-based fishery management. Within the gear table for the U.S. Caribbean, the fisheries are described by island area, and then by whether the fishery is managed under an FMP. Each fishery is then broken into components by fishing gear type or sector, as appropriate. As with the current table, the authorized gear types are specified for each fishery component.

In this final rule, NMFS clarifies and makes consistent the description of the authorized gear for all fisheries. For example, NMFS is specifying the individual hook and line gear types authorized rather than listing ''hook and line'' as an authorized gear. Under 50 CFR 622.2, hook and line gear means automatic reel, bandit gear, buoy gear, handline, longline, and rod and reel. The authorized gear table lists those gear types as authorized, rather than the more general ''hook and line.'' Further, NMFS clarifies that trap and pot gear is an authorized recreational gear type for the reef fish and spiny lobster fisheries managed under each of the island-based FMPs.

In addition, NMFS is making additional clarifying and non-substantive changes to regulations in part 622 through this final rule. For example, to account for management measures that occur in leap years, NMFS revises language currently at 50 CFR 622.435(a)(2)(ii), which describes the annual seasonal closure for the red hind spawning aggregation areas off Puerto Rico and St. Croix, from ''through February 28 each year,'' to ''through the last day of February each year.'' The seasonal closure, with this updated language, is included in the subparts containing the regulations implementing the Puerto Rico FMP and the St Croix FMP.

This final rule updates the cross references to the subparts in 50 CFR part 622 to reflect changes to implement the island-based FMPs where there will be three U.S. Caribbean specific subparts instead of four as in the current regulations. This final rule amends the import restrictions regulatory language for queen conch to reflect the change to island-based management. At 50 CFR 622.2, this final rule revises the definition of fish trap in the U.S. Caribbean EEZ consistent with the island-based FMPs. The vessel color code requirements at 50 CFR 622.6(a)(2) are clarified to reflect a change in how the fisheries are described and identified under the island-based FMPs. The landing fish intact provisions at 50 CFR 622.10(b) are updated to clarify the requirements for highly migratory species. This final rule also clarifies the St. Croix queen conch prohibition at 50 CFR 622.479(b)(4) to state that the prohibition applies whether or not queen conch are on a vessel, but also in a person's possession.

Further, NMFS is revising appendix A to part 622 that currently lists federally managed species in the U.S. Caribbean. NMFS is removing the species tables applicable to the previous U.S. Caribbean-wide FMPs. This final rule specifies the federally managed species for Puerto Rico, St. Croix, and St. Thomas and St. John in subparts S, T, and U, respectively. As a result of removing U.S. Caribbean species tables from appendix A to part 622, NMFS is also revising the numbering for the tables of Gulf of Mexico reef fish, South Atlantic snapper-grouper, and Atlantic dolphin and wahoo species.

Changes in This Final Rule From the Proposed Rule

Subsequent to the publication of the proposed rule for the island-based FMPs, NMFS became aware of an error within an amendatory instruction of the proposed rule's codified text (87 FR 30730; May 19, 2022). Amendatory instruction 23 contained an incorrect regulatory reference in the instruction. In the proposed rule, instruction 23 states ''In addition to the amendments to this part, remove all references to ''622.413'' and add, in their place, ''622.419'' in the following sections in 50 CFR: 622.55(e); 622.382(a)(1)(i)(B); 622.400(a)(1)(i); 622.402(a)(1), (2), and (3) and (c)(1); 622.403(b)(3)(i); 622.404(e) and (f); and 622.405(b)(2)(i). In the proposed rule and in this final rule, 50 CFR 622.413, ''Incorporation by reference,'' in subpart R of part 622 is moved to 50 CFR 622.19, subpart A of part 622. Amendatory instruction 23 is corrected in this final rule to refer to ''622.19'' instead of ''622.419.''

No other changes to this final rule have been made from the proposed rule.

Comments and Responses

NMFS received five comments on the notice of availability for the island-based FMPs and two comments on the proposed rule. Comment submissions were from members of the general public and a non-profit legal organization. The majority of the comments were in support of some or all of the actions within the FMPs.

One comment received on the proposed rule recommended a prohibition on commercial fishing. The

Council did not take any action in the island-based FMPs to prohibit commercial fishing and NMFS has not taken any action to implement such a measure in this final rule. NMFS does not find it appropriate to exercise its authority under the Magnuson-Stevens Act to prohibit commercial fishing in this final rule.

NMFS has not made any changes from the proposed rule to this final rule based on public comment.

Comments specific to the island-based FMPs and the proposed rule are grouped as appropriate and summarized below, each followed by NMFS' respective responses.

Comment 1: Spearfishing should not be prohibited for the recreational harvest of reef fish in the Puerto Rico FMP. There is no evidence that spearfishing has a high impact on reef fish populations and spearfishing is the least invasive and most selective of the fishing methods. Prohibiting recreational spearfishing for reef fish but not prohibiting other fishing gear types, particularly those used by commercial fishers, demonstrates a biased approach to conservation not based on science.

Response: NMFS clarifies that the Puerto Rico FMP does not prohibit the recreational use of spearfishing gear for the harvest of reef fish in Puerto Rico. The Council's unofficial Spanish translation of Chapter 5 of the Puerto Rico FMP, published on the Council's website, included an incomplete list of gear authorized for recreational harvest of reef fish, omitting spears. After NMFS published the notice of availability and received this comment, the Council corrected the translation error and posted a revised translation of Chapter 5 of the Puerto Rico FMP on its website: *https://caribbeanfmc.com/FMP_Island_Based_2019/EA_FMP_Puerto_Rico_ESPANOL.pdf.* Under the Puerto Rico FMP and this final rule implementing the FMP, spear is an allowable gear type for use by the recreational sector for the harvest of reef fish.

Comment 2: The Puerto Rico FMP does not manage forage species and predatory functional groups and therefore is not consistent with the NMFS priority of taking an ecosystem-based approach to fisheries management in the region. The lack of species-specific data for forage and top predator species such as sharks and rays from waters under Council jurisdiction should not be a reason for not managing these species under the Puerto Rico FMP.

Response: The Puerto Rico FMP does not manage forage species and predatory functional groups. However, NMFS manages highly migratory species such as sharks, Atlantic tunas, swordfish, and billfish, under delegated authority from the Secretary of Commerce (Secretary), through the 2006 Consolidated Highly Migratory Species FMP (71 FR 58058; October 2, 2006), as amended. Action 2, Preferred Alternative 2 of each of the island-based FMPs sets forth the stepwise process that the Council applied to identify species in need of conservation and management. This process accounts for the ecological value of the species (See Criterion C), and complies with the Magnuson-Stevens Act section 302(h)(1). In the future, the Council may choose to identify and include stocks within the FMPs as ecosystem component (EC) species that do not require conservation and management, and adopt management measures to address ecosystem issues, but such management is not required (50 CFR 600.305(c)(5)).

For example, the Council is currently developing a Fishery Ecosystem Plan that among other items, would address the role of forage species and predatory functional groups in the U.S. Caribbean. The Council and NMFS expect that the Fishery Ecosystem Plan would serve as a source document for the Council to guide future management actions pursued under each of the island-based FMPs, including potentially a decision to manage additional species with important ecosystem value.

Comment 3: The scalloped hammerhead population recently listed as threatened under the Endangered Species Act (ESA) should have been included in the Puerto Rico FMP as this species can be impacted as bycatch from pelagic long line fisheries allowed in the Puerto Rico EEZ.

Response: The ESA-listed scalloped hammerhead shark is a highly migratory species whose range includes the geographical authority of more than one fishery management council. Therefore, under the Magnuson-Stevens Act, NMFS, under delegated authority from the Secretary, not the Council, has the authority to manage this highly migratory species (Magnuson-Stevens Act sections 302(a)(3) and 3(21)). NMFS has exercised its authority to manage scalloped hammerhead sharks as an Atlantic Highly Migratory Species under the 2006 Consolidated Highly Migratory Species FMP, as amended.

Comment 4: In the Puerto Rico FMP and the St. Thomas and St. John FMP, the Council did not cite to or rely on certain published reports, including Council-funded research, about the ESA-listed Nassau grouper spawning activities in certain spawning sites in Puerto Rico and St. Thomas, USVI in relation to lunar cycles. The Council should re-consider the timing of the seasonal closure in the Council-managed spawning areas (*e.g.,* Bajo de Sico, Puerto Rico, Grammanik Bank, St. Thomas, USVI) to encompass Nassau grouper spawning activity that may occur beyond the seasonal closure dates.

Response: The Council and NMFS established seasonal spawning closures to protect spawning fish resources, including groupers, during the identified peak spawning periods in Puerto Rico and the USVI. For example, the Bajo de Sico seasonal closure in western Puerto Rico, was established in 1996 to protect spawning aggregations of red hind grouper during their peak spawning period of December through February (61 FR 64485; December 5, 1996). Bajo de Sico also has been identified as an important spawning aggregation site for other snappers and groupers, including the Nassau grouper. In 2010, NMFS and the Council modified the Bajo de Sico seasonal closure from a 3-month closure (December through February) to a 6-month closure (October through March) to protect other Council-managed reef fish that may be aggregating in the area to spawn, including Nassau grouper (75 FR 67247; November 2, 2010). The Grammanik Bank seasonal closure in southern St. Thomas, USVI, was established in 2005 to protect a spawning aggregation of the yellowfin grouper during its peak spawning period of February through April (70 FR 62073; October 28, 2005). Similar to Bajo de Sico, areas within the Grammanik Bank have also been identified as multi-species spawning aggregation sites, including for Nassau grouper. The Council did not seek to modify the seasonal closure period for the Bajo de Sico or Grammanik Bank managed areas in the Puerto Rico or St. Thomas and St John FMP. However, the Council is currently developing a Fishery Ecosystem Plan that would incorporate the most recent information available with respect to the spawning activities of the Nassau grouper. Although the island-based FMPs and this final rule do not revise the time period for the spawning seasonal closures at Bajo de Sico and the Grammanik Bank, NMFS expects that the Fishery Ecosystem Plan would serve as a source document for the Council to guide future management actions under each of the island-based FMPs, as needed. This could include evaluating and revising the current seasonal closures under the island-based FMPs.

NMFS notes that fishing for the Nassau grouper has been prohibited in Caribbean Federal waters since 1990, and the Council has implemented many

other measures to protect not only the fish resource but also the habitat that supports these aggregations.

Comment 5: The proposed rule is invalid because it results from the Council process, which is legally invalid. The Council process under the Magnuson-Stevens Act violates the Appointments, Executive Vesting, and Take Care clauses of the U.S. Constitution and, as a result, any rule resulting from the Council process is legally invalid.

Response: This rulemaking is legally valid and consistent with the Magnuson-Stevens Act, which also is constitutional and legally valid. This final rule implements the island-based FMPs, which NMFS, through delegation of authority from the Secretary, has approved as consistent with the Magnuson-Stevens Act and other applicable law. Under Section 304 of the Magnuson-Stevens Act, NMFS, acting through delegated authority from the Secretary, retains significant discretion to reject Council recommendations, including the proposed regulations that the Council submitted to NMFS to implement the island-based FMPs. In addition, it is NMFS, not the Council, that has the authority to promulgate regulations to implement an approved FMP. Fishery management councils are not considered Federal agencies for the purposes of the Administrative Procedures Act. For this reason, the Council process under the Magnuson-Stevens Act is consistent with the U.S. Constitution. This rulemaking, therefore, is not legally invalid for resulting from the advisory Council process established in the Magnuson-Stevens Act.

Incorporation by Reference

NMFS created § 622.413 as a centralized incorporation by reference (IBR) section—essentially a section which contained the information about material approved for IBR and the sections where that material was approved for use (the outlying sections). Redesignating that section to § 622.19 does not change the material or the approval for any of the outlying sections.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the island-based FMPs, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or recordkeeping requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained earlier in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. None of the public comments received addressed the certification and NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects

50 CFR Part 600

Caribbean, Commercial, Fisheries, Fishing, Recreational.

50 CFR Part 622

Caribbean, Commercial, Fisheries, Fishing, Incorporation by Reference, Recreational.

Dated: September 2, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 622 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725(v), in the table, revise the entries under ''V. Caribbean Fishery Management Council'' to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
V. Caribbean Fishery Management Council	
1. Exclusive Economic Zone around Puerto Rico.	
A. Puerto Rico Reef Fish Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, trap, pot, spear.
ii. Recreational fishery	ii. Dip net, handline, rod and reel, slurp gun, spear, trap, pot.
B. Puerto Rico Pelagic Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, gillnet.
ii. Recreational fishery	ii. Spear, handline, longline, rod and reel.
C. Puerto Rico Spiny Lobster Fishery (FMP):	
i. Commercial fishery	i. Trap, pot, dip net, hand harvest, snare.
ii. Recreational fishery	ii. Trap, pot, dip net, hand harvest, snare.
D. Puerto Rico Coral Reef Resources Fishery (FMP):	No harvest or possession in the EEZ.
E. Puerto Rico Queen Conch Fishery (FMP):	No harvest or possession in the EEZ.
F. Puerto Rico Pelagic Fishery (Non-FMP):	

Fishery	Authorized gear types
i. Commercial fishery	i. Gillnet, automatic reel, bandit gear, buoy gear, handline, longline, rod and reel.
ii. Recreational fishery	ii. Spear, handline, longline, rod and reel.
G. Puerto Rico Commercial Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, trawl, gillnet, cast net, spear.
H. Puerto Rico Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
2. Exclusive Economic Zone around St. Croix.	
A. St. Croix Reef Fish Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, trap, pot, spear.
ii. Recreational fishery	ii. Dip net, handline, rod and reel, slurp gun, spear, trap, pot.
B. St. Croix Pelagic Fishery (FMP):	
i. Commercial fishery	i. Gillnet, automatic reel, bandit gear, buoy gear, handline, longline, rod and reel.
ii. Recreational fishery	ii. Spear, handline, longline, rod and reel.
C. St. Croix Spiny Lobster Fishery (FMP):	
i. Commercial fishery	i. Trap, pot, dip net, hand harvest, snare.
ii. Recreational fishery	ii. Trap, pot, dip net, hand harvest, snare.
D. St. Croix Coral Reef Resource Fishery (FMP):	No harvest or possession in the EEZ.
E. St. Croix Queen Conch Fishery (FMP):	
i. Commercial fishery	i. Hand harvest.
ii. Recreational fishery	ii. Hand harvest.
F. St. Croix Pelagic Fishery (Non-FMP):	
i. Commercial fishery	i. Gillnet, automatic reel, bandit gear, buoy gear, handline, longline, rod and reel.
ii. Recreational fishery	ii. Spear, handline, longline, rod and reel.
G. St. Croix Commercial Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, trawl, gillnet, cast net, spear.
H. St. Croix Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.
3. Exclusive Economic Zone around St. Thomas and St. John.	
A. St. Thomas and St. John Reef Fish Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, trap, pot, spear.
ii. Recreational fishery	ii. Dip net, handline, rod and reel, slurp gun, spear, trap, pot.
B. St. Thomas and St. John Pelagic Fishery (FMP):	
i. Commercial fishery	i. Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, gillnet.
ii. Recreational fishery	ii. Spear, handline, longline, rod and reel.
C. St. Thomas and St. John Spiny Lobster Fishery (FMP):	
i. Commercial fishery	i. Trap, pot, dip net, hand harvest, snare.
ii. Recreational fishery	ii. Trap, pot, dip net, hand harvest, snare.
D. St. Thomas and St. John Coral Reef Resource Fishery (FMP):	No harvest or possession in the EEZ.
E. St. Thomas and St. John Queen Conch Fishery (FMP):	No harvest or possession in the EEZ.
F. St. Thomas and St. John Pelagic Fishery (Non-FMP):	
i. Commercial fishery	i. Gillnet, automatic reel, bandit gear, buoy gear, handline, longline, rod and reel.
ii. Recreational fishery	ii. Spear, handline, longline, rod and reel.
G. St. Thomas and St. John Commercial Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, trawl, gillnet, cast net, spear.
H. St. Thomas and St. John Recreational Fishery (Non-FMP)	Automatic reel, bandit gear, buoy gear, handline, longline, rod and reel, spear, powerhead, hand harvest, cast net.

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PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. Amend § 622.1 by:

■ a. Revising paragraph (c); and

■ b. In Table 1:

■ i. Removing the entry for ''FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands'';

■ ii. Adding entries for ''FMP for the Exclusive Economic Zone around Puerto Rico'', ''FMP for the Exclusive Economic Zone around St. Croix'', and ''FMP for the Exclusive Economic Zone around St. Thomas and St. John'' in alphabetical order; and

■ iii. Removing the entries for ''FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands'', ''FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands'', and ''FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands''.

The revision and additions read as follows:

§ 622.1 Purpose and scope.

* * * * *

(c) This part also governs the importation of spiny lobster into Puerto Rico or the U.S. Virgin Islands.

* * * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * * *	* *	*
FMP for the Exclusive Economic Zone around Puerto Rico	CFMC	Caribbean.
FMP for the Exclusive Economic Zone around St. Croix	CFMC	Caribbean.
FMP for the Exclusive Economic Zone around St. Thomas and St. John	CFMC	Caribbean.
* * * *	* *	*

* * * * *

■ 5. Amend § 622.2 by:
■ a. Removing the definitions of ''Caribbean coral reef resource'', ''Caribbean prohibited coral'', ''Caribbean queen conch'', ''Caribbean reef fish'', and ''Caribbean spiny lobster or spiny lobster'';
■ b. Revising paragraph (1) in the definition for ''Fish trap'' and paragraph (1) in the definition for ''Import''; and
■ c. Adding, in alphabetical order, the definition for ''Spiny lobster''.

The revisions and addition read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Fish Trap * * *

(1) In the Caribbean EEZ, a trap and its component parts, including the lines and buoys, regardless of the construction material, used for or capable of taking finfish. This does not include a spiny lobster trap as defined in subparts S, T, and U of this part.

* * * * *

Import * * *

(1) For the purpose of § 622.1(c) and subparts S, T, and U of this part only—To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, Puerto Rico or the U.S. Virgin Islands, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States;

* * * * *

Spiny lobster means the species *Panulirus argus,* or a part thereof.

* * * * *

■ 6. In § 622.4, revise the introductory text and paragraphs (b) and (f)(1) to read as follows:

§ 622.4 Permits and fees—general.

This section contains general information about procedures related to permits. See also §§ 622.70 and 622.220 regarding certain permit procedures unique to coral permits in the Gulf of Mexico and the South Atlantic, respectively. See subpart F of this part for permit requirements related to aquaculture of species other than live rock. Permit requirements for specific fisheries, as applicable, are contained in the permit sections within subparts B through U of this part.

* * * * *

(b) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (a) of this section or in § 622.70(b), § 622.220(b), or § 622.400(b). The permit is void if any change in the information is not reported within 30 days.

* * * * *

(f) * * *

(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this part is not transferable or assignable, except as provided in the permits sections within subparts B through U of this part, where applicable. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section and other applicable sections of this part. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit, and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

* * * * *

■ 7. In § 622.5, revise the introductory text and paragraph (a) and paragraph (b) introductory text to read as follows:

§ 622.5 Recordkeeping and reporting—general.

This section contains recordkeeping and reporting requirements that are broadly applicable, as specified, to most or all fisheries governed by this part. Additional recordkeeping and reporting requirements specific to each fishery are contained in the respective subparts B through U of this part.

(a) *Collection of additional data and fish inspection.* In addition to data required to be reported as specified in subparts B through U of this part, as applicable, additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or any part thereof available for inspection by the SRD or an authorized officer on request.

(b) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under the recordkeeping and reporting requirements in subparts B through U of this part, must provide the following information when interviewed by the SRD:

* * * * *

■ 8. In § 622.6, revise the introductory text of paragraphs (a)(1) and (2) to read as follows:

§ 622.6 Vessel identification.

* * * * *

(a) * * *

(1) *Official number.* A vessel for which a permit has been issued under subparts B through U of this part, except for subpart R, and a vessel that fishes for or possesses pelagic sargassum in the South Atlantic EEZ, must display its official number—

* * * * *

(2) *Official number and color code.* The following vessels must display their official number as specified in paragraph (a)(1) of this section and, in addition, must display their assigned

color code: A vessel for which a permit has been issued to fish with a sea bass pot, as required under § 622.170(a)(1); and, in the EEZ around Puerto Rico, St. Croix, or St. Thomas and St. John, a vessel fishing commercially with traps for reef fish, as defined in subparts S through U of this part, or a vessel fishing for spiny lobster, when color codes are required and have been assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, as applicable. Color codes required for vessels fishing in the EEZ around Puerto Rico, St. Croix, or St. Thomas and St. John are assigned by Puerto Rico or the U.S. Virgin Islands, as applicable. Color codes required in all other fisheries are assigned by the RA. The color code must be displayed—

* * * * *

■ 9. Revise § 622.8 to read as follows:

§ 622.8 Quotas—general.

(a) *Applicability.* Quotas apply for the fishing year for each species, species group, sector, or sector component unless accountability measures are implemented during the fishing year pursuant to the applicable annual catch limits (ACLs) and accountability measures (AMs) sections within subparts B through U of this part due to a quota overage occurring in the previous year, in which case a reduced quota will be specified through notification in the **Federal Register**. Annual quota increases are contingent on the total allowable catch for the applicable species not being exceeded in the previous fishing year. If the total allowable catch is exceeded in the previous fishing year, the RA will file a notification with the Office of the Federal Register to maintain the quota for the applicable species, species group, sector, or sector component from the previous fishing year for following fishing years unless NMFS determines based upon the best scientific information available that maintaining the quota from the previous year is unnecessary. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ.

(b) *Quota closures.* When a quota specified in this part is reached or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the applicable closure restrictions for such a quota, as specified in this part apply. See the applicable ACLs, annual catch targets (ACTs), and AMs sections in subparts B through U of this part for closure provisions when an applicable ACL or ACT is reached or projected to be reached.

(c) *Reopening.* When a species, species group, sector, or sector component has been closed based on a projection of the quota specified in this part, or the ACL specified in the applicable ACL and accountability measures sections of subparts B through U of this part being reached and subsequent data indicate that the quota or ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the species, species group, sector, or sector component to provide an opportunity for the quota or ACL to be harvested.

■ 10. In § 622.9, revise the introductory text and paragraph (b) to read as follows:

§ 622.9 Prohibited gear and methods—general.

This section contains prohibitions on use of gear and methods that are of general applicability, as specified. Additional prohibitions on use of gear and methods applicable to specific species or species groups are contained in subparts B through U of this part.

* * * * *

(b) *Chemicals and plants.* A toxic chemical may not be used or possessed in a coral area.

* * * * *

■ 11. In § 622.10, revise the introductory text and paragraph (b) to read as follows:

§ 622.10 Landing fish intact—general.

This section contains requirements for landing fish intact that are broadly applicable to finfish in the Gulf EEZ and Caribbean EEZ, as specified. See subparts B through U of this part, as applicable, for additional species-specific requirements for landing fish intact.

* * * * *

(b) Atlantic highly migratory species, such as tunas, billfishes (marlins, spearfishes, and swordfish), and oceanic sharks are not subject to the requirements of paragraph (a) of this section. See 50 CFR part 635 for any requirements applicable to landing Atlantic highly migratory species intact.

* * * * *

■ 12. Revise § 622.11 to read as follows:

§ 622.11 Bag and possession limits—general applicability.

This section describes the general applicability provisions for bag and possession limits specified in subparts B through U of this part.

(a) *Applicability.* (1) The bag and possession limits apply for a species or species group in or from the EEZ. Unless specified otherwise, bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Unless specified otherwise, a person is limited to a single bag limit for a trip lasting longer than one calendar day. Unless specified otherwise, possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person on a vessel in the EEZ that has on board the commercial vessel permit required under this part for the appropriate species or species group. The possession of a commercial vessel permit notwithstanding, the bag and possession limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in subparts B through U of this part with a bag or possession limit applicable to state waters. A species or species group subject to a bag limit specified in subparts B through U of this part and taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ. The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in subparts B through U of this part are not exceeded.

(2) [Reserved]

(b) [Reserved]

§ 622.12 [Removed and Reserved]

■ 13. Remove and reserve § 622.12.

§ 622.413 [Redesignated as § 622.19]

■ 14. Redesignate § 622.413 as § 622.19 in subpart A.

■ 15. In newly redesignated § 622.19, revise paragraphs (a) and (b)(7) and (8) to read as follows:

§ 622.19 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NMFS must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NMFS and at the National Archives and Records

Administration (NARA). Contact NMFS at: NMFS, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD; 301–427–8500; *www.fisheries.noaa.gov/about/office-sustainable-fisheries*. 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*. The material may be obtained from the source(s) in paragraphs (b) and (c) of this section.

(b) * * *

(7) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.002: Retrieval of Trap Debris, in effect as of October 15, 2007, IBR approved for §§ 622.402(c) and 622.403(b).

(8) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.004: Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping, in effect as of October 15, 2007, IBR approved for §§ 622.402(c) and 622.403(b).

* * * * *

■ 16. In § 622.409, revise paragraphs (a) introductory text and (a)(2) to read as follows:

§ 622.409 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* Multiple minimum size limits apply to the importation of spiny lobster into the United States—one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and more restrictive minimum size limits that apply to Puerto Rico, St. Croix, and St. Thomas and St. John, respectively.

* * * * *

(2) See subparts S, T, and U of this part for the more restrictive minimum size limits that apply to spiny lobster imported into Puerto Rico, St. Croix, and St. Thomas and St. John, respectively.

* * * * *

■ 17. Revise subparts S, T, and U to read as follows:

Subpart S—FMP for the EEZ around Puerto Rico

Sec.
622.430 Management area.
622.431 Definitions.
622.432 [Reserved]
622.433 Vessel identification.
622.434 Gear identification.
622.435 Trap construction specifications and tending restrictions.
622.436 Anchoring restrictions.
622.437 Prohibited gear and methods.
622.438 Prohibited species.
622.439 Area and seasonal closures.
622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).
622.441 Size limits.
622.442 [Reserved]
622.443 Restrictions on sale or purchase.
622.444 Bag and possession limits.
622.445 Other harvest restrictions.
622.446 Spiny lobster import prohibitions.
622.447 Adjustment of management measures.

Subpart T—FMP for the EEZ around St. Croix

Sec.
622.470 Management area.
622.471 Definitions.
622.472 [Reserved]
622.473 Vessel identification.
622.474 Gear identification.
622.475 Trap construction specifications and tending restrictions.
622.476 Anchoring restrictions.
622.477 Prohibited gear and methods.
622.478 Prohibited species.
622.479 Area and seasonal closures.
622.480 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).
622.481 Size limits.
622.482 Commercial trip limits.
622.483 Restrictions on sale or purchase.
622.484 Bag and possession limits.
622.485 Other harvest restrictions.
622.486 Spiny lobster import prohibitions.
622.487 Adjustment of management measures.

Subpart U—FMP for the EEZ around St. Thomas and St. John

Sec.
622.505 Management area.
622.506 Definitions.
622.507 [Reserved]
622.508 Vessel identification.
622.509 Gear identification.
622.510 Trap construction specifications and tending restrictions.
622.511 Anchoring restrictions.
622.512 Prohibited gear and methods.
622.513 Prohibited species.
622.514 Area and seasonal closures.
622.515 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).
622.516 Size limits.
622.517 [Reserved]
622.518 Restrictions on sale or purchase.
622.519 Bag and possession limits.
622.520 Other harvest restrictions.
622.521 Spiny lobster import prohibitions.
622.522 Adjustment of management measures.

Subpart S—FMP for the EEZ around Puerto Rico

§ 622.430 Management area.

The management area is the EEZ around Puerto Rico bounded by rhumb lines connecting the following points and geographic instructions in order:

TABLE 1 TO § 622.430

Point	North lat.	West long.
A (intersects with the international and EEZ boundary).	19°37′29″	65°20′57″
B	18°25′46.3015″	65°06′31.866″
From Point B proceed southerly along the 3-nautical mile territorial boundary of the St. Thomas and St. John island group to Point C.		
C	18°13′59.0606″	65°05′33.058″
D	18°01′16.9636″	64°57′38.817″
E	17°30′00.000″	65°20′00.1716″
F	16°02′53.5812″	65°20′00.1716″
From Point F proceed along the international and EEZ boundary southwesterly, then northerly, then easterly, and finally southerly to Point A.		
A (intersects with the International and EEZ boundary).	19°37′29″	65°20′57″

§ 622.431 Definitions.

In addition to the definitions and acronyms in § 622.2, the terms and acronyms used in this subpart have the following meanings:

Coral means any or all species, or a part thereof, of coral occurring in the EEZ around Puerto Rico, including any or all species, or a part thereof, of soft corals and gorgonians in Order Alcyonacea; sea pens and sea pansies in Order Pennatulacea; black corals in Order Antipatharia; stony corals in Order Scleractinia; and, within Order Anthoatheacata, fire corals in Family Milleporidae and lace corals in Family Stylasteridae.

Coral reef resource means any or all species, or a part thereof, of coral, sea cucumber, and sea urchin.

Pelagic fish means any or all species, or a part thereof, as follows:

TABLE 1 TO § 622.431

Class or Family	Scientific name	English common name
Dolphinfishes—Coryphaenidae	*Coryphaena hippurus*	Dolphinfish.
	Coryphaena equiselis	Pompano dolphinfish.
Barracudas—Sphyraenidae	*Sphyraena barracuda*	Great barracuda.
Mackerels and tunas—Scombridae	*Thunnus atlanticus*	Blackfin tuna.
	Scomberomorus regalis	Cero.
	Scomberomorus cavalla	King mackerel.
	Euthynnus alletteratus	Little tunny.
	Acanthocybium solandri	Wahoo.
Tripletails—Lobotidae	*Lobotes surinamensis*	Tripletail.

Queen conch means the species *Lobatus gigas,* or a part thereof.

Rays means any or all species, or a part thereof, as follows:

TABLE 2 TO § 622.431

Class or Family	Scientific name	English common name
Eagle and manta rays—Myliobatidae	*Manta birostris*	Giant manta.
	Aetobatus narinari	Spotted eagle ray.
Stingrays—Dasyatidae	*Dasyatis americana*	Southern stingray.

Reef fish means any or all species, or a part thereof, as follows:

TABLE 3 TO § 622.431

Class or Family	Scientific name	English common name
Angelfishes—Pomacanthidae	*Pomacanthus paru*	French angelfish.
	Pomacanthus arcuatus	Gray angelfish.
	Holacanthus ciliaris	Queen angelfish.
Groupers—Serranidae	*Mycteroperca bonaci*	Black grouper.
	Cephalopholis fulva	Coney.
	Epinephelus itajara	Goliath grouper.
	Cephalopholis cruentata	Graysby.
	Hyporthodus mystacinus	Misty grouper.
	Epinephelus striatus	Nassau grouper.
	Epinephelus morio	Red grouper.
	Epinephelus guttatus	Red hind.
	Epinephelus adscensionis	Rock hind.
	Mycteroperca tigris	Tiger grouper.
	Hyporthodus flavolimbatus	Yellowedge grouper.
	Mycteroperca venenosa	Yellowfin grouper.
	Mycteroperca interstitialis	Yellowmouth grouper.
Grunts—Haemulidae	*Haemulon plumierii*	White grunt.
Jacks—Carangidae	*Alectis ciliaris*	African pompano.
	Caranx hippos	Crevalle jack.
	Elagatis bipinnulata	Rainbow runner.
Parrotfishes—Scaridae	*Scarus coeruleus*	Blue parrotfish.
	Scarus coelestinus	Midnight parrotfish.
	Scarus taeniopterus	Princess parrotfish.
	Scarus vetula	Queen parrotfish.
	Scarus guacamaia	Rainbow parrotfish.
	Sparisoma aurofrenatum	Redband parrotfish.
	Sparisoma chrysopterum	Redtail parrotfish.
	Sparisoma viride	Stoplight parrotfish.
	Scarus iseri	Striped parrotfish.
Snappers—Lutjanidae	*Apsilus dentatus*	Black snapper.
	Lutjanus buccanella	Blackfin snapper.

TABLE 3 TO § 622.431—Continued

Class or Family	Scientific name	English common name
	Pristipomoides macrophthalmus	Cardinal snapper.
	Lutjanus cyanopterus	Cubera snapper.
	Lutjanus jocu	Dog snapper.
	Lutjanus synagris	Lane snapper.
	Lutjanus analis	Mutton snapper.
	Etelis oculatus	Queen snapper.
	Lutjanus apodus	Schoolmaster.
	Lutjanus vivanus	Silk snapper.
	Rhomboplites aurorubens	Vermilion snapper.
	Pristipomoides aquilonaris	Wenchman.
	Ocyurus chrysurus	Yellowtail snapper.
Surgeonfishes—Acanthuridae	*Acanthurus coeruleus*	Blue tang.
	Acanthurus chirurgus	Doctorfish.
	Acanthurus tractus	Ocean surgeonfish.
Triggerfishes—Balistidae	*Balistes capriscus*	Gray triggerfish.
	Canthidermis sufflamen	Ocean triggerfish.
	Balistes vetula	Queen triggerfish.
Wrasses—Labridae	*Lachnolaimus maximus*	Hogfish.
	Halichoeres radiatus	Puddingwife.
	Bodianus rufus	Spanish hogfish.

Sea cucumber means any or all species, or a part thereof, in Class Holothuroidea and occurring in the EEZ around Puerto Rico.

Sea urchin means any or all species of sea urchin, or a part thereof, in Class Echinoidea and occurring in the EEZ around Puerto Rico.

Spiny lobster trap means a trap and its component parts, including the lines and buoys, used for or capable of taking spiny lobster and meeting the spiny lobster trap construction specifications of this subpart.

§ 622.432 [Reserved]

§ 622.433 Vessel identification.

See § 622.6 for vessel identification requirements applicable to this subpart.

§ 622.434 Gear identification.

(a) *Reef fish*—(1) *Fish traps and associated buoys.* All fish traps used or possessed in the EEZ around Puerto Rico must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands. A fish trap that is fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Fish traps that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. All buoys must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(2) *Presumption of ownership of fish traps.* A fish trap in the EEZ around Puerto Rico will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(3) *Disposition of unmarked fish traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ around Puerto Rico is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Spiny lobster traps and associated buoys.* All spiny lobster traps used or possessed in the EEZ around Puerto Rico must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands. A spiny lobster trap that is fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Spiny lobster traps that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. All buoys must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(2) *Presumption of ownership of spiny lobster traps.* A spiny lobster trap in the EEZ around Puerto Rico will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(3) *Disposition of unmarked spiny lobster traps or buoys.* An unmarked spiny lobster trap or buoy deployed in the EEZ around Puerto Rico is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.435 Trap construction specifications and tending restrictions.

(a) *Reef fish*—(1) *Construction specifications*—(i) *Minimum mesh size.* A bare-wire fish trap used or possessed in the EEZ around Puerto Rico that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ around Puerto Rico that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ around Puerto Rico, must have a minimum mesh size of 2 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(ii) *Escape mechanisms.* A fish trap used or possessed in the EEZ around Puerto Rico must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛-inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding ⅛-inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(2) *Tending restrictions.* A fish trap in the EEZ around Puerto Rico may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Construction specifications*—

(i) *Escape mechanisms.* A spiny lobster trap used or possessed in the EEZ around Puerto Rico must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding ⅛-inch (3.2 mm). This includes, but is not limited to tyre palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16-inch (1.6 mm), that is, 16-gauge wire.

(ii) [Reserved]

(2) *Tending restrictions.* A spiny lobster trap in the EEZ around Puerto Rico may be pulled or tended only by a person (other than an authorized officer) aboard the trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

§ 622.436 Anchoring restrictions.

The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses reef fish in or from the EEZ around Puerto Rico must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy is required.

§ 622.437 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Reef fish*—(1) *Poisons.* A poison, drug, or other chemical may not be used to fish for reef fish in the EEZ around Puerto Rico.

(2) *Powerheads.* A powerhead may not be used in the EEZ around Puerto Rico to harvest reef fish. The possession of a mutilated reef fish in or from the EEZ around Puerto Rico and a powerhead constitutes a rebuttable presumption of a violation of this paragraph (a)(2).

(3) *Gillnets and trammel nets.* A gillnet or trammel net may not be used in the EEZ around Puerto Rico to fish for reef fish. The possession of a reef fish in or from the EEZ around Puerto Rico and a gillnet or trammel net constitutes a rebuttable presumption of a violation of this paragraph (a)(3). A gillnet or trammel net used in the EEZ around Puerto Rico to fish for any other species must be tended at all times.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Spears and hooks.* A spear, hook, or similar device may not be used in the EEZ around Puerto Rico to harvest a spiny lobster. The possession of a speared, pierced, or punctured spiny lobster in or from the EEZ around Puerto Rico constitutes a rebuttable presumption of a violation of this paragraph (c)(1).

(2) *Gillnets and trammel nets.* A gillnet or trammel net may not be used in the EEZ around Puerto Rico to fish for spiny lobster. The possession of a spiny lobster in or from the EEZ around Puerto Rico and a gillnet or trammel net constitutes a rebuttable presumption of a violation of this paragraph (c)(2). A gillnet or trammel net used in the EEZ around Puerto Rico to fish for any other species must be tended at all times.

§ 622.438 Prohibited species.

The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ around Puerto Rico is responsible for the limit applicable to that vessel. Any of the following species caught in the EEZ around Puerto Rico must be released immediately with a minimum of harm.

(a) *Reef fish.* No person may fish for or possess the following reef fish species in or from the EEZ around Puerto Rico.

(1) Goliath grouper or Nassau grouper.

(2) Blue parrotfish, midnight parrotfish, or rainbow parrotfish.

(b)–(c) [Reserved]

(d) *Coral, sea cucumber, and sea urchin.* A coral, sea cucumber, or sea urchin may not be fished for or possessed in or from the EEZ around Puerto Rico. The taking of coral in the EEZ around Puerto Rico is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(e) *Queen conch.* No person may fish for or possess queen conch in or from the EEZ around Puerto Rico.

(f) *Rays.* No person may fish for or possess giant manta, spotted eagle ray, or southern stingray in or from the EEZ around Puerto Rico.

§ 622.439 Area and seasonal closures.

(a) *Closures applicable to specific areas*—(1) *Abrir La Sierra Bank red hind spawning aggregation area.* Abrir La Sierra Bank is bounded by rhumb lines connecting, in order, the points listed in Table 1 to this paragraph (a)(1).

(i) From December 1 through the last day of February, each year, fishing is prohibited in Abrir La Sierra Bank.

(ii) Fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in Abrir La Sierra Bank.

TABLE 1 TO § 622.439(a)(1)—ABRIR LA SIERRA BANK

Point	North lat.	West long.
A	18°06.5′	67°26.9′
B	18°06.5′	67°23.9′
C	18°03.5′	67°23.9′
D	18°03.5′	67°26.9′
A	18°06.5′	67°26.9′

(2) *Tourmaline Bank red hind spawning aggregation area.* Tourmaline Bank is bounded by rhumb lines connecting, in order, the points listed in Table 2 to this paragraph (a)(2).

(i) From December 1 through the last day of February, each year, fishing is prohibited in those parts of Tourmaline Bank that are in the EEZ around Puerto Rico.

(ii) Fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in those parts of Tourmaline Bank that are in the EEZ around Puerto Rico.

TABLE 2 TO § 622.439(a)(2)—TOURMALINE BANK

Point	North lat.	West long.
A	18°11.2′	67°22.4′
B	18°11.2′	67°19.2′
C	18°08.2′	67°19.2′
D	18°08.2′	67°22.4′
A	18°11.2′	67°22.4′

(3) *Bajo de Sico.* Bajo de Sico is bounded by rhumb lines connecting, in order, the points listed in Table 3 to this paragraph (a)(3).

(i) From October 1 through March 31, each year, no person may fish for or possess any reef fish in or from those parts of Bajo de Sico that are in the EEZ around Puerto Rico. The prohibition on possession does not apply to such reef fish harvested and landed ashore prior to the closure.

(ii) Fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in those parts of Bajo de Sico that are in the EEZ around Puerto Rico.

(iii) Anchoring by fishing vessels is prohibited year-round in those parts of Bajo de Sico that are in the EEZ around Puerto Rico.

TABLE 3 TO § 622.439(a)(3)—BAJO DE SICO

Point	North lat.	West long.
A	18°15.7′	67°26.4′
B	18°15.7′	67°23.2′
C	18°12.7′	67°23.2′
D	18°12.7′	67°26.4′

TABLE 3 TO § 622.439(a)(3)—BAJO DE SICO—Continued

Point	North lat.	West long.
A	18°15.7′	67°26.4′

(b) *Seasonal closures applicable to specific species*—(1) *Black, red, tiger, yellowedge, and yellowfin grouper closure.* From February 1 through April 30, each year, no person may fish for or possess black, red, tiger, yellowedge, or yellowfin grouper in or from the EEZ around Puerto Rico. The prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(2) *Red hind closure.* From December 1 through the last day of February, each year, no person may fish for or possess red hind in or from the EEZ around Puerto Rico west of 67°10′ W. longitude. The prohibition on possession does not apply to red hind harvested and landed ashore prior to the closure.

(3) *Black, blackfin, silk, and vermilion snapper closure.* From October 1 through December 31, each year, no person may fish for or possess black, blackfin, silk, or vermilion snapper in or from the EEZ around Puerto Rico. The prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(4) *Lane and mutton snapper closure.* From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the EEZ around Puerto Rico. The prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Reef fish.* For those fishing commercially, the applicable ACL is the commercial ACL. For those fishing recreationally, the applicable ACL is the recreational ACL. When landings for one sector are not available for comparison to that sector's ACL, the ACL for the sector with available landings is the ACL for the stock or stock complex.

(1) *Commercial ACLs.* The commercial ACLs are as follows and given in round weight.

TABLE 1 TO § 622.440(a)(1)

Family	Stock or stock complex and species composition	Commercial ACL
Angelfishes	Angelfish—French angelfish, gray angelfish, queen angelfish	137 lb (62.1 kg).
Groupers	Grouper 3—coney,[1] graysby	23,890 lb (10,836.3 kg).
	Grouper 4—black grouper, red grouper, tiger grouper, yellowfin grouper, yellowmouth grouper.	2,492 lb (1,130.3 kg)
	Grouper 5—misty grouper, yellowedge grouper	15,327 lb (6,952.2 kg).
	Grouper 6—red hind,[1] rock hind	121,729 lb (55,215.3 kg).
Grunts	Grunts—white grunt	177,923 lb (80,704.5 kg).
Jacks	Jacks 1—crevalle jack	46 lb (20.8 kg).
	Jacks 2—African pompano	1,052 lb (477.1 kg).
	Jacks 3—rainbow runner	913 lb (414.1 kg).
Parrotfishes	Parrotfish 2—princess parrotfish, queen parrotfish, redband parrotfish, redtail parrotfish, stoplight parrotfish, striped parrotfish.	147,774 lb (67,029.1 kg).
Snappers	Snapper 1—black snapper, blackfin snapper, silk snapper,[1] vermilion snapper, wenchman.	424,009 lb (192,327.2 kg).
	Snapper 2—cardinal snapper, queen snapper[1]	257,236 lb (116,680.2 kg).
	Snapper 3—lane snapper	244,376 lb (110,847 kg).
	Snapper 4—dog snapper, mutton snapper,[1] schoolmaster	116,434 lb (52,813.5 kg).
	Snapper 5—yellowtail snapper	315,806 lb (143,247.1 kg).
	Snapper 6—cubera snapper	119 lb (53.9 kg).
Surgeonfishes	Surgeonfish—blue tang, doctorfish, ocean surgeonfish	147 lb (66.6 kg).
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish[1]	83,099 lb (37,693 kg).
Wrasses	Wrasses 1—hogfish	70,140 lb (31,814.9 kg).
	Wrasses 2—puddingwife, Spanish hogfish	20,126 lb (9,129 kg).

[1] Indicator stock.

(2) *Recreational ACLs.* The recreational ACLs are as follows and given in round weight.

TABLE 2 TO § 622.440(a)(2)

Family	Stock or stock complex and species composition	Recreational ACL
Angelfishes	Angelfish—French angelfish, gray angelfish, queen angelfish	2,985 lb (1,353.9 kg).
Groupers	Grouper 3—coney,[1] graysby	19,634 lb (8,905.8 kg).

TABLE 2 TO § 622.440(a)(2)—Continued

Family	Stock or stock complex and species composition	Recreational ACL
	Grouper 4—black grouper, red grouper, tiger grouper, yellowfin grouper, yellowmouth grouper.	5,867 lb (2,661.2 kg).
	Grouper 5—misty grouper, yellowedge grouper	4,225 lb (1,916.4 kg).
	Grouper 6—red hind,[1] rock hind	34,493 lb (15,645.7 kg).
Grunts	Grunts—white grunt	2,461 lb (1,116.2 kg).
Jacks	Jacks 1—crevalle jack	41,894 lb (19,002.7 kg).
	Jacks 2—African pompano	5,719 lb (2,594 kg).
	Jacks 3—rainbow runner	8,091 lb (3,670 kg).
Parrotfishes	Parrotfish 2—princess parrotfish, queen parrotfish, redband parrotfish, redtail parrotfish, stoplight parrotfish, striped parrotfish.	17,052 lb (7,734.6 kg).
Snappers	Snapper 1—black snapper, blackfin snapper, silk snapper,[1] vermilion snapper, wenchman.	111,943 lb (50,776.4 kg).
	Snapper 2—cardinal snapper, queen snapper[1]	24,974 lb (11,328 kg).
	Snapper 3—lane snapper	21,603 lb (9,798.9 kg).
	Snapper 4—dog snapper, mutton snapper,* schoolmaster	76,625 lb (34,756.5 kg).
	Snapper 5—yellowtail snapper	23,988 lb (10,880.7 kg).
	Snapper 6—cubera snapper	6,448 lb (2,924.7 kg).
Surgeonfishes	Surgeonfish—blue tang, doctorfish, ocean surgeonfish	860 lb (390 kg).
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish[1]	7,453 lb (3,380.6 kg).
Wrasses	Wrasses 1—hogfish	8,263 lb (3,748 kg).
	Wrasses 2—puddingwife, Spanish hogfish	5,372 lb (2,436.6 kg).

[1] Indicator stock.

(3) *Total ACLs.* The total ACLs (combined commercial and recreational ACLs) are as follows and given in round weight.

TABLE 3 TO § 622.440(a)(3)

Family	Stock or stock complex and species composition	Total ACL
Angelfishes	Angelfish—French angelfish, gray angelfish, queen angelfish	3,122 lb (1,416.1 kg).
Groupers	Grouper 3—coney,[1] graysby	43,524 lb (19,742.1 kg).
	Grouper 4—black grouper, red grouper, tiger grouper, yellowfin grouper, yellowmouth grouper.	8,359 lb (3,791.5 kg).
	Grouper 5—misty grouper, yellowedge grouper	19,552 lb (8,868.6 kg).
	Grouper 6—red hind,[1] rock hind	156,222 lb (70,861.1 kg).
Grunts	Grunts—white grunt	180,384 lb (81,820.8 kg).
Jacks	Jacks 1—crevalle jack	41,940 lb (19,023.6 kg).
	Jacks 2—African pompano	6,771 lb (3,071.2 kg).
	Jacks 3—rainbow runner	9,004 lb (4,084.1 kg).
Parrotfishes	Parrotfish 2—princess parrotfish, queen parrotfish, redband parrotfish, redtail parrotfish, stoplight parrotfish, striped parrotfish.	164,826 lb (74,763.8 kg).
Snappers	Snapper 1—black snapper, blackfin snapper, silk snapper,[1] vermilion snapper, wenchman.	535,952 lb (243,103.7 kg).
	Snapper 2—cardinal snapper, queen snapper[1]	282,210 lb (128,008.3 kg).
	Snapper 3—lane snapper	265,979 lb (120,646 kg).
	Snapper 4—dog snapper, mutton snapper,[1] schoolmaster	193,059 lb (87,570 kg).
	Snapper 5—yellowtail snapper	339,794 lb (154,127.9 kg).
	Snapper 6—cubera snapper	6,567 lb (2,978.7 kg).
Surgeonfishes	Surgeonfish—blue tang, doctorfish, ocean surgeonfish	1,007 lb (456.7 kg).
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish[1]	90,552 lb (41,073.6 kg).
Wrasses	Wrasses 1—hogfish	78,403 lb (35,563 kg).
	Wrasses 2—puddingwife, Spanish hogfish	25,498 lb (11,565.6 kg).

[1] Indicator stock.

(4) *General applicability and monitoring of AMs.* At or near the beginning the fishing year, landings for each stock, stock complex, or indicator stock will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. When landings for one sector are not available for comparison to that sector's ACL, the ACL for the sector with available landings is the ACL for the stock or stock complex and the AM specified in paragraph (a)(7) of this section applies. Any fishing season reduction required under paragraph (a) of this section will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

(5) *Commercial AMs.* If NMFS estimates that commercial landings for a stock, stock complex, or indicator stock have exceeded the applicable commercial ACL specified in paragraph (a)(1) of this section for the stock or stock complex, and the combined commercial and recreational landings for the stock, stock complex, or

indicator stock have exceeded the applicable combined commercial and recreational sector ACL (total ACL) specified in paragraph (a)(3) of this section for that stock or stock complex, the Assistant Administrator for NOAA Fisheries (AA) will file a notification with the Office of the Federal Register to reduce the length of the commercial fishing season for the stock or stock complex within that fishing year by the amount necessary to prevent commercial landings from exceeding the commercial ACL for the stock or stock complex, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines that either the commercial ACL or total ACL for the stock or stock complex was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the commercial fishing season for the stock or stock complex.

(6) *Recreational AMs.* If NMFS estimates that recreational landings for a stock, stock complex, or indicator stock have exceeded the applicable recreational ACL specified in paragraph (a)(2) of this section for the stock or stock complex, and the combined commercial and recreational landings for the stock, stock complex, or indicator stock have exceeded the applicable combined commercial and recreational ACL (total ACL) specified in paragraph (a)(3) of this section for that stock or stock complex, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season for the stock or stock complex within that fishing year by the amount necessary to prevent recreational landings from exceeding the recreational ACL for the stock or stock complex, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines that either the recreational ACL or total ACL for the stock or stock complex was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the recreational fishing season for the stock or stock complex.

(7) *AM when only one sector's landings are available.* When landings for one sector are not available for comparison to that sector's ACL, the ACL for the sector with available landings in paragraph (a) of this section is the applicable ACL for the stock or stock complex. If NMFS estimates that available landings for the stock, stock complex, or indicator stock, have exceeded the applicable ACL for the stock or stock complex, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for the stock or stock complex within that fishing year by the amount necessary to prevent landings from exceeding the ACL, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines that the ACL was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the fishing season for the stock or stock complex.

(b) *Pelagic fish.* The ACLs and ACTs are given in round weight. Indicator stocks are noted in the relevant tables to paragraph (a) of this section. For those fishing commercially, the applicable ACL is the commercial ACL and the applicable ACT is the commercial ACT. For those fishing recreationally, the applicable ACL is the recreational ACL and the applicable ACT is the recreational ACT. When landings for one sector are not available for comparison to that sector's ACL and ACT, the ACL and ACT for the sector with available landings are the ACL and ACT for the stock or stock complex.

(1) *Barracuda—great barracuda.* (i) Commercial ACL—495 lb (224.5 kg).

(ii) Commercial ACT—445 lb (201.8 kg).

(iii) Recreational ACL—167,693 lb (76,064.2 kg).

(iv) Recreational ACT—150,924 lb (68,457.9 kg).

(2) *Dolphinfishes—dolphinfish, pompano dolphinfish.* (i) Commercial ACL—232,173 lb (105,311.9 kg).

(ii) Commercial ACT—208,956 lb (94,780.8 kg).

(iii) Recreational ACL—1,513,873 lb (686,681.2 kg).

(iv) Recreational ACT—1,362,486 lb (618,013.2 kg).

(3) *Mackerels—cero, king mackerel.* (i) Commercial ACL—232,422 lb (105,424.8 kg).

(ii) Commercial ACT—209,180 lb (94,882.4 kg).

(iii) Recreational ACL—129,180 lb (58,595 kg).

(iv) Recreational ACT—116,262 lb (52,735.5 kg).

(4) *Tripletail.* (i) Commercial ACL—270 lb (122.4 kg).

(ii) Commercial ACT—243 lb (110.2 kg).

(iii) Recreational ACL—39,005 lb (17,692.3 kg).

(iv) Recreational ACT—35,105 lb (15,923.3 kg).

(5) *Tunas—blackfin tuna, little tunny.* (i) Commercial ACL—82,779 lb (37,547.9 kg).

(ii) Commercial ACT—74,501 lb (33,793 kg).

(iii) Recreational ACL—34,485 lb (15,642.1 kg).

(iv) Recreational ACT—31,037 lb (14,078.1 kg).

(6) *Wahoo.* (i) Commercial ACL—25,911 lb (11,753 kg).

(ii) Commercial ACT—23,320 lb (10,577.7 kg).

(iii) Recreational ACL—210,737 lb (95,588.6 kg).

(iv) Recreational ACT—189,663 lb (86,029.6 kg).

(7) *Pelagic fish AM application.* At or near the beginning the fishing year, landings for each stock, stock complex, or indicator stock will be evaluated relative to the applicable ACT for the stock or stock complex based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings have exceeded the applicable ACT specified in paragraph (b) of this section for a stock or stock complex, NMFS in consultation with the Caribbean Fishery Management Council will determine appropriate corrective action.

(c) *Spiny lobster.* (1) ACL—527,232 lb (239,148.4 kg), round weight.

(2) At or near the beginning the fishing year, landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings have exceeded the ACL specified in paragraph (c)(1) of this section, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent landings from exceeding the ACL, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines the ACL was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

(d)–(e) [Reserved]

(f) *Closure provisions for reef fish and spiny lobster*—(1) *Restrictions applicable during a commercial closure*

for a reef fish stock or stock complex in the EEZ around Puerto Rico. During the closure period announced in the notification filed pursuant to paragraph (a)(5) of this section, the commercial sector included in the notification is closed, and such stock or stock complex in or from the EEZ around Puerto Rico may not be purchased or sold. Harvest or possession of such reef fish stock or stock complex in or from the EEZ around Puerto Rico is limited to the recreational bag and possession limits. If the recreational sector for such stock or stock complex also is closed, such stock or stock complex in or from the EEZ around Puerto Rico may not be harvested, possessed, purchased, or sold, and the bag and possession limits are zero.

(2) *Restrictions applicable during a recreational closure for a reef fish stock or stock complex in the EEZ around Puerto Rico.* During the closure period announced in the notification filed pursuant to paragraph (a)(6) of this section, the recreational sector for the reef fish stock or stock complex included in the notification is closed, and the bag and possession limits for such stock or stock complex in or from the EEZ around Puerto Rico are zero. If the commercial sector for such stock or stock complex also is closed, such stock or stock complex in or from the EEZ around Puerto Rico may not be harvested, possessed, purchased, or sold, and the bag and possession limits are zero.

(3) *Restrictions applicable during a closure for a reef fish stock or stock complex in the EEZ around Puerto Rico when only one sector's landings are available.* During the closure period announced in the notification filed pursuant to paragraph (a)(7) of this section, the fishing season for the reef fish stock or stock complex included in the notification is closed, and such stock or stock complex in or from the EEZ around Puerto Rico may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such stock or stock complex are zero.

(4) *Restrictions applicable during a spiny lobster closure in the EEZ around Puerto Rico.* During the closure period announced in the notification filed pursuant to paragraph (c)(2) of this section, the fishing season for spiny lobster is closed, and spiny lobster in or from the EEZ around Puerto Rico may not be harvested, possessed, purchased, or sold, and the bag and possession limits are zero.

§ 622.441 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit in or from the EEZ around Puerto Rico may not be possessed, sold, or purchased, and must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ around Puerto Rico is responsible for ensuring that all species on board are in compliance with the size limits specified in this section. See § 622.10 regarding requirements for landing fish intact. See § 622.445(c)(2) regarding requirements for landing spiny lobster intact.

(a) *Reef fish.* (1) Yellowtail snapper—12 inches (30.5 cm), TL.

(2) [Reserved]

(b) [Reserved]

(c) *Spiny lobster.* 3.5 inches (8.9 cm), carapace length.

§ 622.442 [Reserved]

§ 622.443 Restrictions on sale or purchase.

(a) *Reef fish.* A live red hind or live mutton snapper in or from the EEZ around Puerto Rico may not be sold or purchased and used in the marine aquarium trade.

(b) [Reserved]

(c) *Coral.* (1) No person may sell or purchase a coral harvested in the EEZ around Puerto Rico.

(2) A coral that is sold in Puerto Rico will be presumed to have been harvested in the EEZ around Puerto Rico, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual harvesting the coral.

(iii) The port and date of landing the coral.

(iv) A statement signed by the person selling the coral attesting that, to the best of his or her knowledge, information, and belief, such coral was harvested from other than in the EEZ around Puerto Rico or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 622.444 Bag and possession limits.

Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a) notwithstanding, the bag limits of this section do not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(a) *Reef fish.* (1) Groupers, parrotfishes, and snappers combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

(2) Angelfishes, grunts, jacks, surgeonfishes, triggerfishes, and wrasses combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day, but not to exceed 1 surgeonfish per person per day or 4 surgeonfish per vessel per day.

(b) [Reserved]

(c) *Spiny lobster.* 3 per person per day, not to exceed 10 per vessel per day, whichever is less.

§ 622.445 Other harvest restrictions.

(a)–(b) [Reserved]

(c) *Spiny lobster*—(1) *Prohibition on harvest of egg-bearing spiny lobster.* Egg-bearing spiny lobster in the EEZ around Puerto Rico must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a spiny lobster trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(2) *Landing spiny lobster intact.* (i) A spiny lobster in or from the EEZ around Puerto Rico must be maintained with head and carapace intact through offloading ashore.

(ii) The operator of a vessel that fishes in the EEZ around Puerto Rico is responsible for ensuring that spiny lobster on that vessel are maintained intact through offloading ashore, as specified in this section.

§ 622.446 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* Multiple minimum size limits apply to importation of spiny lobster into the United States—one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and more restrictive minimum size limits that apply to Puerto Rico, St. Croix, and St. Thomas and St. John, respectively.

(1) No person may import a spiny lobster with less than a 6-ounce (170-gram) tail weight into Puerto Rico. For the purposes of paragraph (a) of this section, a 6-ounce (170-gram) tail weight is defined as a tail that weighs 5.9–6.4 ounces (167–181 grams). If the documentation accompanying an imported spiny lobster, including but not limited to product packaging, customs entry forms, bills of lading,

brokerage forms, or commercial invoices, indicates that the product does not satisfy the minimum tail-weight, the person importing such spiny lobster has the burden to prove that such spiny lobster does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied, such spiny lobster will be considered to be in compliance with the minimum 6-ounce (170-gram) tail-weight requirement.

(2) See § 622.409 regarding the minimum size limit that applies to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands.

(3) See subparts T and U of this part for the minimum size limits that apply to spiny lobster imported into St. Croix and St. Thomas and St. John, respectively.

(b) *Additional spiny lobster import prohibitions*—(1) *Prohibition related to tail meat.* No person may import into any place subject to the jurisdiction of the United States spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster.* No person may import into any place subject to the jurisdiction of the United States spiny lobster with eggs attached or spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods are the first five pairs of abdominal appendages.

§ 622.447 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the EEZ around Puerto Rico, the RA may establish or modify the following items.

(a) *Standard open framework procedures.* Re-specify maximum sustainable yield (MSY), optimum yield (OY), overfishing limit (OFL), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), acceptable biological catch (ABC), ACL, ACT, sustainable yield level, and other related management reference points and status determination criteria; establish or revise rebuilding plans; revise AMs; modify reporting or monitoring requirements, and time or area closures and closure procedures.

(b) *Abbreviated open framework procedures.* Gear or vessel marking requirements, maintaining fish in a specific condition, size limits, commercial trip limits, recreational bag and possession limits, changes to the length of an established closed season of no more than 1 day, and gear modifications to address conservation issues including responding to interactions with species listed under the Endangered Species Act or protected under the Marine Mammal Protection Act.

Subpart T—FMP for the EEZ Around St. Croix

§ 622.470 Management area.

The management area is the EEZ around St. Croix bounded by rhumb lines connecting the following points and geographic instructions in order:

TABLE 1 TO § 622.470

Point	North lat.	West long.
G	18°03′03″	64° 38′ 03″
From Point G proceed along the international and EEZ boundary easterly, then southerly, then southwesterly to Point F.		
F	16° 02′53.5812″	65°20′00.1716″
E	17°30′00.000″	65°20′00.1716″
D	18°01′16.9636″	64°57′38.817″
G	18°03′03″	64°38′03″

§ 622.471 Definitions.

In addition to the definitions and acronyms in § 622.2, the terms and acronyms used in this subpart have the following meanings:

Coral means any or all species, or a part thereof, of coral occurring in the EEZ around St. Croix, including any or all species, or a part thereof, of soft corals and gorgonians in Order Alcyonacea; sea pens and sea pansies in Order Pennatulacea; black corals in Order Antipatharia; stony corals in Order Scleractinia; and, within Order Anthoatheacata, fire corals in Family Milleporidae and lace corals in Family Stylasteridae.

Coral reef resource means any or all species, or a part thereof, of coral, sea cucumber, and sea urchin.

Pelagic fish means any or all species, or a part thereof, as follows:

TABLE 1 TO § 622.471

Class or Family	Scientific name	English common name
Dolphinfishes—Coryphaenidae	*Coryphaena hippurus*	Dolphinfish.
Mackerels and tunas—Scombridae	*Acanthocybium solandri*	Wahoo.

Queen conch means the species *Lobatus gigas,* or a part thereof.

Reef fish means any or all species, or a part thereof, as follows:

TABLE 2 TO § 622.471

Class or family	Scientific name	English common name
Angelfishes—Pomacanthidae	*Pomacanthus paru*	French angelfish.
	Pomacanthus arcuatus	Gray angelfish.
	Holacanthus ciliaris	Queen angelfish.
Groupers—Serranidae	*Mycteroperca bonaci*	Black grouper.
	Cephalopholis fulva	Coney.
	Epinephelus itajara	Goliath grouper.
	Cephalopholis cruentata	Graysby.
	Hyporthodus mystacinus	Misty grouper.
	Epinephelus striatus	Nassau grouper.
	Epinephelus morio	Red grouper.
	Epinephelus guttatus	Red hind.
	Epinephelus adscensionis	Rock hind.
	Mycteroperca tigris	Tiger grouper.
	Mycteroperca venenosa	Yellowfin grouper.
Grunts—Haemulidae	*Haemulon sciurus*	Bluestriped grunt.
	Haemulon plumierii	White grunt.
Parrotfishes—Scaridae	*Scarus coeruleus*	Blue parrotfish.
	Scarus coelestinus	Midnight parrotfish.
	Scarus taeniopterus	Princess parrotfish.
	Scarus vetula	Queen parrotfish.
	Scarus guacamaia	Rainbow parrotfish.
	Sparisoma aurofrenatum	Redband parrotfish.
	Sparisoma rubripinne	Redfin parrotfish.
	Sparisoma chrysopterum	Redtail parrotfish.
	Sparisoma viride	Stoplight parrotfish.
	Scarus iseri	Striped parrotfish.
Snappers—Lutjanidae	*Apsilus dentatus*	Black snapper.
	Lutjanus buccanella	Blackfin snapper.
	Lutjanus griseus	Gray snapper.
	Lutjanus synagris	Lane snapper.
	Lutjanus analis	Mutton snapper.
	Etelis oculatus	Queen snapper.
	Lutjanus apodus	Schoolmaster.
	Lutjanus vivanus	Silk snapper.
	Rhomboplites aurorubens	Vermilion snapper.
	Ocyurus chrysurus	Yellowtail snapper.
Squirrelfishes—Holocentridae	*Holocentrus rufus*	Longspine squirrelfish.
Surgeonfishes—Acanthuridae	*Acanthurus coeruleus*	Blue tang.
	Acanthurus chirurgus	Doctorfish.
	Acanthurus tractus	Ocean surgeonfish.
Triggerfishes—Balistidae	*Balistes vetula*	Queen triggerfish.

Sea cucumber means any or all species, or a part thereof, in Class Holothuroidea and occurring in the EEZ of St. Croix.

Sea urchin means any or all species of sea urchin, or a part thereof, in Class Echinoidea and occurring in the EEZ of St. Croix.

Spiny lobster trap means a trap and its component parts, including the lines and buoys, used for or capable of taking spiny lobster and meeting the spiny lobster trap construction specifications of this subpart.

§ 622.472 [Reserved]

§ 622.473 Vessel identification.

See § 622.6 for vessel identification requirements applicable to this subpart.

§ 622.474 Gear identification.

(a) *Reef fish*—(1) *Fish traps and associated buoys.* All fish traps used or possessed in the EEZ around St. Croix must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands. A fish trap that is fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Fish traps that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. All buoys must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(2) *Presumption of ownership of fish traps.* A fish trap in the EEZ around St. Croix will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(3) *Disposition of unmarked fish traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ around St. Croix is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Spiny lobster traps and associated buoys.* All spiny lobster traps used or possessed in the EEZ around St. Croix must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands. A spiny lobster trap that is fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Spiny lobster traps that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. All buoys must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(2) *Presumption of ownership of spiny lobster traps.* A spiny lobster trap in the EEZ around St. Croix will be presumed

to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(3) *Disposition of unmarked spiny lobster traps or buoys.* An unmarked spiny lobster trap or buoy deployed in the EEZ around St. Croix is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.475 Trap construction specifications and tending restrictions.

(a) *Reef fish*—(1) *Construction specifications*—(i) *Minimum mesh size.* A bare-wire fish trap used or possessed in the EEZ around St. Croix that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ around St. Croix that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ around St. Croix, must have a minimum mesh size of 2 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(ii) *Escape mechanisms.* A fish trap used or possessed in the EEZ around St. Croix must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding 1/8-inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding 1/8-inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(2) *Tending restrictions.* A fish trap in the EEZ around St. Croix may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Construction specifications*—(i) *Escape mechanisms.* A spiny lobster trap used or possessed in the EEZ around St. Croix must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding 1/8-inch (3.2 mm). This includes, but is not limited to tyre palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16-inch (1.6 mm), that is, 16-gauge wire.

(ii) [Reserved]

(2) *Tending restrictions.* A spiny lobster trap in the EEZ around St. Croix may be pulled or tended only by a person (other than an authorized officer) aboard the trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

§ 622.476 Anchoring restrictions.

The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses reef fish in or from the EEZ around St. Croix must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy is required.

§ 622.477 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Reef fish*—(1) *Poisons.* A poison, drug, or other chemical may not be used to fish for reef fish in the EEZ around St. Croix.

(2) *Powerheads.* A powerhead may not be used in the EEZ around St. Croix to harvest reef fish. The possession of a mutilated reef fish in or from the EEZ around St. Croix and a powerhead constitutes a rebuttable presumption of a violation of this paragraph (a)(2).

(3) *Gillnets and trammel nets.* A gillnet or trammel net may not be used in the EEZ around St. Croix to fish for reef fish. The possession of a reef fish in or from the EEZ around St. Croix and a gillnet or trammel net constitutes a rebuttable presumption of a violation of this paragraph (a)(3). A gillnet or trammel net used in the EEZ around St. Croix to fish for any other species must be tended at all times.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Spears and hooks.* A spear, hook, or similar device may not be used in the EEZ around St. Croix to harvest a spiny lobster. The possession of a speared, pierced, or punctured spiny lobster in or from the EEZ around St. Croix constitutes a rebuttable presumption of a violation of this paragraph (c)(1).

(2) *Gillnets and trammel nets.* A gillnet or trammel net may not be used in the EEZ around St. Croix to fish for spiny lobster. The possession of a spiny lobster in or from the EEZ around St. Croix and a gillnet or trammel net constitutes a rebuttable presumption of a violation of this paragraph (c)(2). A gillnet or trammel net used in the EEZ around St. Croix to fish for any other species must be tended at all times.

(d) [Reserved]

(e) *Queen conch.* In the EEZ around St. Croix, no person may harvest queen conch by diving while using a device that provides a continuous air supply from the surface.

§ 622.478 Prohibited species.

The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ around St. Croix is responsible for the limit applicable to that vessel. Any of the following species caught in the EEZ around St. Croix must be released immediately with a minimum of harm.

(a) *Reef fish.* No person may fish for or possess the following reef fish species in or from the EEZ around St. Croix.

(1) Goliath grouper or Nassau grouper.

(2) Blue parrotfish, midnight parrotfish, or rainbow parrotfish.

(b)—(c) [Reserved]

(d) *Coral, sea cucumber, and sea urchin.* A coral, sea cucumber, or sea urchin may not be fished for or possessed in or from the EEZ around St. Croix. The taking of coral in the EEZ around St. Croix is not considered unlawful possession provided it is

returned immediately to the sea in the general area of fishing.

(e) [Reserved]

§ 622.479 Area and seasonal closures.

(a) *Closures applicable to specific areas*—(1) *Mutton snapper spawning aggregation area.* The mutton snapper spawning aggregation area is bounded by rhumb lines connecting, in order, the points listed in Table 1 to this paragraph (a).

(i) From March 1 through June 30, each year, fishing is prohibited in those parts of the mutton snapper spawning aggregation area that are in the EEZ around St. Croix.

(ii) Fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in those parts of the mutton snapper spawning aggregation area that are in the EEZ around St. Croix.

TABLE 1 TO § 622.479(A)—MUTTON SNAPPER SPAWNING AGGREGATION AREA

Point	North lat.	West long.
A	17°37.8′	64°53.0′
B	17°39.0′	64°53.0′
C	17°39.0′	64°50.5′
D	17°38.1′	64°50.5′
E	17°37.8′	64°52.5′
A	17°37.8′	64°53.0′

(2) *Red hind spawning aggregation area east of St. Croix.* The red hind spawning aggregation area east of St. Croix is bounded by rhumb lines connecting, in order, the points listed in Table 2 to this paragraph (a)(2).

(i) From December 1 through the last day of February, each year, fishing is prohibited in the red hind spawning aggregation area east of St. Croix.

(ii) Fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the red hind spawning aggregation area east of St. Croix.

TABLE 2 TO § 622.479(A)(2)—RED HIND SPAWNING AGGREGATION AREA EAST OF ST. CROIX

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(b) *Seasonal closures applicable to specific species*—(1) *Black, red, tiger, and yellowfin grouper closure.* From February 1 through April 30, each year, no person may fish for or possess black, red, tiger, or yellowfin grouper in or from the EEZ around St. Croix. The prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(2) *Black, blackfin, silk, and vermilion snapper closure.* From October 1 through December 31, each year, no person may fish for or possess black, blackfin, silk, or vermilion snapper in or from the EEZ around St. Croix. The prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(3) *Lane and mutton snapper closure.* From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the EEZ around St. Croix. The prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(4) *Queen conch.* No person may fish for or possess a queen conch in or from the EEZ around St. Croix, except from November 1 through May 31 in the area east of 64°34′ W longitude, which includes Lang Bank.

§ 622.480 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Reef fish.* (1) The ACLs are as follows and given in round weight.

TABLE 1 TO § 622.480(a)(1)

Family	Stock or stock complex and species composition	ACL
Angelfishes	Angelfish—French angelfish, gray angelfish, queen angelfish	6,412 lb (2,908.4 kg).
Groupers	Grouper 3—coney,[1] graysby	13,529 lb (6,136.6 kg).
	Grouper 4—red hind,[1] rock hind	11,849 lb (5,374.6 kg).
	Grouper 5—black grouper, red grouper, tiger grouper, yellowfin grouper.	701 lb (317.9 kg).
	Grouper 6—misty grouper	77 lb (34.9 kg).
Grunts	Grunts—bluestriped grunt, white grunt	27,169 lb (12,323.6 kg).
Parrotfishes	Parrotfish 2—princess parrotfish, queen parrotfish, redband parrotfish, redfin parrotfish, redtail parrotfish,[1] stoplight parrotfish,[1] striped parrotfish.	72,365 lb (32,824.2 kg).
Snappers	Snapper 1—black snapper, blackfin snapper,[1] silk snapper,[1] vermilion snapper.	61,455 lb (27,875.5 kg).

TABLE 1 TO § 622.480(a)(1)—Continued

Family	Stock or stock complex and species composition	ACL
	Snapper 2—queen snapper	7,911 lb (3,588.3 kg).
	Snapper 3—gray snapper, lane snapper	14,156 lb (6,421 kg).
	Snapper 4—mutton snapper	8,513 lb (3,861.4 kg).
	Snapper 5—schoolmaster	22,879 lb (10,377.7 kg).
	Snapper 6—yellowtail snapper	15,670 lb (7,107.7 kg).
Squirrelfishes	Squirrelfish—longspine squirrelfish	3,514 (1,593.9 kg).
Surgeonfishes	Surgeonfish—blue tang, doctorfish, ocean surgeonfish	39,061 lb (17,717.7 kg).
Triggerfishes	Triggerfish—queen triggerfish	21,450 lb (9,729.5 kg).

[1] Indicator stock.

(2) At or near the beginning the fishing year, landings for each stock, stock complex, or indicator stock will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings for a stock, stock complex, or indicator stock have exceeded the ACL specified in paragraph (a)(1) of this section for the stock or stock complex, the Assistant Administrator for NOAA Fisheries (AA) will file a notification with the Office of the Federal Register to reduce the length of the fishing season for the stock or stock complex within that fishing year by the amount necessary to prevent landings from exceeding the ACL for the stock or stock complex, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines that the ACL for a particular stock or stock complex was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the fishing season for the stock or stock complex. Any fishing season reduction required under this paragraph (a)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

(b) *Pelagic fish.* The ACLs and ACTs are given in round weight.

(1) *Dolphinfish.* (i) ACL—86,633 lb (39,296 kg).

(ii) ACT—77,970 lb (35,366.5 kg).

(2) *Wahoo.* (i) ACL—27,260 lb (12,364.9 kg).

(ii) ACT—24,534 lb (11,128.4 kg).

(3) *Pelagic fish AM application.* At or near the beginning the fishing year, landings for the stock or stock complex will be evaluated relative to the ACT for the stock or stock complex based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings have exceeded the ACT specified in paragraph (b) of this section, NMFS in consultation with the Caribbean Fishery Management Council will determine appropriate corrective action.

(c) *Spiny lobster.* (1) ACL—197,528 lb (89,597.1 kg), round weight.

(2) At or near the beginning the fishing year, landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings have exceeded the ACL specified in paragraph (c)(1) of this section, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent landings from exceeding the ACL, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines the ACL was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

(d) [Reserved]

(e) *Queen conch.* (1) ACL—50,000 lb (22,679.6 kg), round weight.

(2) If NMFS estimates landings reach or are projected to reach the ACL specified in paragraph (e)(1) of this section, the AA will close the area east of 64°34′ W longitude in the EEZ around St. Croix to the harvest and possession of queen conch by filing a notification of the closure with the Office of the Federal Register. During the closure period, no person may fish for or possess a queen conch in or from the area east of 64°34′ W longitude in the EEZ around St. Croix.

(f) *Closure provisions for reef fish, spiny lobster, and queen conch.* The following restrictions apply during a fishing season closure for reef fish, spiny lobster, or queen conch in the EEZ around St. Croix. During the closure period announced in the notification filed pursuant to paragraph (a)(2), (c)(2), or (e)(2) of this section, such stock or stock complex in or from the EEZ around St. Croix may not be harvested, possessed, purchased, or sold, and the commercial trip limits and recreational bag and possession limits are zero.

§ 622.481 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit in or from the EEZ around St. Croix may not be possessed, sold, or purchased, and must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ around St. Croix is responsible for ensuring that all species on board are in compliance with the size limits specified in this section. See § 622.10 regarding requirements for landing fish intact. See § 622.485(c)(2) regarding requirements for landing spiny lobster intact. See § 622.485(e) regarding requirements for landing queen conch with the meat and shell intact.

(a) *Reef fish.* (1) Yellowtail snapper—12 inches (30.5 cm), TL.

(2) Parrotfishes, except for redband parrotfish, and prohibited blue parrotfish, midnight parrotfish, or rainbow parrotfish—9 inches (22.9 cm), FL.

(3) Redband parrotfish—8 inches (20.3 cm), FL.

(b) [Reserved]

(c) *Spiny lobster.* 3.5 inches (8.9 cm), carapace length.

(d) [Reserved]

(e) *Queen conch.* (1) The minimum size limit is either 9 inches (22.9 cm) in

length, that is, from the tip of the spire to the distal end of the shell, or 3/8-inch (9.5 mm) in lip width at its widest point.

(2) A queen conch not in compliance with its size limit, as specified in paragraph (e)(1) of this section, in or from the EEZ around St. Croix, may not be possessed, sold, or purchased and must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ around St. Croix is responsible for ensuring that queen conch on board are in compliance with the size limit specified in paragraph (e)(1) this section.

§ 622.482 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ around St. Croix may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ around St. Croix may not be transferred at sea, regardless of where such transfer takes place.

(a) *Queen conch.* (1) 200.

(2) The trip limits specified in paragraph (a)(1) of this section apply to a vessel that has at least one person on board with a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands. If no person on the vessel has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands, the bag and possession limits specified in § 622.484(e) apply.

(b) [Reserved]

§ 622.483 Restrictions on sale or purchase.

(a) *Reef fish.* A live red hind or live mutton snapper in or from the EEZ around St. Croix may not be sold or purchased and used in the marine aquarium trade.

(b) [Reserved]

(c) *Coral.* (1) No person may sell or purchase a coral harvested in the EEZ around St. Croix.

(2) A coral that is sold in St. Croix will be presumed to have been harvested in the EEZ around St. Croix, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual harvesting the coral.

(iii) The port and date of landing the coral.

(iv) A statement signed by the person selling the coral attesting that, to the best of his or her knowledge, information, and belief, such coral was harvested from other than in the EEZ around St. Croix or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 622.484 Bag and possession limits.

Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a) notwithstanding, the bag limits of this section do not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(a) *Reef fish.* (1) Groupers, parrotfishes, and snappers combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

(2) Angelfishes, grunts, squirrelfishes, surgeonfishes, and triggerfishes combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day, but not to exceed 1 surgeonfish per person per day or 4 surgeonfish per vessel per day.

(b) [Reserved]

(c) *Spiny lobster.* 3 per person per day, not to exceed 10 per vessel per day, whichever is less.

(d) [Reserved]

(e) *Queen conch.* 3 per person per day or, if more than 4 persons are aboard, 12 per vessel per day.

§ 622.485 Other harvest restrictions.

(a)–(b) [Reserved]

(c) *Spiny lobster*—(1) *Prohibition on harvest of egg-bearing spiny lobster.* Egg-bearing spiny lobster in the EEZ around St. Croix must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a spiny lobster trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(2) *Landing spiny lobster intact.* (i) A spiny lobster in or from the EEZ around St. Croix must be maintained with head and carapace intact through offloading ashore.

(ii) The operator of a vessel that fishes in the EEZ around St. Croix is responsible for ensuring that spiny lobster on that vessel are maintained intact through offloading ashore, as specified in this section.

(d) [Reserved]

(e) *Queen conch.* (1) A queen conch in or from the EEZ around St. Croix must be maintained with meat and shell intact through offloading ashore.

(2) The operator of a vessel that fishes in the EEZ around St. Croix is responsible for ensuring that queen conch on that vessel are maintained intact through offloading ashore, as specified in this section.

§ 622.486 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* Multiple minimum size limits apply to importation of spiny lobster into the United States—one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and more restrictive minimum size limits that apply to Puerto Rico, St Croix, and St. Thomas and St. John, respectively.

(1) No person may import a spiny lobster with less than a 6-ounce (170-gram) tail weight into St. Croix. For the purposes of paragraph (a) of this section, a 6-ounce (170-gram) tail weight is defined as a tail that weighs 5.9–6.4 ounces (167–181 grams). If the documentation accompanying an imported spiny lobster, including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices, indicates that the product does not satisfy the minimum tail-weight, the person importing such spiny lobster has the burden to prove that such spiny lobster does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied, such spiny lobster will be considered to be in compliance with the minimum 6-ounce (170-gram) tail-weight requirement.

(2) See § 622.409 regarding the minimum size limit that applies to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands.

(3) See subparts S and U of this part for the minimum size limits that apply to spiny lobster imported into Puerto Rico and St. Thomas and St. John, respectively.

(b) *Additional spiny lobster import prohibitions*—(1) *Prohibition related to*

tail meat. No person may import into any place subject to the jurisdiction of the United States spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster.* No person may import into any place subject to the jurisdiction of the United States spiny lobster with eggs attached or spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods are the first five pairs of abdominal appendages.

§ 622.487 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the EEZ around St Croix, the RA may establish or modify the following items.

(a) *Standard open framework procedures.* Re-specify maximum sustainable yield (MSY), optimum yield (OY), overfishing limit (OFL), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), acceptable biological catch (ABC), ACL, ACT, sustainable yield level, and other related management reference points and status determination criteria; establish or revise rebuilding plans; revise AMs; modify reporting or monitoring requirements, and time or area closures and closure procedures.

(b) *Abbreviated open framework procedures.* Gear or vessel marking requirements, maintaining fish in a specific condition, size limits, commercial trip limits, recreational bag and possession limits, changes to the length of an established closed season of no more than 1 day, and gear modifications to address conservation issues including responding to interactions with species listed under the Endangered Species Act or protected under the Marine Mammal Protection Act.

Subpart U—FMP for the EEZ around St. Thomas and St. John

§ 622.505 Management area.

The management area is the EEZ around St. Thomas and St. John bounded by rhumb lines connecting the following points and geographic instructions in order:

TABLE 1 TO § 622.505

Point	North lat.	West long.
A (intersects with the international and EEZ boundary)	19°37′29″	65°20′57″
From Point A proceed along the international and EEZ boundary southeasterly to Point G		
G	18°03′03″	64°38′03″
D	18°01′16.9636″	64°57′38.817″
C	18°13′59.0606″	65°05′33.058″
From Point C proceed along the 3-nautical mile territorial boundary around St. Thomas and St. John northerly to Point B.		
B	18°25′46.3015″	65°06′31.866″
A (intersects with the international and EEZ boundary)	19°37′29″	65°20′57″

§ 622.506 Definitions.

In addition to the definitions and acronyms in § 622.2, the terms and acronyms used in this subpart have the following meanings:

Coral means any or all species, or a part thereof, of coral occurring in the EEZ around St. Thomas and St. John, including any or all species, or a part thereof, of soft corals and gorgonians in Order Alcyonacea; sea pens and sea pensies in Order Pennatulacea; black corals in Order Antipatharia; and stony corals in Order Scleractinia; and, within Order Anthoatheacata, fire corals in Family Milleporidae and lace corals in Family Stylasteridae.

Coral reef resource means any or all species, or a part thereof, of coral, sea cucumber, and sea urchin.

Pelagic fish means any or all species, or a part thereof, as follows:

TABLE 1 TO § 622.506

Class or family	Scientific name	English common name
Dolphinfishes—Coryphaenidae	*Coryphaena hippurus*	Dolphinfish.
Mackerels and tunas—Scombridae	*Acanthocybium solandri*	Wahoo.

Queen conch means the species *Lobatus gigas,* or a part thereof.

Reef fish means any or all species, or a part thereof, as follows:

TABLE 2 TO § 622.506

Class or family	Scientific name	English common name
Angelfishes—Pomacanthidae	*Pomacanthus paru*	French angelfish.
	Pomacanthus arcuatus	Gray angelfish.
	Holacanthus ciliaris	Queen angelfish.
Groupers—Serranidae	*Mycteroperca bonaci*	Black grouper.
	Cephalopholis fulva	Coney.
	Epinephelus itajara	Goliath grouper.
	Hyporthodus mystacinus	Misty grouper.
	Epinephelus striatus	Nassau grouper.
	Epinephelus morio	Red grouper.
	Epinephelus guttatus	Red hind.
	Mycteroperca tigris	Tiger grouper.

TABLE 2 TO § 622.506—Continued

Class or family	Scientific name	English common name
	Hyporthodus flavolimbatus	Yellowedge grouper.
	Mycteroperca venenosa	Yellowfin grouper.
	Mycteroperca interstitialis	Yellowmouth grouper.
Grunts—Haemulidae	*Haemulon sciurus*	Bluestriped grunt.
	Haemulon album	Margate.
	Haemulon plumierii	White grunt.
Jacks—Carangidae	*Caranx crysos*	Blue runner.
Parrotfishes—Scaridae	*Scarus coeruleus*	Blue parrotfish.
	Scarus coelestinus	Midnight parrotfish.
	Scarus taeniopterus	Princess parrotfish.
	Scarus vetula	Queen parrotfish.
	Scarus guacamaia	Rainbow parrotfish.
	Sparisoma aurofrenatum	Redband parrotfish.
	Sparisoma rubripinne	Redfin parrotfish.
	Sparisoma chrysopterum	Redtail parrotfish.
	Sparisoma viride	Stoplight parrotfish.
	Scarus iseri	Striped parrotfish.
Porgies—Sparidae	*Calamus bajonado*	Jolthead porgy.
	Calamus calamus	Saucereye porgy.
	Archosargus rhomboidalis	Sea bream.
	Calamus penna	Sheepshead porgy.
Snappers—Lutjanidae	*Apsilus dentatus*	Black snapper.
	Lutjanus buccanella	Blackfin snapper.
	Lutjanus synagris	Lane snapper.
	Lutjanus analis	Mutton snapper.
	Etelis oculatus	Queen snapper.
	Lutjanus vivanus	Silk snapper.
	Rhomboplites aurorubens	Vermilion snapper.
	Ocyurus chrysurus	Yellowtail snapper.
Surgeonfishes—Acanthuridae	*Acanthurus coeruleus*	Blue tang.
	Acanthurus chirurgus	Doctorfish.
	Acanthurus tractus	Ocean surgeonfish.
Triggerfishes—Balistidae	*Balistes vetula*	Queen triggerfish.
Wrasses—Labridae	*Lachnolaimus maximus*	Hogfish.

Sea cucumber means any or all species, or a part thereof, in Class Holothuroidea and occurring in the EEZ of St. Thomas and St. John.

Sea urchin means any or all species of sea urchin, or a part thereof, in Class Echinoidea and occurring in the EEZ of St. Thomas and St. John.

Spiny lobster trap means a trap and its component parts, including the lines and buoys, used for or capable of taking spiny lobster and meeting the spiny lobster trap construction specifications of this subpart.

§ 622.507 [Reserved]

§ 622.508 Vessel identification.

See § 622.6 for vessel identification requirements applicable to this subpart.

§ 622.509 Gear identification.

(a) *Reef fish*—(1) *Fish traps and associated buoys.* All fish traps used or possessed in the EEZ around St. Thomas and St. John must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands. A fish trap that is fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Fish traps that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. All buoys must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(2) *Presumption of ownership of fish traps.* A fish trap in the EEZ around St. Thomas and St. John will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(3) *Disposition of unmarked fish traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ around St. Thomas and St. John is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Spiny lobster traps and associated buoys.* All spiny lobster traps used or possessed in the EEZ around St. Thomas and St. John must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands. A spiny lobster trap that is fished individually, rather than tied together in a trap line, must have at least one buoy attached that floats on the surface. Spiny lobster traps that are tied together in a trap line must have at least one buoy that floats at the surface attached at each end of the trap line. All buoys must display the official number and color code assigned to the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(2) *Presumption of ownership of spiny lobster traps.* A spiny lobster trap in the EEZ around St. Thomas and St. John will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps that are lost or sold if the owner reports the loss or sale within 15 days to the RA.

(3) *Disposition of unmarked spiny lobster traps or buoys.* An unmarked spiny lobster trap or buoy deployed in the EEZ around St. Thomas and St. John is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.510 Trap construction specifications and tending restrictions.

(a) *Reef fish*—(1) *Construction specifications*—(i) *Minimum mesh size.* A bare-wire fish trap used or possessed

in the EEZ around St. Thomas and St. John that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ around St. Thomas and St. John that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ around St. Thomas and St. John, must have a minimum mesh size of 2 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(ii) *Escape mechanisms.* A fish trap used or possessed in the EEZ around St. Thomas and St. John must have a panel located on one side of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of the panel may not be smaller than the mesh size of the trap. The panel must be attached to the trap with untreated jute twine with a diameter not exceeding 1/8-inch (3.2 mm). An access door may serve as the panel, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding 1/8-inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(2) *Tending restrictions.* A fish trap in the EEZ around St. Thomas and St. John may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Construction specifications*—(i) *Escape mechanisms.* A spiny lobster trap used or possessed in the EEZ around St. Thomas and St. John must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding 1/8-inch (3.2 mm). This includes, but is not limited to tyre palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16-inch (1.6 mm), that is, 16-gauge wire.

(ii) [Reserved]

(2) *Tending restrictions.* A spiny lobster trap in the EEZ around St. Thomas and St. John may be pulled or tended only by a person (other than an authorized officer) aboard the trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

§ 622.511 Anchoring restrictions.

The owner or operator of any fishing vessel, recreational or commercial, that fishes for or possesses reef fish in or from the EEZ around St. Thomas and St. John must ensure that the vessel uses only an anchor retrieval system that recovers the anchor by its crown, thereby preventing the anchor from dragging along the bottom during recovery. For a grapnel hook, this could include an incorporated anchor rode reversal bar that runs parallel along the shank, which allows the rode to reverse and slip back toward the crown. For a fluke- or plow-type anchor, a trip line consisting of a line from the crown of the anchor to a surface buoy is required.

§ 622.512 Prohibited gear and methods.

Also see § 622.9 for additional prohibited gear and methods that apply more broadly to multiple fisheries or in some cases all fisheries.

(a) *Reef fish*—(1) *Poisons.* A poison, drug, or other chemical may not be used to fish for reef fish in the EEZ around St. Thomas and St. John.

(2) *Powerheads.* A powerhead may not be used in the EEZ around St. Thomas and St. John to harvest reef fish. The possession of a mutilated reef fish in or from the EEZ around St. Thomas and St. John and a powerhead constitutes a rebuttable presumption of a violation of this paragraph (a)(2).

(3) *Gillnets and trammel nets.* A gillnet or trammel net may not be used in the EEZ around St. Thomas and St. John to fish for reef fish. The possession of a reef fish in or from the EEZ around St. Thomas and St. John and a gillnet or trammel net constitutes a rebuttable presumption of a violation of this paragraph (a)(3). A gillnet or trammel net used in the EEZ around St. Thomas and St. John to fish for any other species must be tended at all times.

(b) [Reserved]

(c) *Spiny lobster*—(1) *Spears and hooks.* A spear, hook, or similar device may not be used in the EEZ around St. Thomas and St. John to harvest a spiny lobster. The possession of a speared, pierced, or punctured spiny lobster in or from the EEZ around St. Thomas and St. John constitutes a rebuttable presumption of a violation of this paragraph (c)(1).

(2) *Gillnets and trammel nets.* A gillnet or trammel net may not be used in the EEZ around St. Thomas and St. John to fish for spiny lobster. The possession of a spiny lobster in or from the EEZ around St. Thomas and St. John and a gillnet or trammel net constitutes a rebuttable presumption of a violation of this paragraph (c)(2). A gillnet or trammel net used in the EEZ around St. Thomas and St. John to fish for any other species must be tended at all times.

§ 622.513 Prohibited species.

The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ around St. Thomas and St. John is responsible for the limit applicable to that vessel. Any of the following species caught in the EEZ around St. Thomas and St. John must be released immediately with a minimum of harm.

(a) *Reef fish.* No person may fish for or possess the following reef fish species in or from the EEZ around St. Thomas and St. John.

(1) Goliath grouper or Nassau grouper.

(2) Blue parrotfish, midnight parrotfish, or rainbow parrotfish.

(b)–(c) [Reserved]

(d) *Coral, sea cucumber, and sea urchin.* A coral, sea cucumber, or sea urchin may not be fished for or possessed in or from the EEZ around St. Thomas and St. John. The taking of coral in the EEZ around St. Thomas and St. John is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(e) *Queen conch.* No person may fish for or possess queen conch in or from the EEZ around St. Thomas and St. John.

§ 622.514 Area and seasonal closures.

(a) *Closures applicable to specific areas*—(1) *Grammanik Bank.* The Grammanik Bank is bounded by rhumb lines connecting, in order, the points listed in Table 1 to this paragraph (a)(1).

(i) From February 1 through April 30, each year, no person may fish for or possess any species of fish, except highly migratory species, in or from the Grammanik Bank. The prohibition on possession does not apply to such fish harvested and landed ashore prior to the closure. For the purpose of this paragraph (a)(1)(i), *fish* means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. *Highly migratory species* means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in appendix A to part 635 of this title); and white marlin, blue marlin, sailfish, and longbill spearfish.

(ii) Fishing with pots, traps, bottom longlines, gillnets or trammel nets is prohibited year-round in the Grammanik Bank.

TABLE 1 TO § 622.514(a)(1)—GRAMMANIK BANK

Point	North lat.	West long.
A	18°11.898′	64°56.328′
B	18°11.645′	64°56.225′
C	18°11.058′	64°57.810′
D	18°11.311′	64°57.913′
A	18°11.898′	64°56.328′

(2) *Hind Bank Marine Conservation District (MCD).* The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed in Table 2 to this paragraph (a)(2). Fishing for any species and anchoring by fishing vessels is prohibited year-round in those parts of the Hind Bank MCD that are in the EEZ around St. Thomas and St. John.

TABLE 2 TO § 622.514(a)(2)—HIND BANK MCD

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(b) *Seasonal closures applicable to specific species*—(1) *Black, red, tiger, yellowedge, and yellowfin grouper closure.* From February 1 through April 30, each year, no person may fish for or possess black, red, tiger, yellowedge, or yellowfin grouper in or from the EEZ around St. Thomas and St. John. The prohibition on possession does not apply to such grouper harvested and landed ashore prior to the closure.

(2) *Black, blackfin, silk, and vermilion snapper closure.* From October 1 through December 31, each year, no person may fish for or possess black, blackfin, silk, or vermilion snapper in or from the EEZ around St. Thomas and St. John. The prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

(3) *Lane and mutton snapper closure.* From April 1 through June 30, each year, no person may fish for or possess lane or mutton snapper in or from the EEZ around St. Thomas and St. John. The prohibition on possession does not apply to such snapper harvested and landed ashore prior to the closure.

§ 622.515 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Reef fish.* (1) The following ACLs are as follows and given in round weight.

TABLE 1 TO § 622.515(a)(1)

Family	Stock or stock complex and species composition	ACL
Angelfishes	Angelfish—French angelfish, gray angelfish,[1] queen angelfish	18,297 lb (8,299.3 kg).
Groupers	Grouper 3—coney, red hind [1]	65,030 lb (29,497.1 kg).
	Grouper 4—black grouper, red grouper, tiger grouper, yellowfin grouper	2,254 lb (1,022.3 kg).
	Grouper 5—misty grouper, yellowedge grouper, yellowmouth grouper	390 lb (176.9 kg).
Grunts	Grunts 1—bluestriped grunt, white grunt [1]	30,581 lb (13,871.3 kg).
	Grunts 2—margate	2,319 lb (1,051.8 kg).
Jacks	Jacks—blue runner	44,665 lb (20,259.7 kg).
Parrotfishes	Parrotfish 2—princess parrotfish, queen parrotfish, redband parrotfish, redfin parrotfish, redtail parrotfish[1], stoplight parrotfish,[1] striped parrotfish.	60,026 lb (27,227.3 kg).
Porgies	Porgies—jolthead porgy, saucereye porgy,[1] sea bream, sheepshead porgy	29,039 lb (13,171.8 kg).
Snappers	Snapper 1—black snapper, blackfin snapper,[1] silk snapper, vermilion snapper	20,090 lb (9,112.6 kg).
	Snapper 2—queen snapper	568 lb (257.6 kg).
	Snapper 3—lane snapper, mutton snapper [1]	30,784 lb (13,963.3 kg).
	Snapper 4—yellowtail snapper	88,952 lb (40,347.9 kg).
Surgeonfishes	Surgeonfish—blue tang, doctorfish,[1] ocean surgeonfish	22,630 lb (10,264.7 kg).
Triggerfishes	Triggerfish—queen triggerfish	97,670 lb (44,302.3 kg).
Wrasses	Wrasses—hogfish	2,951 lb (1,338.5 kg).

[1] Indicator stock.

(2) At or near the beginning of the fishing year, landings for each stock, stock complex, or indicator stock will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings for a stock, stock complex, or indicator stock have exceeded the ACL specified in paragraph (a)(1) of this section for the stock or stock complex, the Assistant Administrator for NOAA Fisheries (AA) will file a notification with the Office of the Federal Register to reduce the length of the fishing season for the stock or stock complex within that fishing year by the amount necessary to prevent landings from exceeding the ACL for the stock or stock complex, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines that the ACL for a particular stock or stock complex was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the fishing season for the stock or stock complex. Any fishing season reduction required under this paragraph (a)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

(b) *Pelagic fish.* The ACLs and ACTs are given in round weight.

(1) *Dolphinfish.* (i) ACL—9,778 lb (4,435.2 kg).

(ii) ACT—8,800 lb (3,991.6 kg).

(2) *Wahoo.* (i) ACL—6,879 lb (3,120.2 kg).

(ii) ACT—6,191 lb (2,808.1 kg).

(3) *Pelagic fish AM application.* At or near the beginning the fishing year, landings for the stock or stock complex will be evaluated relative to the ACT for the stock or stock complex based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings have exceeded the ACT specified in paragraph (b) of this section, NMFS in consultation with the Caribbean Fishery Management Council will determine appropriate corrective action.

(c) *Spiny lobster.* (1) ACL—209,210 lb (94,896 kg), round weight.

(2) At or near the beginning the fishing year, landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP. If NMFS estimates that landings have exceeded the ACL specified in paragraph (c)(1) of this section, the AA will file a notification with the Office of the Federal Register to reduce the length of the fishing season for spiny lobster within that fishing year by the amount necessary to prevent landings from exceeding the ACL, unless NMFS determines that a fishing season reduction is not necessary based on the best scientific information available. If NMFS determines the ACL was exceeded because data collection or monitoring improved rather than because landings increased, NMFS will not reduce the length of the fishing season. Any fishing season reduction required under this paragraph (c)(2) will be applied starting from September 30 and moving earlier toward the beginning of the fishing year. If the length of the required fishing season reduction exceeds the time period of January 1 through September 30, any additional fishing season reduction will be applied starting from October 1 and moving later toward the end of the fishing year.

(d)–(e) [Reserved]

(f) *Closure provisions for reef fish and spiny lobster.* The following restrictions apply during a fishing season closure for reef fish or spiny lobster in the EEZ around St. Thomas and St. John. During the closure period announced in the notification filed pursuant to paragraph (a)(2) or (c)(2) of this section, such stock or stock complex in or from the EEZ around St. Thomas and St. John may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such stock or stock complex are zero.

§ 622.516 Size limits.

All size limits in this section are minimum size limits unless specified otherwise. A fish not in compliance with its size limit in or from the EEZ around St. Thomas and St. John may not be possessed, sold, or purchased, and must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ around St. Thomas and St. John is responsible for ensuring that all species on board are in compliance with the size limits specified in this section. See § 622.10 regarding requirements for landing fish intact. See § 622.520(c)(2) regarding requirements for landing spiny lobster intact.

(a) *Reef fish.* (1) Yellowtail snapper—12 inches (30.5 cm), TL.

(2) [Reserved]

(b) [Reserved]

(c) *Spiny lobster.* 3.5 inches (8.9 cm), carapace length.

§ 622.517 [Reserved]

§ 622.518 Restrictions on sale or purchase.

(a) *Reef fish.* A live red hind or live mutton snapper in or from the EEZ around St. Thomas and St. John may not be sold or purchased and used in the marine aquarium trade.

(b) [Reserved]

(c) *Coral.* (1) No person may sell or purchase a coral harvested in the EEZ around St. Thomas and St. John.

(2) A coral that is sold in St. Thomas or St. John will be presumed to have been harvested in the EEZ around St. Thomas and St. John, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual harvesting the coral.

(iii) The port and date of landing the coral.

(iv) A statement signed by the person selling the coral attesting that, to the best of his or her knowledge, information, and belief, such coral was harvested from other than in the EEZ around St. Thomas and St. John, or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 622.519 Bag and possession limits.

Section 622.11(a) provides the general applicability for bag and possession limits. However, § 622.11(a) notwithstanding, the bag limits of this section do not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(a) *Reef fish.* (1) Groupers, parrotfishes, and snappers combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

(2) Angelfishes, grunts, jacks, porgies, surgeonfishes, triggerfishes, and wrasses combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day, but not to exceed 1 surgeonfish per person per day or 4 surgeonfish per vessel per day.

(b) [Reserved]

(c) *Spiny lobster.* 3 per person per day, not to exceed 10 per vessel per day, whichever is less.

§ 622.520 Other harvest restrictions.

(a)–(b) [Reserved]

(c) Spiny lobster—(1) *Prohibition on harvest of egg-bearing spiny lobster.* Egg-bearing spiny lobster in the EEZ around St. Thomas and St. John must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a spiny lobster trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(2) *Landing spiny lobster intact.* (i) A spiny lobster in or from the EEZ around St. Thomas and St. John must be maintained with head and carapace intact through offloading ashore.

(ii) The operator of a vessel that fishes in the EEZ around St. John and St. Thomas is responsible for ensuring that spiny lobster on that vessel are maintained intact through offloading ashore, as specified in this section.

§ 622.521 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* Multiple minimum size limits apply to importation of spiny lobster into the United States—one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and more restrictive minimum size limits that apply to Puerto Rico, St. Croix, and St. Thomas and St. John, respectively.

(1) No person may import a spiny lobster with less than a 6-ounce (170-gram) tail weight into St. Thomas or St. John. For the purposes of paragraph (a) of this section, a 6-ounce (170-gram) tail weight is defined as a tail that weighs 5.9–6.4 ounces (167–181 grams). If the documentation accompanying an imported spiny lobster, including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices, indicates that the product does not satisfy the minimum tail-weight, the person importing such spiny lobster has the burden to prove that such spiny lobster does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied, such spiny lobster will be considered to be in compliance with the minimum 6-ounce (170-gram) tail-weight requirement.

(2) See § 622.409 regarding the minimum size limit that applies to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands.

(3) See subparts S and T of this part for the minimum size limits that apply to spiny lobster imported into Puerto Rico and St. Croix, respectively.

(b) *Additional spiny lobster import prohibitions*—(1) *Prohibition related to tail meat.* No person may import into any place subject to the jurisdiction of the United States spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster.* No person may import into any place subject to the jurisdiction of the United States spiny lobster with eggs attached or spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods are the first five pairs of abdominal appendages.

§ 622.522 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the EEZ around St. Thomas and St. John, the RA may establish or modify the following items.

(a) *Standard open framework procedures.* Re-specify maximum sustainable yield (MSY), optimum yield (OY), overfishing limit (OFL), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), acceptable biological catch (ABC), ACL, ACT, sustainable yield level, and other related management reference points and status determination criteria; establish or revise rebuilding plans; revise AMs; modify reporting or monitoring requirements, and time or area closures and closure procedures.

(b) *Abbreviated open framework procedures.* Gear or vessel marking requirements, maintaining fish in a specific condition, size limits, commercial trip limits, recreational bag and possession limits, changes to the length of an established closed season of no more than 1 day, and gear modifications to address conservation issues including responding to interactions with species listed under the Endangered Species Act or protected under the Marine Mammal Protection Act.

Subpart V [Removed]

■ 18. Remove subpart V, consisting of §§ 622.490 through 622.497.

■ 19. Revise appendix A to read as follows:

Appendix A to Part 622—Species Tables

Table 1 to Appendix A to Part 622—Gulf of Mexico Reef Fish

Balistidae—Triggerfishes
- Gray triggerfish, *Balistes capriscus*

Carangidae—Jacks
- Greater amberjack, *Seriola dumerili*
- Lesser amberjack, *Seriola fasciata*
- Almaco jack, *Seriola rivoliana*
- Banded rudderfish, *Seriola zonata*

Labridae—Wrasses
- Hogfish, *Lachnolaimus maximus*

Lutjanidae—Snappers
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Blackfin snapper, *Lutjanus buccanella*
- Red snapper, *Lutjanus campechanus*
- Cubera snapper, *Lutjanus cyanopterus*
- Gray (mangrove) snapper, *Lutjanus griseus*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Wenchman, *Pristipomoides aquilonaris*
- Vermilion snapper, *Rhomboplites aurorubens*

Malacanthidae—Tilefishes
- Goldface tilefish, *Caulolatilus chrysops*
- Blueline tilefish, *Caulolatilus microps*
- Tilefish, *Lopholatilus chamaeleonticeps*

Serranidae—Groupers
- Speckled hind, *Epinephelus drummondhayi*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Goliath grouper, *Epinephelus itajara*
- Red grouper, *Epinephelus morio*
- Warsaw grouper, *Epinephelus nigritus*
- Snowy grouper, *Epinephelus niveatus*
- Black grouper, *Mycteroperca bonaci*
- Yellowmouth grouper, *Mycteroperca interstitialis*
- Gag, *Mycteroperca microlepis*
- Scamp, *Mycteroperca phenax*
- Yellowfin grouper, *Mycteroperca venenosa*

Table 2 to Appendix A to Part 622—South Atlantic Snapper-Grouper

Balistidae—Triggerfishes
- Gray triggerfish, *Balistes capriscus*

Carangidae—Jacks
- Bar jack, *Caranx ruber*
- Greater amberjack, *Seriola dumerili*
- Lesser amberjack, *Seriola fasciata*
- Almaco jack, *Seriola rivoliana*

Ephippidae—Spadefishes
- Spadefish, *Chaetodipterus faber*

Haemulidae—Grunts
- Margate, *Haemulon album*
- Tomtate, *Haemulon aurolineatum*
- Sailor's choice, *Haemulon parra*
- White grunt, *Haemulon plumierii*

Labridae—Wrasses
- Hogfish, *Lachnolaimus maximus*

Lutjanidae—Snappers
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Blackfin snapper, *Lutjanus buccanella*
- Red snapper, *Lutjanus campechanus*
- Cubera snapper, *Lutjanus cyanopterus*
- Gray snapper, *Lutjanus griseus*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Vermilion snapper, *Rhomboplites aurorubens*

Malacanthidae—Tilefishes
- Blueline tilefish, *Caulolatilus microps*
- Golden tilefish, *Lopholatilus chamaeleonticeps*
- Sand tilefish, *Malacanthus plumieri*

TABLE 2 TO APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER—Continued

Percichthyidae—Temperate basses
Wreckfish, *Polyprion americanus*
Serranidae—Groupers
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*
Serranidae—Sea Basses:
Black sea bass, *Centropristis striata*
Sparidae—Porgies
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus calamus*

TABLE 2 TO APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER-GROUPER—Continued

Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus pagrus*
Scup, *Stenotomus chrysops*
The following species are designated as ecosystem component species:
Cottonwick, *Haemulon melanurum*
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Longspine porgy, *Stenotomus caprinus*
Ocean triggerfish, *Canthidermis sufflamen*

TABLE 3 TO APPENDIX A TO PART 622—ATLANTIC DOLPHIN AND WAHOO

Dolphin, *Coryphaena equiselis or Coryphaena hippurus*
Wahoo, *Acanthocybium solandri*
The following species are designated as ecosystem component species:
Bullet mackerel, *Auxis rochei*
Frigate mackerel, *Auxis thazard*

§§ 622.55, 622.382, 622.400, 622.402, 622.403, 622.404, and 622.405 [Amended]

■ 20. In addition to the previous amendments to this part, remove all references to ''622.413'' and add, in their place, ''622.19'' in the following sections:

■ a. 50 CFR 622.55(e) introductory text and (e)(2);

■ b. 50 CFR 622.382(a)(1)(i)(B);

■ c. 50 CFR 622.400(a)(1)(i);

■ d. 50 CFR 622.402(a)(1), (2), and (3) and (c)(1);

■ e. 50 CFR 622.403(b)(3)(i);

■ f. 50 CFR 622.404(e) and (f); and

■ g. 50 CFR 622.405(b)(2)(i).

[FR Doc. 2022–19409 Filed 9–12–22; 8:45 am]

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Federal Register

Vol. 87, No. 176

Tuesday, September 13, 2022

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Last List August 29, 2022

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