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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[Doc. No. AMS–LP–22–0032]

Pork Promotion, Research, and Consumer Information Order—Decrease in Assessment Rate and Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this rulemaking decreases the current rate of assessment of 0.40 percent of the market value of live porcine animals to 0.35 percent and decreases the amount of assessment per pound due on imported pork and pork products (one- to three-hundredths of a cent per pound). These reductions in assessment rates are made in response to the approximately 47 percent increase in 2021 in the average prices of live hogs above its 3-year average from 2018–2020 and reflect the National Pork Producers Delegate Body's (Delegate Body) desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also brings the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. This action also updates the Harmonized Tariff Schedule number for prepared or preserved pork in the regulation.

DATES: *Effective date:* January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Maribel Reyna; Agricultural Marketing Specialist; Research and Promotion Division; Telephone: (202) 302–1139; or Email: *Maribel.Reyna@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule does not meet the definition of significant regulatory action contained in section 3(f) of Executive Order (E.O.) 12866 and is not subject to review by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The Pork Promotion, Research, and Consumer Information Act of 1985 (Act) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Sec. 1625 of the Act, a person subject to an order may file a petition with the United States Department of Agriculture (USDA) stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the USDA's determination, if a complaint is filed no later than 20 days after the date such person receives notice of such determination.

Executive Order 13175

This final rule has also been reviewed under E.O. 13175, Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions 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. The Agricultural Marketing Service (AMS) has assessed the impact of this final rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under E.O. 13175. AMS participates on teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the changes to the assessment rate will be relayed through a notice to trade. AMS will work with the USDA, Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the final rule.

Regulatory Flexibility Act and Paperwork Reduction Act

This action was reviewed under the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*) in the Order initially published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). The AMS Administrator determined at that time that the Order would not have significant economic impact on a substantial number of small entities; therefore, a regulatory impact analysis was not required. The Census of Agriculture reports that 64,871 U.S. farms produced hogs and pigs in 2017. Many of those farms are likely to be classified as small business by having total sales less than the $3.5 million threshold set by the Small Business Administration (SBA) definition (13 CFR 121.201). AMS does not believe that this rule change will have a significant or differential economic impact on small producers because total assessments paid are proportionate to the value of hogs sold by a producer.

This final rule decreases the rate of the assessment from 0.40 percent of the market value of porcine animals to 0.35 percent and decreases the amount of assessment per pound due on imported pork and pork products. While domestic assessments are only made to live porcine animals, assessments on

imports are made to both live animal imports and post-slaughter pork and pork products. This update to the regulations updates assessments on the imported product based on the Harmonized Tariff Schedule (HTS) to bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals.

From 2018 to 2020, total checkoff revenue ranged from $72.3 million to $77.6 million. In that time, 95.6 percent of all revenue was from domestic sales and 4.4 percent was derived from assessments on imported hogs and pork products. Of domestic revenue, 98.6 percent was derived from market hogs and 1.4 percent was derived from feeder hogs. In 2021, total checkoff revenue increased approximately 41 percent to $103.6 million, an increase primarily reflecting the 47 percent increase in live hog prices.[1] Despite the price increase, both the share of all revenue derived from imports and the share of domestic revenue derived from live hogs was mostly unchanged in 2021 relative to previous years.

The assessment decrease reduces annual funding of the promotion, research, and consumer information program by an estimated $13.5 million under the assumption that 2021 market conditions persist. This decrease reflects both a $12.3 million reduction in domestic assessments stemming from the 12.5 percent decrease in the rate of assessment for live hogs (*i.e.,* the change from 0.40 to 0.35 percent assessment for live weight hogs), which totaled $98.4 million in 2021 and a $1.2 million reduction in importer assessments.

In 2021, the gross market value of all swine marketed in the United States was approximately $27 billion. The assessment decrease reflects the Delegate Body's desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The expected benefit of the rule change is savings of $13.5 million in assessments that would have been paid under the existing rule. The expected cost of the rule is the potential loss of returns accruing to the industry from promotion, research, and consumer information programs paid for by the National Pork Board using assessment funds. While these programs have been shown to earn positive returns in academic studies when considering pre-2021 data, the sharp 2021 increase in assessment revenue is likely to create diminishing marginal returns to advertising. [2] However, even with the reduction in assessment rates, total program funds will have still increased significantly above 2020 levels owing to the ongoing increase in price levels, assuming the general market conditions of 2021 persist. For these reasons, the economic impact of the assessments is not expected to be a significant part of the total market value of swine. Accordingly, the AMS Administrator determined that this action will not have a significant economic impact on substantial number of small entities.

The information collection requirements have been previously approved by the OMB and have been assigned OMB control number 0581–0093. Reapproval for the information collection will not be necessary since the rate assessment does not substantially change the assessment collection process.

The Act (7 U.S.C. 4801–4819), enacted on December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The final Order at 7 CFR part 1230 establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29962, 61 FR 28002, 62 FR 26205, 63 FR 45935, 64 FR 44643, 66 FR 67071, 67 FR 58320, and 69 FR 9924) and assessments began on November 1, 1986. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29962). Further, the rate was decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). The import assessments were decreased by five-hundredths to seven-hundredths of a cent per pound effective April 2, 2004, to reflect a decrease in the 2002 average price for domestic barrows and gilts (69 FR 9924). The total annual assessment rate collected in 2021 was $103.6 million. Assessments on imported pork and pork products accounted for about $4.5 million of the total.

The Order requires that producers pay to the National Pork Board an assessment of 0.40 percent of the market value of each porcine animal upon sale (7 CFR 1230.112). However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. Regulations under 7 CFR 1230.71 specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. Section 1230.71(b) of the Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

Section 1230.110(a) requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.40 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.40 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The Act and Order contain provisions for adjusting the rate of assessment. The Delegate Body has the responsibility to recommend the rate of assessment to the Department. The 2022 Delegate Body, at its annual meeting March 9–11, 2022, in Louisville, Kentucky, voted to recommend to the USDA the rate of assessment of 0.40 percent be decreased to 0.35 percent. In 2022, the Secretary appointed 155 members to serve on the Delegate Body, including 150 producers and 5 importers. At the Delegate Body annual meeting, 145 Delegates were present representing 101,017.5 valid share votes. There were 98,797.6 share votes cast following floor debate of the resolution for the rate assessment reduction. There were 93,151.3 share votes cast in favor of the 0.05 percent decrease in checkoff rate assessment. A simple majority of share votes is required to pass the resolution (7 CFR 1230.36). The assessment rate decrease also applies to the amount of assessment on imported pork and pork products pursuant to the 7 CFR 1230.110.

Methodology and Analysis

AMS weighed the costs and benefits of the change in pork assessment rates, acknowledging the role the Delegate Body plays in the disposition of funds and its insight into the effect of an

[1] Specifically, the Barrow and Gilt National Base Live Equivalent Price (51–52% Lean) rose from its 2018–20 average of $45.7 to $67.29 per cwt.

[2] Kaiser, Harry M. ''An Economic Analysis of the National Pork Board Checkoff Program'' Publication of the National Pork Board, January 2022

assessment decrease. The cost of the assessment reduction is the reduced funds available for research, promotion and consumer information of pork and pork products and activities that strengthen and increase demand for lives hogs sold by producers paying the assessment. Economic research has shown that such research and promotion programs generally yield positive net returns to producers, a finding confirmed in the National Pork Board's own commissioned evaluation of the program based on data through 2020. While this finding would initially suggest that a reduction in the assessment would reduce returns to pork producers (and thus fails a cost benefit analysis test), AMS notes the sharp increase in pork prices in the intervening period as a mitigating factor to relying solely on that study.

Between 2018 and 2020, the national barrows and gilt national base live weight equivalent price for 51–51% lean hogs was $45.69 per cwt on a slaughter of 131.5 million head. In 2021, the price rose 47% to $67.29 per cwt while slaughter only fell 2 percent to 129.0 million head. Together, these changes have caused checkoff revenue to increase 41 percent between 2020 and 2021. While the reduced assessment will lower expected assessment revenue in future years from 2021, AMS still expects revenue to be greater than the 2018–2020 average in 2022 and in future years owing to the expected continuation of elevated prices.

In its assessments of the costs of the final rule, AMS assumed that demand for hogs and pork products is unchanged in the short run by any reduction in promotion expenditure that may result from the reduced assessment. As such, AMS finds there will be no cost to the final rule change in terms of reduced demand for pork. AMS notes that research and promotion spending is likely to exhibit diminishing marginal returns, meaning that the large increase in promotion expenditure from the 2021 increase in assessment revenue is unlikely to generate economic returns as those returns estimated from data in earlier periods, which started at a lower level.[3] AMS also notes that the National Pork Board, subject to the Secretary's approval, determines specifically how assessment revenue is spent to promote pork consumption and enhance demand. Subsequently, the National Pork Board is also likely to know the point at which the highest return promotional opportunities have been exhausted and that additional advertising becomes ineffective. Based on its independent analysis of market trends and the research on returns to the pork checkoff program, AMS agrees that this reduction in assessment rate will effectuate the purposes of the Act.

AMS notes that total assessment revenue is expected to remain above the 2020 level despite the assessment rate reduction. On this point, AMS calculated the total reduction in assessment revenue as the sum of the reduction in domestic and foreign revenue. Between 2018 and 2020, about 95.6 percent of assessment revenue was from domestic assessments on live hogs, most of which are market hogs although all types of hogs pay the same assessment rate. AMS estimated the reduction in domestic revenue of $12.3 by multiplying 2021 domestic revenue level of $97.3 million by the 12.5 percent reduction in the rate of assessment (*i.e.,* the change in the assessment rate from 0.4 to 0.35 dollars per hundred weight.)

AMS estimated the reduction in import assessment revenue using trade data available from the USDA Foreign Agricultural Service. This data shows that approximately 49 percent of assessment revenue from imports in 2021 was derived from live hog assessments, which, like domestic hogs, will see a 12.5 percent reduction in the rate of assessment. The remaining 51 percent of pork and processed pork products will see variable decreases in the rate of assessments, all of which are larger in magnitude than the 12.5 percent in the live hog rate. AMS calculated the average rate reduction for these pork and processed products to be 38.6 percent based on each product's average value share of imports between 2019 and 2021. AMS then calculated a change in the rate of all import assessments of 25.9 percent, calculated as the sum of the 49 percent revenue share for live hogs times the 12.5 assessment reduction plus the 51 percent revenue share for pork products times the 38.6 percent reduction. Applying the average rate of assessment to the $4.53 million in assessment revenue from imports in 2021, AMS found that import revenue will fall by $1.2 million.

The adjustment in importer assessments will bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. Since the original rule was put in place, the wholesale-to-farm price spread for pork has increased from 38.7 percent in 2002 to 74 percent between 2019 and 2021, as report by the USDA Economic Research Service. Other things equal, a widening price spread will cause assessments on finished wholesale products to increase relative to hogs. This rule reduces the assessment rate for imported processed products by 38.6 percent on average but only 12.5 percent for live hogs.

This is not the first reduction in assessment rate for this program. As mentioned above, the program was funded by an initial assessment rate of 0.25 percent. The rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635) and then to 0.45 percent effective September 3, 1995 (60 FR 29962). Further, the rate was decreased to 0.40 percent effective September 30, 2002 (67 FR 58320). The import assessments were decreased by five-hundredths to seven-hundredths of a cent per pound effective April 2, 2004, to reflect a decrease in the 2002 average price for domestic barrows and gilts (69 FR 9924).

From 2012 to current, working off a comparable rate decrease, the Board has continued to build industry initiatives that have long-term return on investment impact for pork producers. Over the years, the Board has initiated several major projects that continue to add value to the industry regardless of budget such as building trust and adding value through a positive image of US Pork, establishing US Pork as the global leader in sustainability agriculture, preventing and preparing for foreign animal diseases, and strengthening state and industry partnerships to build support that keeps people, pigs and the planet as leading fundamentals. Even with the rate reduction, AMS has no reason to believe that the Board cannot effectively continue its goal to develop and expand markets for pork and pork products by funding promotion, research, and consumer information initiatives.

Further, over the past 10 years the National Pork Board has averaged producer checkoff revenue of $80.6 million. Even with an estimated $13.5 million ($12.3 million of that decrease

[3] In the 2021 publication ''An Economic Analysis of the National Pork Board Checkoff Program'', Kaiser finds that benefit-cost ratios (BCR) for expenditure components of pork assessments to range from 71.58 to 1.37 using data from 1976 to 2020. At the lower bound of that range, the 1.37 BCR value indicates that a dollar invested in promotion raises returns to producer by 1.37. That research also finds that the 90 percent lower bound for the marginal benefit-cost ratio is less one for the category of demand enhancing research (indicating negative producer returns) and between 5 and 7 for pork advertising and non-advertising promotion. These estimates, however, only consider the effects of changing program expenditure by 1 percent. AMS believes that for some promotional activities funded by the checkoff the BCR may fall below one if expenditure increases by 41 percent as it did in 2021.

deriving from reduced domestic assessments and $1.2 million deriving from reduced importer assessments) reduction in assessment revenue, the total assessment revenue will continue to fall above the last 10-year average assessment revenue.

AMS assumes that the reduction in promotional spending from the new rates will have a negligibly small effect on demand, especially given the still substantial increase in promotion spending above historic levels. For this reason, the costs of the rule will be small as well. The benefits of the rule, however, will be the direct saving to producers of $13.5 million in reduced assessment payments. Together, AMS assesses that the benefits to this rule change will exceed its costs.

Comments

The proposed rule describing the decrease in rate of assessment of market value of live porcine animals and assessment per pound due on imported pork and pork products was published on July 20, 2022, in the **Federal Register** (87 FR 43222). The 30-day public comment period closed on August 19, 2022. The Department received a total of 3 comments. Two comments did not support the rate decrease but instead recommended switching to plant-based farming or diet. The third comment was submitted by 27 state associations supporting the assessment rate decrease and encouraging the Final Rule be effective January 1, 2023, to allow appropriate time to adjust processes for collecting checkoff funds.

USDA carefully considered the comments and the recommendation of the Delegate Body and determined that a decrease in the assessment rate would effectuate the purposes of the Act. This action lessens the assessment burden on producers and importers. The effective date of January 1, 2023 gives the Board ample time to communicate this change and will not burden those that remit pork checkoff assessments. This final rule adopts the decrease in the assessment rate from 0.40 percent of market value of porcine animals to 0.35 percent as proposed and decreases the amount of assessment per pound due on imported pork and pork products.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1230 as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

■ 2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

TABLE 1 TO PARAGRAPH (a)

Live porcine animals	Article description	Assessment
0103.10.0000	Purebred breeding animals	0.35 percent Customs Entered Value.
0103.91.00	Other: Weighing less than 50 kg each.	
0103.91.0010	Weighing less than 7 kg each	0.35 percent Customs Entered Value.
0103.91.0020	Weighing 7 kg or more but less than 23 kg each	0.35 percent Customs Entered Value.
0103.91.0030	Weighing 23 kg or more but less than 50 kg each	0.35 percent Customs Entered Value.
0103.92.00	Weighing 50 kg or more each.	
0103.92.0010	Imported for immediate slaughter	0.35 percent Customs Entered Value.
0103.92.0090	Other	0.35 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

TABLE 2 TO PARAGRAPH (b)

Pork and pork products	Article description	Assessment	
		Cents/lb	Cents/kg
0203	Meat of swine, fresh, chilled, or frozen: Fresh or chilled:		
0203.11.0000	Carcasses and half-carcasses	0.15	0.390920
0203.12.1010	Processed hams and cuts thereof, with bone in	0.15	0.390920
0203.12.1020	Processed shoulders and cuts thereof, with bone in	0.15	0.390920
0203.12.9010	Other hams and cuts thereof, with bone in	0.15	0.390920
0203.12.9020	Other shoulders and cuts thereof, with bone in	0.15	0.390920
0203.19.2010	Processed spare ribs	0.18	0.457058
0203.19.2090	Processed other	0.18	0.457058
0203.19.4010	Bellies	0.15	0.390920
0203.19.4090	Other	0.15	0.390920
0203.21.0000	Frozen carcasses and half-carcasses	0.15	0.390920
0203.22.1000	Frozen-processed hams, shoulders, and cuts thereof, with bone in	0.15	0.390920
0203.22.9000	Frozen-other hams, shoulders, and cuts thereof, with bone in	0.15	0.390920
0203.29.2000	Frozen processed other	0.18	0.457058
0203.29.4000	Frozen other:	0.15	0.390920

TABLE 2 TO PARAGRAPH (b)—Continued

Pork and pork products	Article description	Assessment	
		Cents/lb	Cents/kg
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:		
0206.30.0000	Of swine, fresh or chilled	0.15	0.390920
0206.41.0000	Of swine, frozen: Livers	0.15	0.390920
0206.49.0000	Of swine, frozen: Other:	0.15	0.390920
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:		
0210.11.0010	Meat of swine: Hams and cuts thereof, with bone in	0.15	0.390920
0210.11.0020	Meat of swine: Shoulders and cuts thereof, with bone in	0.15	0.390920
0210.12.0020	Meat of swine: Bellies (streaky) and cuts thereof, Bacon	0.15	0.390920
0210.12.0040	Meat of swine: Bellies (streaky) and cuts thereof, Other	0.15	0.390920
0210.19.0010	Meat of swine: Canadian style bacon	0.18	0.457058
0210.19.0090	Meat of Swine: Other	0.18	0.457058
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:		
1601.00.2010	Pork canned	0.23	0.567288
1601.00.2090	Pork other	0.23	0.567288
1602	Other prepared or preserved meat, meat offal or blood:		
1602.41.2020	Of swine: Boned and cooked and packed in airtight containers holding less than 1 kg.	0.25	0.611380
1602.41.2040	Of swine: Other boned and cooked and packed in airtight containers	0.25	0.611380
1602.41.9000	Of swine: Other	0.15	0.390920
1602.42.2020	Of swine: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers holding less than 1 kg.	0.25	0.611380
1602.42.2040	Of swine: Shoulders and cuts thereof: Other boned and cooked and packed in airtight containers.	0.25	0.611380
1602.42.4000	Of swine: Other shoulders and cuts thereof	0.15	0.390920
1602.49.2000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Boned and cooked and packed in air-tight containers.	0.23	0.567288
1602.49.4000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Other.	0.18	0.457058
1602.49.9000	Of swine: Other, including mixtures: Other	0.18	0.457058

■ 3. Section 1230.112 is revised to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d), the rate of assessment shall be 0.35 percent of market value.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–23762 Filed 11–3–22; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0144]

RIN 3150–AK87

List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International, Inc. MAGNASTOR® Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 10 to Certificate of Compliance No. 1031. Amendment No. 10 revises the certificate of compliance by adding a new metal storage overpack.

DATES: This direct final rule is effective January 18, 2023, unless significant adverse comments are received by December 5, 2022. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2022–0144, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR**

FURTHER INFORMATION CONTACT section of this document for alternate instructions.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6577, email: *Bernard.White@nrc.gov* and Tyler Hammock, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1381, email: *Tyler.Hammock@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0144 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0144. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2022–0144 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This rule is limited to the changes contained in Amendment No. 10 to Certificate of Compliance No. 1031 and does not include other aspects of the NAC International, Inc. MAGNASTOR® Storage System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on January 18, 2023. However, if the NRC receives any significant adverse comment on this direct final rule by December 5, 2022, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**, or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

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

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

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

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

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

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

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule,

establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC International, Inc. MAGNASTOR® Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1031.

IV. Discussion of Changes

On December 9, 2019, NAC International, Inc. submitted a request to the NRC to amend Certificate of Compliance No. 1031. The NAC International, Inc. supplemented its request on the following dates: May 13, 2020, February 25, 2021, April 20, 2021, and September 2, 2021. Amendment No. 10 revises the certificate of compliance by adding a new metal storage overpack, which provides for additional structural strength and radiation shielding.

As documented in the preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. The NRC determined that this amendment does not reflect a significant change in design or fabrication of the cask. Specifically, the NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition per § 72.236. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 10 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' Thus, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents per § 72.236.

The NRC staff determined that the amended NAC International Inc. MAGNASTOR® Storage System cask design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into NAC International, Inc. MAGNASTOR® Storage System casks that meet the criteria of Amendment No. 10 to Certificate of Compliance No. 1031.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the NAC International, Inc. MAGNASTOR® Storage System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State's administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of the environmental assessment that follows.

A. The Proposed Action

The proposed action is to amend § 72.214 to revise the NAC International, Inc. MAGNASTOR® Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 10 to Certificate of Compliance No. 1031.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the NAC International, Inc. MAGNASTOR® Storage System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, Amendment No. 10 revises the certificate of compliance to add a new metal storage overpack.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 10 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The NAC International, Inc. MAGNASTOR® Storage System is designed to mitigate the effects of design basis accidents that could occur during

storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 10 would remain well within the 10 CFR part 20 limits. The NRC has also determined that the design of the cask as modified by this rule would maintain confinement, shielding, and criticality control in the event of an accident. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences from, radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Proposed Action

The alternative to this action is to deny approval of Amendment No. 10 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into NAC International, Inc. MAGNASTOR® Storage System in accordance with the changes described in proposed Amendment No.10 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be similar to the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 10 to Certificate of Compliance No. 1031 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC International, Inc. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On November 21, 2008 (73 FR 70587), the NRC issued an amendment to 10 CFR part 72 that approved the NAC International, Inc. MAGNASTOR® Storage System design by adding it to the list of NRC-approved cask designs in § 72.214.

On December 9, 2019, and as supplemented on May 13, 2020, February 25, 2021, April 20, 2021, and September 2, 2021, NAC International, Inc. submitted a request to amend the MAGNASTOR® Storage System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment No. 10 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the NAC International, Inc. MAGNASTOR® Storage System under the changes described in Amendment No. 10 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1031 for the NAC International, Inc. MAGNASTOR® Storage System, as currently listed in § 72.214. The revision consists of the changes in Amendment No. 10 previously described, as set forth in the revised certificate of compliance and technical specifications.

Amendment No. 10 to Certificate of Compliance No. 1031 for the NAC International, Inc. MAGNASTOR® Storage System was initiated by NAC International, Inc. and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 10 applies only to new casks fabricated and used under Amendment No. 10. These changes do not affect existing users of the NAC International, Inc. MAGNASTOR® Storage System, and the current Amendment No. 9 continues to be effective for existing users. While current users of this storage system may comply with the new requirements in Amendment No. 10, this would be a voluntary decision on the part of current users.

For these reasons, Amendment No.10 to Certificate of Compliance No. 1031 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No.
NAC International request to amend Certificate of Compliance No. 1031, dated December 9, 2019	ML19345E594
NAC International Supplemented to Request for Additional Information for the amendment of Certificate of Compliance No. 1031, dated May 13, 2020.	ML20143A102
Supplemental Request to amend the NAC International, Certificate of Compliance No. 1031, dated February 25, 2021	ML21067A041
Supplemental Request to amend the NAC International, Certificate of Compliance No. 1031, dated April 20, 2021	ML21118A043
Supplemental Request to amend the NAC International, Certificate of Compliance No. 1031, dated September 2, 2021	ML21251A529
User Need Memorandum Package for Rulemaking for Certificate of Compliance Amendment, Amendment Number 10 to the NAC International Storage Cask, dated June 26, 2022.	ML22026A519
Proposed Technical Specification Appendix A for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A522
Proposed Technical Specifications Appendix B for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A523
Preliminary Safety Evaluation Report for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A524
Proposed Certificate of Compliance No. 1031 for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A521
Memo forwarding CoC, Tech Specs and SER to REFS for MAGNASTOR® Amendment 10	ML22026A520

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0144. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2022–0144); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1031 to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1031.

Initial Certificate Effective date: February 4, 2009, superseded by Initial Certificate, Revision 1, on February 1, 2016.

Amendment Number 1 Effective Date: August 30, 2010, superseded by Amendment Number 1, Revision 1, on February 1, 2016.

Amendment Number 2 Effective Date: January 30, 2012, superseded by Amendment Number 2, Revision 1, on February 1, 2016.

Amendment Number 3 Effective Date: July 25, 2013, superseded by Amendment Number 3, Revision 1, on February 1, 2016.

Amendment Number 4 Effective Date: April 14, 2015.

Amendment Number 5 Effective Date: June 29, 2015.

Amendment Number 6 Effective Date: December 21, 2016.

Amendment Number 7 Effective Date: August 21, 2017, as corrected (ADAMS Accession No. ML19045A346).

Amendment Number 8, Effective Date: March 24, 2020.

Amendment Number 9, Effective Date: December 7, 2020.

Amendment Number 10, Effective Date: January 18, 2023.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the MAGNASTOR® System.

Docket Number: 72–1031.

Certificate Expiration Date: February 4, 2029.

Model Number: MAGNASTOR®.

* * * * *

Dated: October 20, 2022.

For the Nuclear Regulatory Commission.

Daniel H. Dorman

Executive Director for Operations.

[FR Doc. 2022–24010 Filed 11–3–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No.: FAA–2018–1051; Amdt. No.: 13–40A]

RIN 2120–AL00

Update to Investigative and Enforcement Procedures and Part 11; Correction

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: On October 11, 2022, the FAA published a final rule titled ''Update to Investigative and Enforcement Procedures and Part 11; Technical Amendments.'' That document made technical amendments to the Update to Investigative and Enforcement Procedures final rule, which was published on October 1, 2021. The technical amendments rule inadvertently identified the Rulemaking Identification Number (RIN).

DATES: Effective November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Cole R. Milliard, Office of the Chief Counsel, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3452; email *Cole.Milliard@faa.gov,* or Jessica E. Kabaz-Gomez, Office of the Chief Counsel, AGC–300, Federal Aviation Administration, (202) 267–7395.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 11, 2022, in FR Doc. 2022–21354, on page 61232, in the first column, correct the RIN to read: RIN 2120–AL00.

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f), 40101 note and 44807, on October 21, 2022.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2022–23990 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0436; Airspace Docket No. 22–ASW–1]

RIN 2120–AA66

Amendment and Establishment of Air Traffic Service (ATS) Routes; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on October 27, 2022, that amends VHF Omnidirectional Range (VOR) Federal airways V–198, V–212, V–556, and V–558; amends Area Navigation (RNAV) route T–256; and establishes RNAV route T–466. In the new RNAV route T–466, the final rule identified the CHILD, TX, route point as a waypoint (WP) and the SEEDS, TX, route point as a Fix, in error. This action makes editorial corrections to the reference of the CHILD, TX, WP to change it to be reflected as a Fix and to the SEEDS, TX, Fix to change it to be reflected as a WP. These corrections are necessary to match the FAA National Airspace System Resource (NASR) database information.

DATES: Effective date 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11G, 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:

History

The FAA published a final rule in the **Federal Register** (87 FR 65011; October 27, 2022), amending VOR Federal airways V–198, V–212, V–556, and V–558; amending RNAV route T–256; and establishing RNAV route T–466. Subsequent to publication, the FAA determined that the CHILD, TX, route point was inadvertently identified as a WP and the SEEDS, TX, route point was inadvertently identified as a Fix, in error. The correct route point references are the CHILD, TX, Fix and the SEEDS, TX, WP. This rule corrects those errors by changing the reference of the CHILD, TX, WP to the CHILD, TX, Fix; and the reference of the SEEDS, TX, Fix to the SEEDS, TX, WP.

These are editorial changes only to match the FAA NASR database information and do not alter the alignment of the affected T–466 route.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV T-route listed in this document will be published subsequently in FAA Order JO 7400.11.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, references to the CHILD, TX, WP and to the SEEDS, TX, Fix that are reflected in Docket No. FAA–2022–0436, as published in the **Federal Register** of October 27, 2022 (87 FR 65011), FR Doc. 2022–22164, are corrected as follows:

■ 1. On pages 65012 and 65013, correct the table for T–466 San Angelo, TX (SJT) to Sabine Pass, TX (SBI) [New] to read:

T–466 San Angelo, TX (SJT) to Sabine Pass, TX (SBI) [New]

San Angelo, TX (SJT)	VORTAC	(Lat. 31°22′29.84″ N, long. 100°27′17.53″ W)
CHILD, TX	FIX	(Lat. 31°03′41.17″ N, long. 100°27′40.62″ W)
Junction, TX (JCT)	VORTAC	(Lat. 30°35′52.88″ N, long. 099°49′02.93″ W)

BETTI, TX	FIX	(Lat. 29°57′54.97″ N, long. 098°03′23.98″ W)
MARCS, TX	FIX	(Lat. 29°53′52.04″ N, long. 097°51′40.70″ W)
SEEDS, TX	WP	(Lat. 29°39′31.94″ N, long. 097°14′58.66″ W)
LDRET, TX	WP	(Lat. 29°39′44.93″ N, long. 096°19′00.96″ W)
KEEDS, TX	WP	(Lat. 29°21′59.49″ N, long. 095°36′48.98″ W)
Scholes, TX (VUH)	VOR/DME	(Lat. 29°16′09.60″ N, long. 094°52′03.81″ W)
Sabine Pass, TX (SBI)	VOR/DME	(Lat. 29°41′12.19″ N, long. 094°02′16.72″ W)

* * * * *

Issued in Washington, DC, on October 28, 2022.

Mark E. Gauch,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–23852 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2020–N–2297]

Microbiology Devices; Reclassification of Human Immunodeficiency Virus Viral Load Monitoring Tests

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final order to reclassify human immunodeficiency virus (HIV) viral load monitoring tests, postamendments class III devices with the product code MZF, into class II (special controls), subject to premarket notification. Through this final order, FDA is also adding a new device classification regulation along with special controls that are necessary to provide a reasonable assurance of safety and effectiveness for this device type. The final order reclassifies this device type from class III (premarket approval) to class II (special controls) and will reduce the regulatory burdens associated with these devices because manufacturers will no longer be required to submit a premarket approval application (PMA) for this device type but can instead submit a less burdensome premarket notification (510(k)) and receive clearance before marketing their device.

DATES: This order is effective December 5, 2022.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Review, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 72, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), among other amendments, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (general controls and special controls), and class III (general controls and premarket approval).

Section 513(a)(1) of the FD&C Act defines the three classes of devices. Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under sections 501, 502, 510, 516, 518, 519, or 520 (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, or 360j) or any combination of such sections) are sufficient to provide reasonable assurance of safety and effectiveness; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of safety and effectiveness or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be regulated by general controls (section 513(a)(1)(A) of the FD&C Act). Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness and for which there is sufficient information to establish special controls to provide such assurance, including the promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the Agency deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act). Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide a reasonable assurance of safety and effectiveness, and are purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f)(1) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until: (1) FDA reclassifies the device into class I or class II, or (2) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. FDA determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act and part 807 (21 CFR part 807), subpart E, of the regulations.

A postamendments device that has been initially classified in class III under section 513(f)(1) of the FD&C Act may be reclassified into class I or II under section 513(f)(3) of the FD&C Act. Section 513(f)(3) of the FD&C Act provides that FDA, acting by administrative order, can reclassify the device into class I or class II on its own initiative, or in response to a petition from the manufacturer or importer of the device. To change the classification of the device, the proposed new class must have sufficient regulatory controls to provide a reasonable assurance of the

safety and effectiveness of the device for its intended use.

In the **Federal Register** of November 24, 2021 (86 FR 66982), FDA published a proposed order to reclassify HIV viral load monitoring tests from class III to class II (special controls), subject to premarket notification. The comment period on the proposed order closed on January 24, 2022.

II. Comments on the Proposed Order

In response to the November 24, 2021, proposed order, FDA received three comments (two comments from public health organizations and one comment from a device manufacturer) by the close of the comment period, each containing one or more comments on one or more issues. We describe and respond to the comments in this section of the document. The order of response to the commenters is purely for organizational purposes and does not signify the comment's value or importance nor the order in which the comments were received.

(Comment 1) All three commenters expressed general support for the proposed reclassification and proposed special controls.

(Response 1) We acknowledge and appreciate the supportive comments. In this final order, we are reclassifying HIV viral load monitoring tests into class II and establishing the special controls published in the proposed order (86 FR 66982) without modifications except for minor editorial changes. See Section III, below, for a summary of the final order.

(Comment 2) One commenter requested that FDA provide more detail regarding the application in various analytical studies of the proposed requirement under § 866.3958(b)(2)(iii) (21 CFR 866.3958(b)(2)(iii)) that ''[s]amples selected for use in analytical studies or used to prepare samples for use in analytical studies must be from subjects with clinically relevant genotypes circulating in the United States.''

(Response 2) FDA does not agree that additional detail is necessary to describe the requirement under § 866.3958(b)(2)(iii). The requirement to use or prepare samples from subjects with clinically relevant genotypes circulating in the United States is intended to ensure that the device will detect HIV genotypes that are of clinical concern at the time the device is cleared. How this requirement should be implemented for a particular analytical study would depend on other details regarding study design, the specific device at issue, and the currently circulating genotypes in the United States. Therefore, it is not practical to describe how this requirement would apply for all future analytical studies of HIV viral load monitoring tests in this final order. If the developer of an HIV viral load monitoring test seeks feedback about the design of an analytical study specific to the developer's device, such feedback can be provided through the Q-submission program.[1]

(Comment 3) One commenter addressed proposed § 866.3958(b)(2)(v) and agreed with the requirement that ''[s]amples tested to demonstrate analytical specificity must include appropriate numbers and types of samples from patients with underlying illness and infection. . . .'' With respect to the requirement under proposed § 866.3958(b)(2)(v) that samples tested to demonstrate analytical specificity ''include appropriate numbers and types of samples . . . from patients with potential interfering substances[,]'' the commenter suggested that there be an option to test the effect of specific interfering substances ''in accordance to *[sic]* CLSI EP07—Interference Testing in Clinical Chemistry; Ed 3. Approved Guideline.'' The commenter added that, ''[i]n this case both HIV–1 positive and HIV–1 negative specimens would be spiked with each potentially interfering substance (endogenous and exogenous) and tested in the investigational device.''

(Response 3) We agree with the comment that in some circumstances, a combination of clinical and spiked samples is appropriate based on the study goals and design, as discussed in EP07. The special control provision at § 866.3958(b)(2)(v) does not preclude this possibility. FDA believes that studies conducted to meet the requirements under § 866.3958(b)(2)(v) should use clinical samples to the extent possible because spiked samples may not mimic natural samples from individuals. We encourage device developers to consult the study designs and recommendations in the FDA recognized voluntary consensus standard EP07, Interference Testing in Clinical Chemistry, 3rd Ed. (see *https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfstandards/detail.cfm?standard__identification_no=37749*).

(Comment 4) One commenter requested that FDA clarify the meaning of ''production lots'' in § 866.3958(b)(2)(iv), which requires that device verification and validation include a ''[m]ultisite reproducibility study that includes the testing of three independent production lots.'' Specifically, the commenter asked if ''these [could] be premarket lots, which are equivalent to what would be commercialized''.

(Response 4) FDA believes the language in § 866.3958(b)(2)(iv) is sufficiently clear on this issue. The phrase ''three independent production lots'' means three lots of the finished device, where the lots are produced independently of each other. While the three independent lots may be produced in a premarket validation run, the devices must be manufactured by a process equivalent to that for the devices that will be commercialized.

(Comment 5) Two commenters recommended harmonizing reclassification of HIV viral load monitoring tests with the proposed reclassification of HIV diagnostic and supplemental tests and indicated that doing so could encourage development of or reduce barriers to marketing devices intended for use in both monitoring and diagnosis. Another comment recommended that FDA align the special controls for HIV tests with the requirements for HCV nucleic acid (NAT) tests in the final reclassification order ''Microbiology Devices; Reclassification of Nucleic Acid-Based Hepatitis C Virus Ribonucleic Acid Assay Devices, To Be Renamed Nucleic Acid-Based Hepatitis C Virus Ribonucleic Acid Tests'' (Docket No. FDA–2020–N–1088; April 2, 2020; 86 FR 66169).

(Response 5) Where appropriate, the special controls for HIV viral load monitoring tests in § 866.3958 are aligned with the special controls for HIV NAT diagnostic and/or supplemental tests in 21 CFR 866.3957, which were established in a final order published May 16, 2022 (Microbiology Devices: Reclassification of Human Immunodeficiency Virus Serological Diagnostic and Supplemental Tests and Human Immunodeficiency Virus Nucleic Acid Diagnostic and Supplemental Tests, 87 FR 29661). However, although a test may use the same technology for two different intended uses, *e.g.,* use of NAT tests as an aid in diagnosis of HIV infection and for viral load monitoring, the risks of a false negative result from a diagnostic test are not identical to and are potentially greater than the risks of a false negative result of a viral load test. For example, an individual living with HIV whose viral load is being monitored

[1] FDA has issued guidance for submitters on the Q-submission program. See ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program; Guidance for Industry and Food and Drug Administration Staff'' dated January 6, 2021, available at *https://www.fda.gov/media/114034/download.*

is under the care of a healthcare provider. In this instance, the risk of an incorrect result may be mitigated by clinical oversight. However, an individual undergoing diagnostic testing may have no signs or symptoms of infection, and one risk of an incorrect result is that they may be lost to care altogether. FDA is committed to working with manufacturers seeking clearance of a device for both intended uses using a least-burdensome approach.[2]

With respect to the comment regarding alignment of special controls for HIV tests with those finalized for nucleic acid-based HCV ribonucleic acid (RNA) tests, we note that the special controls necessary to provide reasonable assurance of safety and effectiveness of an in vitro diagnostic device are based on, among other things, the specific analyte measured, the disease or condition for which the particular device is intended to be used in diagnosis, and the conditions of use. This means that the special controls may vary between devices that measure different analytes (*e.g.,* HIV and HCV) or with different conditions of use (*e.g.,* point of care versus lab-based) because the risks associated with each device are different. FDA has determined that the special controls identified in the proposed order are, together with general controls, sufficient to provide reasonable assurance of safety and effectiveness for HIV viral load monitoring tests. Therefore, FDA is finalizing those special controls in this order without making changes to align them further with those for nucleic acid-based HCV RNA tests.

To the extent the comment addresses alignment of special controls for HIV diagnostic and supplemental tests with those for nucleic acid-based HCV RNA tests, the comment is outside of the scope of this final order. For a discussion of comments received on FDA's proposed special controls for HIV NAT diagnostic and supplemental tests and HIV serological diagnostic and supplemental tests, please refer to the final order, ''Microbiology Devices; Reclassification of Human Immunodeficiency Virus Serological Diagnostic and Supplemental Tests and Human Immunodeficiency Virus Nucleic Acid Diagnostic and Supplemental Tests'' (Docket No. FDA–2019–N–5192; May 16, 2022; 87 FR 29661).

[2] See ''The Least Burdensome Provisions: Concepts and Principles; Guidance for Industry and Food and Drug Administration Staff'' (February 5, 2019), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/least-burdensome-provisions-concept-and-principles.*

III. Final Order

Based on the information discussed in the preamble to the proposed order (86 FR 66982), the comments received on the proposed order, and FDA's experience over the years with this device type, FDA concludes that special controls, in conjunction with general controls, will provide reasonable assurance of the safety and effectiveness of HIV viral load monitoring tests. FDA is adopting its findings under section 513(f)(3) of the FD&C Act, as published in the preamble to the proposed order.

FDA is issuing this final order to reclassify HIV viral load monitoring tests from class III into class II and to establish special controls that will be codified at § 866.3958.[3] In this final order, the Agency has identified special controls under section 513(a)(1)(B) of the FD&C Act which, together with general controls, provide a reasonable assurance of the safety and effectiveness of HIV viral load monitoring tests. FDA is reclassifying these devices and establishing special controls as published in the proposed order (86 FR 66982) with minor editorial changes for clarity in § 866.3958(a), (b)(1)(iii), and (b)(2)(vii).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide a reasonable assurance of the safety and effectiveness of HIV viral load monitoring tests. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market HIV viral load monitoring tests must submit and obtain clearance of a premarket notification and demonstrate compliance with the special controls in this final order, prior to marketing the device.

The devices that are the subject of this reclassification are assigned the generic name ''human immunodeficiency virus (HIV) viral load monitoring tests''. HIV viral load monitoring tests are identified as in vitro diagnostic prescription devices for the quantitation of the amount of HIV RNA in human body fluids. HIV viral load monitoring tests are intended for use in the clinical management of individuals living with HIV and are for professional use only. These devices are not intended for use as an aid in diagnosis or for screening donors of blood or blood products or human cells, tissues, or cellular and tissue-based products (HCT/Ps).

Under this final order, the HIV viral load monitoring tests are identified as prescription use only devices. As such, these prescription devices must satisfy prescription labeling requirements for in vitro diagnostic products (see 21 CFR 809.10(a)(4) and (b)(5)(ii)). A premarket notification submission for these devices will be required in the circumstances described in 21 CFR 807.81.

[3] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. This change was made in accordance with the Office of Federal Register's (OFR) interpretations of the **Federal Register** Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the *Document Drafting Handbook.*

IV. Codification of Orders

Under section 513(f)(3) of the FD&C Act, FDA may issue final orders to reclassify devices. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as newly codified orders. In accordance with section 513(f)(3) of the FD&C Act, we are codifying in this final order the classification of HIV viral load monitoring tests in the new § 866.3958, under which these devices are reclassified from class III to class II.

V. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) 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.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final order contains no new collection 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.

This final order refers to previously approved FDA collections of information. These collections of information are subject to review by the OMB under the PRA. The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the

collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; and the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.3958 to subpart D to read as follows:

§ 866.3958 Human immunodeficiency virus (HIV) viral load monitoring test.

(a) *Identification.* A human immunodeficiency virus (HIV) viral load monitoring test is an in vitro diagnostic prescription device for the quantitation of the amount of HIV ribonucleic acid (RNA) in human body fluids. The test is intended for use in the clinical management of individuals living with HIV and is for professional use only. The test results are intended to be interpreted in conjunction with other relevant clinical and laboratory findings. The test is not intended to be used as an aid in diagnosis or for screening donors of blood or blood products or human cells, tissues, or cellular and tissue-based products (HCT/Ps).

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The labeling must include:

(i) An intended use that states that the device is not intended for use as an aid in diagnosis or for use in screening donors of blood or blood products, or HCT/Ps.

(ii) A detailed explanation of the principles of operation and procedures used for assay performance.

(iii) A detailed explanation of the interpretation of results and that recommended actions should be based on current clinical guidelines.

(iv) Limitations, which must be updated to reflect current clinical practice and patient management. The limitations must include, but are not limited to, statements that indicate:

(A) The matrices and sample types with which the device has been cleared and that use of this test with specimen types other than those specifically cleared for this device may cause inaccurate test results.

(B) Mutations in highly conserved regions may affect binding of primers and/or probes resulting in the under-quantitation of virus or failure to detect the presence of virus.

(C) All test results should be interpreted in conjunction with the individual's clinical presentation, history, and other laboratory results.

(2) Device verification and validation must include:

(i) Detailed device description, including the device components, ancillary reagents required but not provided, and an explanation of the device methodology. Additional information appropriate to the technology must be included, such as detailed information on the design of primers and probes.

(ii) For devices with assay calibrators, the design and nature of all primary, secondary, and subsequent quantitation standards used for calibration as well as their traceability to a reference material. In addition, analytical testing must be performed following the release of a new lot of the standard material that was used for device clearance, or when there is a transition to a new calibration standard.

(iii) Detailed documentation of analytical performance studies conducted as appropriate to the technology, specimen types tested, and intended use of the device, including but not limited to, limit of blank, limit of detection, limit of quantitation, cutoff determination, precision, linearity, endogenous and exogenous interferences, cross-reactivity, carry-over, quality control, matrix equivalency, sample and reagent stability. Samples selected for use in analytical studies or used to prepare samples for use in analytical studies must be from subjects with clinically relevant genotypes circulating in the United States.

(iv) Multisite reproducibility study that includes the testing of three independent production lots.

(v) Analytical sensitivity of the device must demonstrate acceptable performance at current clinically relevant medical decision points. Samples tested to demonstrate analytical sensitivity must include appropriate numbers and types of samples, including real clinical samples near the lower limit of quantitation and any clinically relevant medical decision points. Analytical specificity of the device must demonstrate acceptable performance. Samples tested to demonstrate analytical specificity must include appropriate numbers and types of samples from patients with different underlying illnesses and infection and from patients with potential interfering substances.

(vi) Detailed documentation of performance from a multisite clinical study or a multisite analytical method comparison study.

(A) For devices evaluated in a multisite clinical study, the study must use specimens from individuals living with HIV being monitored for changes in viral load, and the test results must be compared to the clinical status of the patients.

(B) For tests evaluated in a multisite analytical method comparison study, the performance of the test must be compared to an FDA-cleared or approved comparator. The multisite method comparison study must include appropriate numbers and types of samples with analyte concentrations across the measuring range of the assay, representing clinically relevant genotypes. The multisite method comparison study design, including number of samples tested, must be sufficient to meet the following criteria:

(*1*) Agreement between the two tests across the measuring range of the assays must have an r2 of greater than or equal to 0.95.

(*2*) The bias between the test and comparator assay, as determined by difference plots, must be less than or equal to 0.5 log copies/mL.

(vii) Detailed documentation of a single-site analytical method comparison study between the device and an FDA-cleared or approved comparator if a multisite clinical study is performed under paragraph(b)(2)(vi) of this section. The analytical method comparison study must use appropriate numbers and types of samples with analyte concentrations across the measuring range of the assay, representing clinically relevant genotypes. The results must meet the criteria in paragraphs (b)(2)(vi)(B)(*1*) and (*2*) of this section.

(viii) Strategies for detection of new strains, types, subtypes, genotypes, and genetic mutations as they emerge.

(ix) Risk analysis and management strategies, such as Failure Modes Effects Analysis and/or Hazard Analysis and Critical Control Points summaries and their impact on test performance.

(x) Final release criteria to be used for manufactured device lots with an appropriate justification that lots released at the extremes of the specifications will meet the claimed analytical and clinical performance

characteristics as well as the stability claims.

(xi) All stability protocols, including acceptance criteria.

(xii) Appropriate and acceptable procedure(s) for addressing complaints and other device information that determines when to submit a medical device report.

(xiii) Premarket notification submissions must include the information contained in paragraphs (b)(2)(i) through (xii) of this section.

Dated: October 28, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23868 Filed 11–3–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2020–04]

RIN 1104–AA09

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is modifying a rule that permits it to reopen a case and rescind a parole date when the prisoner has committed a violation of institutional rules. This modification will permit findings by a Residential Reentry Center's Disciplinary Committee, as well as findings by the Disciplinary Hearing Officer, as conclusive evidence of misconduct for the United States Parole Commission to rescind an established parole date.

DATES: This regulation is effective November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530, telephone (202) 346–7000. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: In 2021, the United States Parole Commission issued an interim rule revising 28 CFR 2.34(a) (86 FR 51271, September 15, 2021). The comment period expired on November 15, 2021, and the Parole Commission did not receive any comments on the change. On October 13, 2022, the Parole Commission voted to

After the U.S. Parole Commission has granted a prisoner a parole effective date, but before the prisoner has signed the parole certificate, if the prisoner violates the rules of the institution, the Parole Commission may reopen the case and schedule a rescission hearing. 28 CFR 2.34(a). At that hearing, the Parole Commission may consider the report of the Bureau of Prisons (''BOP'') Disciplinary Hearing Officer (''DHO'') following a disciplinary hearing, that a prisoner has violated disciplinary rules as ''conclusive evidence of institutional misconduct,'' and does not need to conduct a full hearing to consider witnesses and evidence. 28 CFR 2.34(c). The disciplinary hearing conducted by the DHO complies with the procedural due process requirements established by the Supreme Court in *Wolff* v. *McDonnell, i.e.,* the prisoner has notice of the alleged violations at least 24 hours in advance of hearing, a statement of factfinding, the right to call witnesses and present documentary evidence. Thus, the Parole Commission may rely on the findings and conclusions of the DHO to take action in response to the information.

For prisoners who are housed at a Residential Reentry Center (''RRC'') prior to their release and violate the rules, the in-person disciplinary hearing is conducted before the RRC's Center Disciplinary Committee (''CDC''). Under the BOP's Program Statement 7300.09, the CDC then refers its findings to the DHO for review, final action, and sanctions. Every court which has examined the procedures established by Program Statement 7300.09 has held that hearing procedures used by the CDC satisfy the procedural due process requirements established by the Supreme Court in *Wolff* v. *McDonnell.*

This rule permits the U.S. Parole Commission to rely on the CDC's findings to promote the smooth transition to the community or to return a prisoner who has demonstrated that he or she is not ready to be released to the community without requiring a second hearing by the DHO or a fully contested disciplinary hearing conducted by the U.S. Parole Commission.

The Parole Commission has added a phrase to clarify that parole may also be rescinded without a hearing for DC Code prisoners for up to 120 days. The interim rule only referenced the 90-day rescission of parole that pertains to US Code prisoners and the rule will apply correspondingly to US Code prisoner and DC Code prisoners under the Parole Commission's jurisdiction. The Parole Commission is publishing the revised rule at § 2.34(a) as a final rule without seeking public comment because this does not create a substantive change to parole decision-making.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulation Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a federalism assessment.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a ''major rule'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability

of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Interim Rule

Accordingly, the interim rule amending 28 CFR part 2 which was published at 86 FR 51271 on September 15, 2021, is adopted as final with the following change:

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Section 2.34 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2.34 Rescission of parole.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by a Discipline Hearing Officer, or the Center Disciplinary Committee, or is alleged to have committed a new criminal act at any time prior to the delivery of the certificate of parole, the Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Commissioner may reopen the case and retard the parole date for up to 90 days without a hearing, or 120 days for a DC Code sentenced prisoner, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a community corrections center or a state or local halfway house.

* * * * *

(c) A hearing before a Discipline Hearing Officer, or the Center Disciplinary Committee, resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

* * * * *

Patricia K. Cushwa,

Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2022–23793 Filed 11–3–22; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0882]

Safety Zone; Fireworks Displays Within the Fifth Coast Guard District

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for fireworks at The Wharf DC on December 3, 2022 to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District identifies the safety zone for this event in Washington, DC During the enforcement period, the operator of any vessel in the safety zone must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified as item (1) of table 2 to paragraph (h)(2) from 7 until 9 p.m. on December 3, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Courtney Perry, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email *Courtney.E.Perry@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for fireworks at The Wharf DC from 7 to 9 p.m. on December 3, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District, 33 CFR 165.506, specifies the location of the safety zone for the fireworks show which encompasses portions of the Washington Channel in the Upper Potomac River as item 1 to table 2 to paragraph (h)(2). During the enforcement period, as reflected in § 165.506(d), if you are the operator of a vessel in the safety zone you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

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.

Dated: October 28, 2022.

David E. O'Connell,

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

[FR Doc. 2022–23999 Filed 11–3–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0880]

RIN 1625–AA00

Safety Zone; Head of the South Regatta, Savannah River, Augusta, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Savannah River near Augusta, GA for the Head of the South Regatta. This temporary safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the rowing regatta. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Savannah or a designated representative.

DATES: This rule is effective from noon until 5 p.m. on November 11, 2022 through November 12, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0880 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or

email LT Alexander McConnell, Marine Safety Unit Savannah Office of Waterways Management, U.S. Coast Guard; telephone 912–652–4353 extension 240, email *Alexander.W.McConnell@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule. It would be contrary to the public interest since the rule is needed by November 11, 2022 to ensure the safety of participants, spectators, the public, and vessels transiting the waters of Augusta, GA during the Head of the South Regatta.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port (COTP) Savannah has determined that potential hazards associated with a rowing regatta starting November 11, 2022, will be a safety concern for anyone on the Savannah River between mile markers 197 and 200. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the rowing regatta is underway.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from noon until 5 p.m. from November 11, 2022 through November 12, 2022. The safety zone will cover all navigable waters of the Savannah River near Augusta, GA between mile markers 197 and 200. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the rowing regatta. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the rule being limited in duration, size, and scope. The temporary safety zone is limited in duration and size as it will be enforced for only 10 cumulative hours over the course of two consecutive days and will cover all navigable waters on the Savannah River between mile markers 197 and 200. The zone is limited in scope as vessels and persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative. The Coast Guard will provide notification of the regulated area to the local maritime community by Marine Safety Information Bulletin.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting only 10 hours that will prohibit entry on the Savannah River between mile markers 197 and 200 near Augusta, GA. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T07–0880 to read as follows:

§ 165.T07–0880 Safety Zone; Head of the South Regatta, Savannah River, Augusta, GA.

(a) *Location.* The following area is a safety zone: All waters of the Savannah River, from surface to bottom, between mile markers 197 to 200.

(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 (COTP) Savannah 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) Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact COTP Savannah by telephone at (912) 247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Savannah or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Marine Safety Information Bulletins, and on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from noon until 5 p.m. from November 11, 2022 through November 12, 2022.

Dated: October 31, 2022.

K.A. Broyles,

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

[FR Doc. 2022–23945 Filed 11–3–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0900]

RIN 1625–AA00

Safety Zone; Oswego River, Oswego, NY

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 420-foot diameter of a pedestrian bridge and the surrounding river in Oswego, NY. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port of Buffalo, NY.

DATES: This rule is effective from 5:30 until 7 p.m., November 26th, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0900 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG William Kelley, Waterways Management at Sector Buffalo, U.S. Coast Guard; telephone 716–843–9343, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and

opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice of the fireworks display to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Buffalo has determined that fireworks over the water presents significant risks to public safety and property. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone from 5:30 through 7 p.m. on November 26, 2022. The safety zone will cover all navigable waters within a 420-foot diameter of land launched fireworks over the Oswego River, in Oswego, NY. The duration of the zone is intended to protect spectators, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Buffalo or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will encompass a 420-foot diameter of land launched fireworks in the Oswego River, in Oswego, NY, lasting approximately 2 hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated

implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 1.5 hours that will prohibit entry within a 420-foot diameter in the Oswego River, in Oswego, NY. for a fireworks display. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0900 to read as follows:

§ 165.T09–0900 Safety Zone; Oswego River, NY.

(a) *Location.* The following area is a safety zone: All waters of the Oswego River, from surface to bottom, encompassed by a 420-foot diameter around 43°27′15.18″ N 76°30′27.89″ W.

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

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP Buffalo or a designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone must contact the COTP Buffalo or his designated representative to obtain permission to do so. The COTP Buffalo or his designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Buffalo, or his designated representative.

(d) *Enforcement period.* The regulated area described in paragraph (a) of this section is effective from 5:30 through 7 p.m. on November 26, 2022.

Dated: October 28, 2022.

M.I. Kuperman,

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

[FR Doc. 2022–24086 Filed 11–3–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0505; FRL–10301–01–OCSPP]

1,3-Benzenedicarboxylic Acid, 5-Sulfo-, Sodium Salt (1:1), Polymer With 1,3-Benzenedicarboxylic Acid, 1,4-Cyclohexanedimethanol and 2,2′-Oxybis[ethanol]; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] (CAS Reg. No. 54590–72–6), when used as an inert ingredient in a pesticide chemical formulation. SciReg, Inc., on behalf of Eastman Chemical Company, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol], on food or feed commodities.

DATES: This regulation is effective November 4, 2022. Objections and requests for hearings must be received on or before January 3, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0505, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, 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. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0505 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before January 3, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0505, by one of the following methods.

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

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

II. Background and Statutory Findings

In the **Federal Register** of August 30, 2022 (87 FR 52868) (FRL–9410–04–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11671) filed by SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192), on behalf of Eastman Chemical Company (P.O. Box 431, Kingsport, TN 37662). The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] (CAS Reg. No. 54590–72–6), with a minimum number average molecular weight of 30,400 Daltons. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any public comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

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

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 1,3-Benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol], with a minimum number average molecular weight 30,400 Daltons, conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize: Adequate biodegradation studies (MRID 51799601 and 52003801) support that 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] is not biodegradable.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF_3- or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

The polymer's number average molecular weight (MW) of 30,400 Daltons is greater than 10,000 Daltons. However, the polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol].

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] is 30,400 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has not found 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] to share a common mechanism of toxicity with any other substances, and 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2'-oxybis[ethanol], EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2'-oxybis[ethanol].

VIII. Other Considerations

Analytical Enforcement Methodology

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

IX. Conclusion

Accordingly, EPA finds that exempting residues of 1,3-benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol] from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

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

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

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

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

XI. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 31, 2022.

Jennifer Saunders,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, amend table 1, in alphabetical order, by adding the polymer ''1,3-Benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol], minimum number average molecular weight (in amu), 30,400'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO § 180.960

Polymer	CAS No.
* * * * * * *	
1,3-Benzenedicarboxylic acid, 5-sulfo-, sodium salt (1:1), polymer with 1,3-benzenedicarboxylic acid, 1,4-cyclohexanedimethanol and 2,2′-oxybis[ethanol], minimum number average molecular weight (in amu), 30,400	54590–72–6
* * * * * * *	

[FR Doc. 2022–24100 Filed 11–3–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 482, 485, and 495

[CMS–1771–F2]

RIN 0938–AU84

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-Qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction and correcting amendment.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the August 10, 2022 **Federal Register**. The final rule was titled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation''.

DATES:

Effective date: The final rule corrections and correcting amendment are effective on November 3, 2022.

Applicability date: The final rule corrections and correcting amendment are applicable for discharges occurring on or after October 1, 2022.

FOR FURTHER INFORMATION CONTACT:

Donald Thompson, and Michele Hudson, (410) 786–4487 or *DAC@cms.hhs.gov,* Operating Prospective Payment.

Adina Hersko, *Adina.Hersko@cms.hhs.gov* and *newtech@cms.hhs.gov,* New Technology Add-on Payments Issues.

Dawn Linn, *dawn.linn@cms.hhs.gov,* Lela Strong, *lela.strong@cms.hhs.gov,* and Alpha Wilson, *alpha.wilson@cms.hhs.gov,* Conditions of Participation (CoP) Requirements for Hospitals and Critical Access Hospitals (CAHs) to Continue Reporting Data for COVID–19 and Influenza After the PHE ends as Determined by the Secretary.

Julia Venanzi, *julia.venanzi@cms.hhs.gov,* Hospital Inpatient Quality Reporting Program and Hospital Value-Based Purchasing Program—Administration Issues

Ariel Cress, *ariel.cress@cms.hhs.gov,* Long-Term Care Hospital Quality Reporting Program—Data Reporting Issues.

Jessica Warren, *jessica.warren@cms.hhs.gov,* Medicare Promoting Interoperability Program.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2022–48780 of August 10, 2022 (87 FR 48780), there were a number of technical and typographical errors that are identified and corrected in this final rule correction and correcting amendment. The final rule corrections and correcting amendment are applicable to discharges occurring on or after October 1, 2022, as if they had been included in the document that appeared in the August 10, 2022 **Federal Register**.

II. Summary of Errors

A. Summary of Errors in the Preamble

On pages 48781, 48785, and 49313, we made typographical and technical errors in specifying certain fiscal years.

On pages 49195, 49197, 49207, 49217, 49223, 49229, 49263, 49267, and 49311, we made typographical errors in referencing a statutory citation.

On page 48789, in the table of the summary of costs and benefits of certain major provisions, we are making conforming corrections to the estimates discussed in the ''Update to the IPPS Payment Rates and Other Payment Policies'' row resulting from the correction to the maximum new technology add-on payment for cases involving the use of Defencath™ discussed later in this section of this final rule correction and correcting amendment.

On page 48790, in the table of the summary of costs and benefits of certain major provisions, we are making corrections to the description of the estimates discussed for the Hospital-Acquired Condition Program.

On pages 48790, 49308, 49327, 49335, 49377, and 49398, we made technical and typographical errors in **Federal Register** citations and cross-references.

On pages 48981 through 48982, in our discussion of new medical services and technologies, we are correcting the cost per case and maximum new technology add-on payment for a case involving the use of Defencath™.

On page 49071, we made typographical errors and an omission in our discussion of revisions to Worksheet E–4 of the hospital cost report instructions.

On page 49087, we made and are correcting a typographical error in our discussion of the Hospital Readmission Reduction Program.

On pages 49095, 49106, 49129, 49248, 49266, 49283, and 49295, we made and are correcting typographical errors in several footnotes and footnote references.

On pages 49201, 49230, 49232, 49233, 49297, and 49308, in the discussion of the Hospital Inpatient Quality Reporting (IQR) Program, we are correcting inadvertent omissions as well as typographical and technical errors.

On pages 49315, 49317, and 49318, in the discussion of the Long-term Care Hospital Quality Reporting Program (LTCH QRP) we are correcting several technical and typographical errors.

On pages 49347 and 49362, in the discussion of the Medicare Promoting Interoperability Program, we made and are correcting typographical and technical errors.

B. Summary of Errors in the Regulations Text

On page 49410, we inadvertently made a typographical error in the paragraph numbering for a paragraph in § 482.42(f)(2).

C. Summary of Errors in the Addendum

As discussed further in section II.D. of this final rule correction and correcting amendment, we made updates to the calculation of Factor 3 of the uncompensated care payment methodology to reflect updated information on hospital mergers received in response to the final rule and made corrections for report upload errors and an update to the DSH eligibility for one provider that was inadvertently projected not DSH eligible in the final rule. Based on the March 2022 Provider Specific File's Medicaid fraction and the FY 2020 SSI fractions, this provider is projected DSH eligible for purposes of interim uncompensated care payments during FY 2023. Specifically, there were two merger updates, one update on a report upload

discrepancy, and one update on DSH eligibility projection. We recalculated the total uncompensated care amount for all DSH-eligible hospitals to reflect these updates. In addition, because the Factor 3 for each hospital reflects that hospital's uncompensated care amount relative to the uncompensated care amount for all DSH hospitals, we also recalculated Factor 3 for all DSH-eligible hospitals. The hospital-specific Factor 3 determines the total amount of the uncompensated care payment a hospital is eligible to receive for a fiscal year. This hospital-specific payment amount is then used to calculate the amount of the interim uncompensated care payments a hospital receives per discharge. Given the small number of updates to the information used in the calculation of Factor 3, the change to the previously calculated Factor 3 for the majority of hospitals is of limited magnitude.

We note that the fixed-loss cost threshold was unchanged after these Factor 3 recalculations. (As discussed elsewhere, however, we incorporated the revised uncompensated care payment amounts into our recalculation of the FY 2023 fixed-loss threshold and related figures to reflect the use of supplemental outlier reconciliation data.) We further note that while for certain prior years, we have also recalculated the budget neutrality factors to reflect revisions to the calculation of Factor 3, in combination with the correction of other errors, given the limited magnitude of the changes to uncompensated care payments, and because we are not making corrections to any other components of the calculation of these budget neutrality factors for FY 2023, we did not recalculate any budget neutrality factors due to the changes to Factor 3.

On pages 49420 through 49421 and 49427 through 49428, we are revising the calculation of the percentage of operating outlier reconciliation dollars to total Federal operating payments based on the FY 2017 cost reports, which is used in our projection of operating outlier reconciliation payments for the FY 2023 outlier threshold calculation, to reflect the use of supplemental outlier reconciliation data, as discussed in the FY 2023 IPPS/LTCH PPS final rule, including additional supplemental data from some hospitals that had an outlier reconciliation amount recorded on Worksheet E, Part A, Line 2.01. In addition to revising the percentage of operating outlier reconciliation dollars to total Federal operating payments, we are also revising the percentage of capital outlier payments to total capital Federal payments for FY 2017 to reflect these additional supplemental data for hospitals that had an outlier reconciliation amount recorded on Worksheet E, Part A, Line 93, Column 1. Accordingly, under our established methodology, this correction to the percentage of operating outlier reconciliation dollars to total Federal operating payments results in a change in the targeted operating outlier percentage and the FY 2023 outlier threshold. In addition, under our established methodology, the correction to the percentage of capital outlier payments to total capital Federal payments and the change in the FY 2023 outlier threshold results in a change in the estimated capital outlier percentage. We note that these recalculations also reflect the revisions to Factor 3 of the uncompensated care payment methodology described previously.

On pages 49433 through 49437, in our discussion of the determination of the Federal hospital inpatient capital related prospective payment rate update, due to the correction of the combination of errors listed previously (the revisions to Factor 3 of the uncompensated care payment methodology, and, in particular, the corrections to the outlier reconciliation projections and outlier threshold), we have made conforming corrections to the capital outlier adjustment, capital Federal rate and related figures. On page 49453, we are also making conforming corrections to the capital standard Federal payment rate in Table 1D.

On page 49438, we made a typographical error in referencing a statutory citation.

In addition, on page 49450, we are making conforming changes to the fixed-loss amount for FY 2023 site neutral payment rate discharges, and the high cost outlier threshold (based on the corrections to the IPPS outlier threshold (that is, fixed-loss amount) discussed previously).

D. Summary of Errors in and Corrections to Files and Tables Posted on the CMS Website

We are correcting the errors in the following IPPS table that is listed on page 49453 of the FY 2023 IPPS/LTCH PPS final rule and is available on the internet on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-ServicePayment/AcuteInpatientPPS/index.html.* The tables that are available on the internet have been updated to reflect the revisions discussed in this final rule correction and correcting amendment.

Table 18—FY 2023 Medicare DSH Uncompensated Care Payment Factor 3. For the FY 2023 IPPS/LTCH PPS final rule, we published a list of hospitals that we identified to be subsection (d) hospitals and subsection (d) Puerto Rico hospitals projected to be eligible to receive interim uncompensated care payments for FY 2023. As stated in the FY 2023 IPPS/LTCH PPS final rule (87 FR 49046) we allowed the public an additional period after the issuance of the final rule to review and submit via email any updated information on mergers and/or to report upload discrepancies. We are updating this table to reflect the information on mergers, upload discrepancy, and DSH eligibility received in response to the final rule and to revise the Factor 3 calculations for purposes of determining uncompensated care payments for the FY 2023 IPPS/LTCH PPS final rule. We are revising Factor 3 for all hospitals to reflect the updated merger information, upload discrepancy information, and DSH eligibility information received in response to the final rule. We are also revising the amount of the total uncompensated care payment calculated for each DSH eligible hospital. The total uncompensated care payment that a hospital receives is used to calculate the amount of the interim uncompensated care payments the hospital receives per discharge. As previously discussed, given the limited magnitude of these uncompensated care payment corrections, and because we are not making corrections to any other components of the calculation of the budget neutrality factors for FY 2023, we do not believe the revisions to the uncompensated care payment amounts merit recalculating all budget neutrality factors. However, the revised uncompensated care payment amounts were incorporated into our recalculation of the outlier fixed-loss cost threshold and related figures to reflect the corrections to the outlier reconciliation projections used in the FY 2023 outlier threshold calculation, as described previously.

E. Summary of Errors in the Appendices

On pages 49457, 49494, and 49495 we are making conforming corrections to the estimated overall impact, estimated overall change in new technology add-on payments, and the accounting statement and table for acute care hospitals under the IPPS, resulting from the correction to the maximum new technology add-on payment for cases involving the use of Defencath™ discussed in section II.A. of this final rule correction and correcting amendment.

On pages 49461 through 49463, 49467 through 49468, and 49482 through 49485 in our regulatory impact analyses, we have made conforming corrections to certain factors, values, tables and accompanying discussion of the changes in operating and capital IPPS payments for FY 2023 as a result of the technical errors that lead to changes in our calculation of the outlier threshold and capital Federal rate (as discussed in section II.B. of this final rule correction and correcting amendment). These conforming corrections include changes to the following:

- On pages 49461 through 49463, the table titled ''Table I—Impact Analysis of Changes to the IPPS for Operating Costs for FY 2023''.
- On pages 49467 through 49468, the table titled ''Table II—Impact Analysis of Changes for FY 2023 Acute Care Hospital Operating Prospective Payment System (Payments per discharge)''.
- On pages 49484 and 49485, the table titled ''TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE [FY 2022 PAYMENTS COMPARED TO FY 2023 PAYMENTS]''.

On pages 49469 through 49470, we are correcting values in tables and estimated total payment values in accompanying discussion resulting from the correction to the maximum new technology add-on payment for cases involving the use of Defencath™.

On page 49470, under the table displaying the FY 2023 Estimates for New Technology Add-On Payments for FY 2023, we are correcting the inadvertent omission of the heading for the next section.

On pages 49471 through 49474 we are correcting the discussion of the ''2. Effects of Changes to Medicare DSH and Uncompensated Care Payments for FY 2023 and the New Supplemental Payment for Indian Health Service Hospitals and Tribal Hospitals and Hospitals Located in Puerto Rico'' for purposes of the Regulatory Impact Analysis in Appendix A of the FY 2023 IPPS/LTCH PPS final rule, including the table titled ''Modeled Uncompensated Care Payments* and Supplemental Payments for Estimated FY 2023 DSHs by Hospital Type*'' on pages 49472 and 49473, in light of the corrections discussed in section II.D. of this final rule correction and correcting amendment.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical and typographical errors in the preamble, regulations text, addendum, payment rates, tables, and appendices included or referenced in the FY 2023 IPPS/LTCH PPS final rule, but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the FY 2023 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2023 IPPS/LTCH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the FY 2023 IPPS/LTCH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements. Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this final rule correction for discharges occurring on or after October 1, 2022, because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2023 IPPS/LTCH PPS final rule accurately reflects our policies.

IV. Correction of Errors

In FR Doc. 2022–16472 of August 10, 2022 (87 FR 48780), we are making the following corrections:

A. Correction of Errors in the Preamble

1. On page 48781, first column,

a. Lines 23 and 24, the phrase ''S–3 Wage Data for the FY 2022 Wage Index'' is corrected to read ''S–3 Wage Data for the FY 2023 Wage Index''.

b. Lines 27 and 28, the phrase, ''Computing the FY 2022 Unadjusted Wage Index'' is corrected to read ''Computing the FY 2023 Unadjusted Wage Index''.

c. Line 74, the phrase '' Updates for FY 2022 (§ 412.64(d))'' is corrected to read ''Updates for FY 2023 (§ 412.64(d))''.

2. On page 48785, second column, third paragraph, the phrase ''FY 2024'' is corrected to read ''FY 2023''.

3. On page 48789, in the untitled table, second column (Description of Costs, Transfers, Savings, and Benefits), third row (Update to the IPPS Payment Rates and Other Payment Policies),

a. Line 2, the figure ''$1.4 billion'' is corrected to read ''$1.5 billion''.

b. Line 4, the figure ''$1.0 billion'' is corrected to read ''$0.9 billion''.

4. On page 48790, in the untitled table,

a. Second column (Description of Costs, Transfers, Savings, and Benefits),

(1) First row, lines 3 and 4, the phrase, ''specific HSRs and a 30-day preview period for the NHSN CDC HAI measures.'' is corrected to read ''specific HSRs and a 30-day preview period.''.

(2) Last row, line 1, the reference, ''section XII.B.10.'' is corrected to read ''section XII.B.11.''

b. Following the table (Table Note 1), the sentence beginning with the phrase ''[1]For the purpose'' and ending with the phrase ''and CABG).'' is corrected by removing the sentence.

5. On page 48981,

a. First column, fourth full paragraph, lines 14 and 15, the phrase ''$5,850 to the hospital, per patient'' is corrected to read ''$1,950 per 5mL vial. ''

b. Third column, last partial paragraph, lines 2 and 3, the language ''the cost per case of the DefenCath™ is $5,850'' is corrected to read ''the cost of DefenCath™ is $1,950 per vial. Per the applicant, the average utilization of DefenCath™ is 9.75 vials per patient, resulting in an average cost per case of $19,012.50.''

6. On page 48982, first column, first partial paragraph, line 5, the figure ''$4,387.50'' is corrected to read ''$14,259.38''.

7. On page 49071,

a. Second column, last partial paragraph,

(1) Line 15, the phrase ''line 9 minus line 8'' is corrected to read ''line 8 minus line 9''.

(2) Lines 18 and 19, the phrase ''line 9 minus line 8'' is corrected to read ''line 8 minus line 9''.

(3) Lines 19 and 20, the phrase ''line 9 minus line 8'' is corrected to read ''line 8 minus line 9''.

b. Third column, first partial paragraph, lines 1 and 2, the phrase ''minus line 8 on line 20,' but we believe they meant to say 'on line 22').'' is corrected to read ''minus line 8' but we believe they meant to state 'line 8 minus line 9.' We also note that the commenters indicated to enter the result 'on line 20,' but we believe they meant to state 'on line 22').''.

8. On page 49087, second column, third full paragraph, line 13, the phrase ''COVID–10 specific ICD–10'' is corrected to read ''COVID–19 specific ICD–10''.

9. On page 49095, first column, third footnote paragraph (footnote 232), the parenthetical web address, ''(statnews.com)'' is corrected to read ''*https://www.statnews.com/2021/09/20/covid-19-set-to-overtake-1918-spanish-flu-as-deadliest-disease-in-american-history/*''.

10. On page 49106,

a. First column, first paragraph (footnote 275), lines 3 through 5, the phrase, ''Fleisher et al. (2022). New England Journal of Medicine. Article available here:'' is corrected to read ''Fleisher et al. (2022). Health Care Safety During the Pandemic and Beyond—Building a System That Ensures Resilience. New England Journal of Medicine. Available at:''

b. Second column—

(1) Sixth footnote paragraph (footnote 283), lines 4 through 10, the hyperlink, *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-additional-oral-antiviral-treatment-covid-19-certain#:~:text=Today%2C%20the%20U.S.%20Food%20and,progression%20to%20severe%20COVID%2D19%2C* is corrected to read: *https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-additional-oral-antiviral-treatment-covid-19-certain*

(2) Eighth footnote paragraph (footnote 285), lines 3 through 7, the hyperlink, ''*https://www.washingtonpost.com/politics/biden-to-give-away-400-million-n95-masks-starting-next-week/2022/01/19/5095c050-;7915-11ec-9dce-7313579de434_story.html*'' is corrected to read ''*https://www.washingtonpost.com/kidspost/2022/01/19/biden-give-away-400-million-n95-masks/*''.

11. On page 49129, first column, footnote paragraph (Footnote 314), line 5 and 6, the hyperlink ''*https://oig.hhs.govAd/oei/reports/OEI-06-18-00400.asp*'' is corrected to read *https://oig.hhs.gov/oei/reports/OEI-06-18-00400.asp.*

12. On page 49195, third column, first full paragraph, lines 3 and 4, the reference ''section 1866'' is corrected to read ''section 1886''.

13. On page 49197, second column, third full paragraph, lines 11 and 12, the reference ''section 1866'' is corrected to read ''section 1886''.

14. On page 49201, first column, second full paragraph, lines 11 through 17, the sentence ''First, because social risk factors disproportionately impact historically [481]'' is corrected to read ''First, because social risk factors disproportionately impact underserved communities, promoting screening for these factors could serve as evidence-based building blocks for supporting hospitals and health systems in actualizing commitment to address disparities, improve health equity through addressing the social needs with community partners, and implement associated equity measures to track progress.''.

15. On page 49207, first column, second full paragraph, lines 3 and 4, the reference ''section 1866'' is corrected to read ''section 1886''.

16. On page 49217, first column, second full paragraph, line 3, the reference ''section 1866'' is corrected to read ''section 1886''.

17. On page 49223, second column, first full paragraph, lines 7 and 8, the reference ''section 1866'' is corrected to read ''section 1886''.

18. On page 49229, first column, first full paragraph, lines 4 and 5, the reference ''section 1866'' is corrected to read ''section 1886''.

19. On page 49230, top third of the page, second column, second full paragraph, lines 2 through 6, the sentence ''The measure is designed to be calculated by the hospitals' CEHRT using the patient-level data and then submitted by hospitals to CMS.'' is corrected to read ''Patient-level data is to be submitted to CMS where risk-adjustment and measure calculation will occur.''.

20. On page 49232, lower two-thirds of the page, first column, last full paragraph, lines 5 and 6, the phrase ''an additional hospital unaffiliated with the first 25'' is corrected to read '' an additional 5 hospitals unaffiliated with the first 25''.

21. On page 49233, third column, first full paragraph, lines 1 through 5, the sentence ''We reiterate that this is an eCQM in which the data is collected through hospitals' EHR and designed to be calculated by the hospital's CEHRT (87 FR 28513).'' is corrected to read ''We reiterate that this is an eCQM in which the data is collected through hospitals' EHR (87 FR 28514). The measure is designed for patient-level data to be submitted to CMS where risk-adjustment and measure calculation will occur.''.

22. On page 49248, first column, 10th footnote paragraph (Footnote 919), lines 1 and 2, the phrase, ''Ma kela K.T., Peltola M., Sund R, Malmivaara A., Ha kkinen U., Remes V.'' is corrected to read ''Mäkelä K.T., Peltola M., Sund R., Malmivaara A., Häkkinen U., Remes V.''.

23. On page 49263, third column, second full paragraph, lines 5 and 6, the reference ''section 1866'' is corrected to read ''section 1886''.

24. On page 49266, third column, before the first footnote paragraph (Footnote 981), the footnote paragraphs are corrected by adding a footnote (Footnote 980) to read as follows:

''National Quality Forum. Surgery Fall Cycle 2020. Measure Testing (subcriteria 2a2, 2b1–2b6) Document. November 3, 2020. Available at: *https://*

nqfappservicesstorage.blob.core.windows.net/proddocs/22/Fall/2020/measures/1550/shared/1550.zip.''.

25. On page 49267, third column, second full paragraph, lines 4 and 5, the reference ''section 1866'' is corrected to read ''section 1886''.

26. On page 49283, first column, sixth footnote paragraph (footnote 1021), lines 6 and 7, the hyperlink ''*https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787181*'' is corrected to read ''*https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2787184*''.

27. On page 49295, second column, first partial footnote paragraph (footnote 1074), lines 1 through 4, the hyperlink ''Accessed on Available at: *https://arpsp.cdc.gov/profile/infections/clabsi?year-select-report=year2019&year-select-hai-state-list=year2019*'' is corrected to read ''Accessed July 27, 2021. Available at: *https://arpsp.cdc.gov/profile/nhsn/clabsi.*''

28. On page 49297, second column, first full paragraph, lines 17 and 18, the phrase ''increase the risk of developing CDIs. '' is corrected to read ''increase the risk of contracting HAIs.''.

29. On page 49308, second column, last partial paragraph, line 18, the citation (85 FR 58952 through 58944)'' is corrected read ''(85 FR 58942 through 58953)''.

30. On page 49311, first column, first full paragraph, line 3, the reference ''section 1866'' is corrected to read ''section 1886''.

31. On page 49312, first column, last partial paragraph, line 1, the reference ''section 1866'' is corrected to read ''section 1886''.

32. On page 49313, third column, third full paragraph, line 7, the phrase ''FY 2021 confidential'' is corrected to read ''FY 2022 confidential''.

33. On page 49315, middle of the page, in the table titled ''Table IX.G.-01. Quality Measures Currently Adopted for the FY 2023 LTCH QRP'', the entries in rows 3 and 4 are corrected to read as follows:

TABLE IX.G.-01. QUALITY MEASURES CURRENTLY ADOPTED FOR THE FY 2023 LTCH QRP

Short Name	Measure Name & Data Source
LTCH CARE Data Set	
Functional Assessment	Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function
Application of Functional Assessment/Care Plan	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function

34. On page 49317, first column, fifth paragraph, lines 10 and 11, the phrase, ''This commenter also suggested CMS to work with CMS to determine'' is corrected to read ''This commenter also suggested CMS determine''.

35. On page 49318—

a. Second column, third full paragraph, line 1, the phrase, ''A number of commenters provider'' is corrected to read ''A number of commenters provided''.

b. Third column, first full paragraph, lines 36 through 40, the sentence, ''We also received one comment recommending CMS use a combination of peer group benchmarking and statistical significance. '' is corrected read ''A commenter also suggested additional guiding principles.''

36. On page 49327, third column, first partial paragraph, line 3, the reference ''[TABLE XX]'' is corrected to read ''Table IX.H.-07''.

37. On page 49335, third column, second full paragraph, line 14, the citation ''(87 FR 28586 through 28587)'' is corrected to read ''(87 FR 28585 through 28587)''.

38. On page 49347, third column, first partial paragraph, line 15, the phrase, ''We finalized our proposal'' should read ''We are finalizing our proposal''.

39. On page 49362, second column, first partial paragraph, lines 11 through 15, the sentence ''Testing established the feasibility of the measure, first in 25 hospitals across eight healthcare sites and then in additional hospital unaffiliated with the first 25.'' is corrected to read ''The measure developer's testing established the feasibility of the measure, first in 25 hospitals across 8 healthcare sites and then in an additional 5 hospitals unaffiliated with the first 25, and across several different electronic health record systems.''.

40. On page 49377, third column, first partial paragraph, lines 31 and 32, the reference ''sections XII.B.10. and XII.H.11, '' is corrected to read ''sections XII.B.11. of the preamble and I.H.11. of the Appendix,''.

41. On page 49398, second column, first full paragraph, lines 1 and 2, the reference, ''section XX.B.2.'' is corrected to read ''section X.B.2.''.

B. Corrections to the Addendum

1. On page 49420, first column, second full paragraph,

a. Line 24, the phrase ''2 additional'' is corrected to ''8 additional''.

b. Line 32, the phrase ''2 hospitals' '' is corrected to ''8 hospitals' '' .

c. Line 40, the phrase ''2 additional'' is corrected to ''8 additional''.

d. Lines 42 and 43, the phrase ''2 hospitals, a total of 17 hospitals'' is corrected to read as follows ''8 hospitals, a total of 23 hospitals''.

e. Line 47, the phrase ''negative $17,153,313 (Step 2)'' is corrected to read as follows ''negative $25,475,549 (Step 2)''.

f. Line 50, the phrase, ''2 hospitals is $88,414,357,653 (Step 3)'' is corrected to read as follows ''8 hospitals is $88,407,788,794 (Step 3)''.

g. Lines 51 and 52, the phrase ''negative 0.019401 percent'' is corrected to read ''negative 0.028816 percent''.

h. Line 53, the phrase ''negative 0.02 percent'' is corrected to read ''negative 0.03 percent''.

i. Lines 57 and 58, ''5.12 percent [5.1 percent − (− 0.02 percent)]'' is corrected to read ''5.13 percent [5.1 percent − (− 0.03 percent)]''.

2. On page 49421,

a. Second column,

(1) First partial paragraph, lines 4 and 5, the phrase ''supplemented for 2 hospitals for a total of 14 hospitals,'' is corrected to read ''supplemented for 8 hospitals for a total of 20 hospitals,''.

(2) First full paragraph,

(a) Lines 2 and 3, the phrase ''2 hospitals, 14 hospitals'' is corrected to read ''8 hospitals, 20 hospitals''.

(b) Line 6, the figure ''$1,101,225'' is corrected to read ''$2,556,541''.

(c) Line 9, the figure ''$7,995,731,783'' is corrected to read ''$7,994,424,546''.

(d) Line 10, the figure, ''0.013773'' is corrected to read ''0.031979''.

(e) Line 11, the figure, ''0.01'' is corrected to read ''0.03''.

(f) Line 17, the figure ''0.01'' is corrected to read ''0.03''.

(g) Line 20, the figure ''0.01'' is corrected to read ''0.03''.

b. Third column, last full paragraph,

(1) Line 2, the figure ''5.66 percent'' is corrected to read ''5.67 percent''.

(2) Line 4, the phrase ''$406,733,862 divided by $7,190,928,057'' is corrected to read ''$407,648,341 divided by ''$7,190,718,976''.

(3) Line 6, the figure ''$406,733,862'' is corrected to read ''$407,648,341''.

(4) Line 7, the figure ''$6,784,194,195'' is corrected to read ''$6,783,070,635''.

(5) Line 11, the figure ''5.40 percent'' is corrected to read ''5.41 percent''.

(6) Line 12, the figure ''$346,066,050'' is corrected to read ''$346,855,738''.

(7) Line 13, the figure ''$6,412,816,596'' is corrected to read ''$6,412,729,550''.

(8) Line 14, the figure ''$346,066,050'' is corrected to read ''$346,855,738''.

(9) Line 16, the figure ''$6,066,750,547'' is corrected to read ''$6,065,873,812''.

(10) Line 20, the figure ''5.53 percent'' is corrected to read ''5.54 percent''.

(11) Line 26, the figure ''0.01 percent'' is corrected to read ''0.03 percent''.

(12) Line 30, the figure ''5.53 percent'' is corrected to read ''5.54 percent''.

(13) Lines 34 and 35, the equation ''5.52 percent (5.53 percent − 0.01 percent)'' is corrected to read 5.51 percent (5.54 percent − 0.03 percent)''.

3. On page 49427, third column, second full paragraph, line 31, the figure ''5.12'' is corrected to ''5.13''.

4. On page 49428,

a. Top of the page,

(1) First column,

(a) First partial paragraph,

(i) Lines 3 through 5, the phrase ''0.019401 percent, which when rounded to the second digit, is 0.02 percent'' is corrected to ''0.028816 percent, which when rounded to the second digit, is 0.03 percent''

(ii) Lines 8 and 9, the mathematical expression ''5.12 percent [5.1 percent − (0.02 percent)]'' is corrected to read ''5.13 percent [5.1 percent − (− 0.03 percent)]''.

(b) Third full paragraph,

(i) Line 4, the figure ''$39,389'' is corrected to read ''$39,317''.

(ii) Line 6, the figure ''$4,658,400,549'' is corrected to read ''$4,667,954,052''.

(iii) Line 7, the figure ''$86,325,462,972'' is corrected to read ''$86,324,951,579''.

(iv) Line 11, the figure ''5.12'' is corrected to read ''5.13''.

(c) Second partial paragraph, line 2, the figure ''$38,328'' is corrected to read ''$38,259''.

(2) Second column,

(a) First partial paragraph,

(i) Line 2, the figure ''$4,073,729,554'' is corrected to read ''$4,081,975,259''

(ii) Line 3, ''$75,488,568,943'' is corrected to ''$75,488,113,785''

(iii) Line 7, the figure ''5.12'' is corrected to read ''5.13''.

(b) First full paragraph, last line, the mathematical expression ''$38,859 (($39,389 + $38,328)/2)).'' is corrected to read ''$38,788 (($39,317 + $38,259)/2)).''

(3) Third column, first partial paragraph, lines 33 and 34, the figure ''5.52 percent'' is corrected to read ''5.51 percent''.

b. Lower fourth of the page, in the untitled table, the figure ''0.944837'' is corrected to read ''0.944910''.

4. On page 49433, second column, first full paragraph, line 6, the figure ''2.36 percent'' is corrected to read ''2.37 percent''.

5. On page 49435, first column,

a. First partial paragraph, line 22, the figure ''5.53 percent'' is corrected to read ''5.54 percent''.

b. First full paragraph,

(1) Line 6, the figure ''0.01 percent'' is corrected to read ''0.03 percent''.

(2) Lines 8 through 12, the phrase ''estimated outlier payments for capital-related PPS payments would equal 5.52 percent (5.53 percent − 0.01 percent) of inpatient capital-related payments'' is corrected to read ''estimated outlier payments for capital-related PPS payments would equal 5.51 percent (5.54 percent − 0.03 percent) of inpatient capital-related payments''.

(3) Line 14, the figure ''0.9448'' is corrected to read ''0.9449''.

c. Second full paragraph,

(1) Lines 4 through 7, the sentence ''The FY 2023 outlier adjustment of 0.9448 is a − 0.24 percent change from the FY 2022 outlier adjustment of 0.9471'' is corrected to read ''The FY 2023 outlier adjustment of 0.9449 is a − 0.23 percent change from the FY 2022 outlier adjustment of 0.9471''.

(2) Lines 9 and 10, the mathematical phrase ''0.9976 (0.9448/0.9471)'' is corrected to read ''0.9977 (0.9449/0.9471)''.

(3) Line 12, the figure '' − 0.24'' is corrected to read '' − 0.23''.

6. On page 49436, third column,

a. First full paragraph,

(1) Line 9, the figure $483.76'' is corrected to read ''$483.79''.

(2) Last line, the figure ''0.9448'' is corrected to read ''0.9449''.

b. Last paragraph,

(1) Line 18, the figure ''0.24'' is corrected to read ''0.23''.

(2) Line 22, the figure ''2.36'' is corrected to read ''2.37''.

7. On page 49437,

a. Top of the page, the table ''Comparison of Factors and Adjustments: FY 2022 Capital Federal Rate and the FY 2023 Capital Federal Rate'' is corrected to read as follows:

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2022 CAPITAL FEDERAL RATE AND THE FY 2023 CAPITAL FEDERAL RATE

	FY 2022	FY 2023	Change	Percent Change
Update Factor[1]	1.0080	1.0250	1.0250	2.50
GAF/DRG Adjustment Factor[1]	1.0004	1.0012	1.0012	0.12
Quartile/Cap Adjustment Factor[2]	0.9974	0.9972	0.9998	-0.02
Outlier Adjustment Factor[3]	0.9471	0.9449	0.9977	-0.23
Capital Federal Rate	$472.59	$483.79	1.0237	2.37[4]

[1] The update factor and the GAF/DRG budget neutrality adjustment factors are built permanently into the capital Federal rate. Thus, for example, the incremental change from FY 2022 to FY 2023 resulting from the application of the 1.0012 GAF/DRG budget neutrality adjustment factor for FY 2023 is a net change of 0.0012 (or 0.12 percent).

[2] The lowest quartile/cap budget neutrality adjustment factor is not built permanently into the capital Federal rate; that is, the factor is not applied cumulatively in determining the capital Federal rate. Thus, for example, the net change resulting from the application of the FY 2023 lowest quartile/cap budget neutrality adjustment factor is 0.9972/0.9974 or 0.9998 (or -0.02 percent).

[3] The outlier reduction factor is not built permanently into the capital Federal rate; that is, the factor is not applied cumulatively in determining the capital Federal rate. Thus, for example, the net change resulting from the application of the FY 2023 outlier adjustment factor is 0.9449/0.9471 or 0.9977 (or -0.23 percent).

[4] Percent change may not sum due to rounding.

b. Lower two-thirds of the page, first column, second full paragraph, last line, the figure ''38,859'' is corrected to read ''$38,788''.

8. On page 49438, second column, first full paragraph, lines 45 and 46, the reference ''section 1866(m)(5)'' is corrected to read ''section 1886(m)(5)''.

9. On page 49450, first full paragraph,

a. Line 11, the figure ''$38,859'' is corrected to read ''$38,788''.

b. Last line, the figure ''$38,859'' is corrected to read ''$38,788''.

10. On page 49453, bottom of the page, the table titled ''TABLE 1D—CAPITAL STANDARD FEDERAL PAYMENT RATE—FY 2023'' is corrected to read as follows:

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE—FY 2023

	Rate
National	$483.79

D. Corrections to the Appendices

1. On page 49457, third column, last paragraph,

a. Line 8, the figure ''$1.4 billion'' is corrected to read ''$1.5 billion''.

b. Line 14, the figure ''$1.0 billion'' is corrected to read ''$0.9 billion''.

2. On pages 49461 through 49463, the column titled ''All FY 2023 Changes'' in the table titled, ''Table I—Impact Analysis of Changes to the IPPS for Operating Costs for FY 2023'' is corrected to read as follows:

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	All FY 2023 Changes (8)[9]
All Hospitals	2.6
By Geographic Location:	
Urban hospitals	2.6
Rural hospitals	2.4
Bed Size (Urban):	
0-99 beds	1.1
100-199 beds	2.9
200-299 beds	3.1
300-499 beds	2.7
500 or more beds	2.4
Bed Size (Rural):	
0-49 beds	0.9
50-99 beds	1.3
100-149 beds	3.5
150-199 beds	3.1
200 or more beds	3.4
Urban by Region:	
New England	3.2
Middle Atlantic	2.5
East North Central	2.3
West North Central	2.2
South Atlantic	2.4
East South Central	2.5
West South Central	3.0
Mountain	4.1
Pacific	2.4
Puerto Rico	3.9
Rural by Region:	
New England	0.1
Middle Atlantic	2.5
East North Central	0.1
West North Central	2.9
South Atlantic	3.6
East South Central	3.2
West South Central	2.8
Mountain	2.9
Pacific	3.4
By Payment Classification:	
Urban hospitals	2.5
Rural areas	2.7
Teaching Status:	
Nonteaching	2.6
Fewer than 100 residents	2.7
100 or more residents	2.5
Urban DSH:	
Non-DSH	2.3
100 or more beds	2.6
Less than 100 beds	2.7
Rural DSH:	
Non-DSH	1.7
SCH	3.8
RRC	2.8
100 or more beds	0.1
Less than 100 beds	-4.0
Urban teaching and DSH:	

	All FY 2023 Changes (8)[9]
All Hospitals	2.6
By Geographic Location:	
Both teaching and DSH	2.5
Teaching and no DSH	2.0
No teaching and DSH	2.8
No teaching and no DSH	2.5
Special Hospital Types:	
RRC	2.0
RRC with Section 401 Reclassification	2.8
SCH	3.6
SCH with Section 401 Reclassification	3.8
SCH and RRC	3.5
SCH and RRC with Section 401 Reclassification	3.3
Type of Ownership:	
Voluntary	2.5
Proprietary	3.3
Government	2.4
Medicare Utilization as a Percent of Inpatient Days:	
0-25	2.9
25-50	2.5
50-65	2.8
Over 65	0.3
Medicaid Utilization as a Percent of Inpatient Days:	
0-25	2.4
25-50	2.8
50-65	3.5
Over 65	4.4
Hospitals with 5% or more of cases that reported experiencing homelessness	3.9
FY 2023 Reclassifications:	
All Reclassified Hospitals	2.8
Non-Reclassified Hospitals	2.4
Urban Hospitals Reclassified	2.7
Urban Nonreclassified Hospitals	2.5
Rural Hospitals Reclassified Full Year	2.8
Rural Nonreclassified Hospitals Full Year	1.9
All Section 401 Reclassified Hospitals	2.7
Other Reclassified Hospitals (Section 1886(d)(8)(B))	0.6

3. On pages 49467 through 49468, the table titled ''Table II—Impact Analysis of Changes for FY 2023 Acute Care Hospital Operating Prospective Payment System (Payments per discharge)'' is corrected to read as follows:

	Number of Hospitals (1)	Estimated Average FY 2022 Payment Per Discharge (2)	Estimated Average FY 2023 Payment Per Discharge (3)	FY 2023 Changes (4)
All Hospitals	3,142	15,064	15,454	2.6
By Geographic Location:				
Urban hospitals	2,420	15,450	15,854	2.6
Rural hospitals	722	11,264	11,530	2.4
Bed Size (Urban):				
0-99 beds	653	11,638	11,762	1.1
100-199 beds	700	12,336	12,694	2.9
200-299 beds	411	13,921	14,346	3.1
300-499 beds	409	15,259	15,678	2.7
500 or more beds	245	19,035	19,494	2.4
Bed Size (Rural):				
0-49 beds	358	9,656	9,744	0.9
50-99 beds	201	10,973	11,119	1.3
100-149 beds	84	10,930	11,313	3.5
150-199 beds	46	12,354	12,741	3.1
200 or more beds	33	12,935	13,372	3.4
Urban by Region:				
New England	107	16,943	17,482	3.2
Middle Atlantic	295	18,132	18,592	2.5
East North Central	373	14,666	15,002	2.3
West North Central	156	14,816	15,141	2.2
South Atlantic	402	13,341	13,661	2.4
East South Central	140	12,824	13,148	2.5
West South Central	362	13,506	13,916	3
Mountain	176	15,343	15,967	4.1
Pacific	359	19,835	20,307	2.4
Puerto Rico	50	9,110	9,461	3.9
Rural by Region:				
New England	19	16,103	16,126	0.1
Middle Atlantic	49	11,001	11,282	2.5
East North Central	113	11,471	11,487	0.1
West North Central	86	11,804	12,144	2.9
South Atlantic	109	10,381	10,759	3.6
East South Central	141	10,144	10,464	3.2
West South Central	134	9,730	10,002	2.8
Mountain	47	13,126	13,501	2.9
Pacific	24	15,534	16,066	3.4
By Payment Classification:				
Urban hospitals	1,861	14,338	14,701	2.5
Rural areas	1,281	15,990	16,415	2.7
Teaching Status:				
Nonteaching	1,939	11,851	12,157	2.6
Fewer than 100 residents	929	13,898	14,267	2.7
100 or more residents	274	21,998	22,555	2.5
Urban DSH:				
Non-DSH	369	12,491	12,783	2.3
100 or more beds	1,129	14,828	15,207	2.6

	Number of Hospitals (1)	Estimated Average FY 2022 Payment Per Discharge (2)	Estimated Average FY 2023 Payment Per Discharge (3)	FY 2023 Changes (4)
Less than 100 beds	363	10,749	11,039	2.7
Rural DSH:				
Non-DSH	105	14,163	14,406	1.7
SCH	264	12,442	12,911	3.8
RRC	674	16,726	17,199	2.8
100 or more beds	22	13,264	13,280	0.1
Less than 100 beds	216	9,297	8,921	-4
Urban teaching and DSH:				
Both teaching and DSH	663	16,060	16,457	2.5
Teaching and no DSH	60	14,060	14,347	2
No teaching and DSH	829	12,077	12,410	2.8
No teaching and no DSH	309	11,689	11,984	2.5
Special Hospital Types:				
RRC	148	11,620	11,849	2
RRC with Section 401 Reclassification	470	17,565	18,059	2.8
SCH	256	11,626	12,046	3.6
SCH with Section 401 Reclassification	47	14,462	15,009	3.8
SCH and RRC	122	13,174	13,637	3.5
SCH and RRC with Section 401 Reclassification	39	15,623	16,135	3.3
Type of Ownership:				
Voluntary	1,915	15,141	15,516	2.5
Proprietary	789	13,173	13,614	3.3
Government	438	17,122	17,542	2.4
Medicare Utilization as a Percent of Inpatient Days:				
0-25	790	17,643	18,156	2.9
25-50	2,072	14,501	14,860	2.5
50-65	225	12,154	12,497	2.8
Over 65	30	9,588	9,614	0.3
Medicaid Utilization as a Percent of Inpatient Days:				
0-25	2,082	13,649	13,981	2.4
25-50	942	17,466	17,950	2.8
50-65	94	20,166	20,874	3.5
Over 65	24	21,038	21,973	4.4
Hospitals with 5% or more of cases that reported experiencing homelessness	45	19,202	19,954	3.9
FY 2023 Reclassifications:				
All Reclassified Hospitals	1,004	15,971	16,419	2.8
Non-Reclassified Hospitals	2,138	14,291	14,632	2.4
Urban Hospitals Reclassified	840	16,472	16,915	2.7
Urban Nonreclassified Hospitals	1,594	14,488	14,853	2.5
Rural Hospitals Reclassified Full Year	282	11,381	11,697	2.8
Rural Nonreclassified Hospitals Full Year	426	11,120	11,328	1.9
All Section 401 Reclassified Hospitals	615	17,132	17,592	2.7
Other Reclassified Hospitals (Section 1886(d)(8)(B))	56	10,488	10,554	0.6

4. On page 49469, lower half of the page, third column, first partial paragraph,

a. Line 9, the figure ''$88.45 million'' is corrected to read ''$164.72 million''.

b. Line 12, the figure ''$33.9 million'' is corrected to read ''$110.17 million''.

5. On page 49470,

a. Top of the page, in the table titled ''FY 2023 Estimates for New Technology Add-On Payments for Technologies under the Alternative Pathway for FY 2023'', the table is corrected to read as follows:

FY 2023 Estimates for New Technology Add-On Payments for Technologies under the Alternative Pathway for FY 2023				
Technology Name	**Pathway (QIDP, LPAD, or Breakthrough Device)**	**Estimated Cases**	**FY 2023 NTAP Amount (65 % or 75 %)**	**Estimated Total FY 2023 Impact**
Cerament® G	Breakthrough Device	1610	$4,918.55	$7,918,865.50
GORE® TAG® Thoracic Branch Endoprosthesis	Breakthrough Device	386	$27,807.00	$10,733,502.00
iFuse Bedrock Granite Implant System	Breakthrough Device	1,480	$9,828.00	$14,545,440.00
Thoraflex™ Hybrid Device	Breakthrough Device	800	$22,750.00	$18,200,000.00
ViviStim®	Breakthrough Device	135	$23,400.00	$3,159,000.00
Defencath™	QIDP	7726	$14,259.38	$110,167,969.88
Estimated Total FY 2023 Impact				**$164,724,777.38**

b. Lower one-third of the page, in the table titled ''FY 2023 Estimates for New Technology Add-On Payments for FY 2023'', the table is corrected to read as follows:

FY 2023 Estimates for New Technology Add-On Payments for FY 2023

Category	Estimated Total FY 2023 Impact
Technologies Continuing New Technology Add-On Payments in FY 2023	$619,943,190.45
Alternative Pathway Applications	164,724,777.38
Traditional Pathway Applications	75,161,627.94
Aggregate Estimated Total FY 2023 Impact	$859,829,595.77

c. Bottom of the page, first column, partial paragraph, before line 1, the text is corrected by adding a heading to read as follows: ''2. Effects of Changes to Medicare DSH and Uncompensated Care Payments for FY 2023 and the New Supplemental Payment for Indian Health Service Hospitals and Tribal Hospitals and Hospitals Located in Puerto Rico''.

6. On page 49471, third column, first full paragraph, line 1, the number ''2,368'' is corrected to ''2,367''.

7. On pages 49472 and 49473, the table titled ''Modeled Uncompensated Care Payments* and Supplemental Payments for Estimated FY 2023 DSHs by Hospital Type'' is corrected to read as follows:

Modeled Uncompensated Care Payments* and Supplemental Payments for Estimated FY 2023 DSHs by Hospital Type					
	Number of Estimated DSHs (1)	FY 2022 Final Rule Estimated Uncompensated Care Payments ($ in millions) (2)	FY 2023 Uncompensated Care Payments and Supplemental Payments** ($ in millions) (3)	Dollar Difference: FY 2022 - FY 2023 ($ in millions) (4)	Percent Change*** (5)
Total	**2,367**	**$7,192**	**$6,971**	**-$221**	**-3.08%**
By Geographic Location					
Urban Hospitals	1,919	6,789	6,592	-197	-2.90
Large Urban Areas	1,005	4,146	4,073	-73	-1.76
Other Urban Areas	914	2,643	2,519	-124	-4.69
Rural Hospitals	448	403	379	-24	-6.00
Bed Size (Urban)					
0 to 99 Beds	363	284	265	-19	-6.55
100 to 249 Beds	779	1,532	1,491	-41	-2.68
250+ Beds	777	4,974	4,836	-137	-2.76
Bed Size (Rural)					
0 to 99 Beds	346	219	206	-13	-5.81
100 to 249 Beds	90	136	127	-9	-6.82
250+ Beds	12	47	45	-2	-4.53
Urban by Region					
New England	88	186	176	-11	-5.79
Middle Atlantic	236	819	765	-54	-6.58
South Atlantic	313	800	762	-38	-4.76
East North Central	104	354	357	4	1.02
East South Central	322	1,759	1,713	-45	-2.58
West North Central	126	439	428	-10	-2.38
West South Central	236	1,434	1,401	-32	-2.27
Mountain	135	299	292	-7	-2.35
Pacific	316	607	611	3	0.54
Puerto Rico	43	93	87	-6	-6.24
Rural by Region					
New England	7	15	11	-3	-23.04
Middle Atlantic	21	12	12	0	-3.77
South Atlantic	66	43	43	-1	-1.81
East North Central	27	23	25	2	8.09
East South Central	77	117	107	-10	-8.75
West North Central	116	85	81	-4	-4.95
West South Central	105	88	81	-7	-8.51
Mountain	23	14	14	-1	-4.60
Pacific	6	5	6	1	24.44
By Payment Classification					
Urban Hospitals	1,456	4,482	4,370	-112	-2.50
Large Urban Areas	832	2,950	2,913	-37	-1.26
Other Urban Areas	624	1,532	1,458	-75	-4.88
Rural Hospitals	911	2,710	2,600	-109	-4.03
Teaching Status					
Nonteaching	1,320	1,961	1,905	-55	-2.82
Fewer than 100 residents	778	2,486	2,425	-61	-2.46
100 or more residents	269	2,746	2,641	-105	-3.82
Type of Ownership					
Voluntary	1,477	4,102	4,023	-80	-1.95
Proprietary	530	1,017	992	-24	-2.38
Government	360	2,073	1,956	-117	-5.65
Medicare Utilization Percent****					

Modeled Uncompensated Care Payments* and Supplemental Payments for Estimated FY 2023 DSHs by Hospital Type					
	Number of Estimated DSHs (1)	FY 2022 Final Rule Estimated Uncompensated Care Payments ($ in millions) (2)	FY 2023 Uncompensated Care Payments and Supplemental Payments** ($ in millions) (3)	Dollar Difference: FY 2022 - FY 2023 ($ in millions) (4)	Percent Change*** (5)
0 to 25	694	3,434	3,335	-99	-2.89
25 to 50	1,552	3,685	3,564	-121	-3.29
50 to 65	111	70	70	0	-0.38
Greater than 65	9	2	2	0	-23.83
Medicaid Utilization Percent****					
0 to 25	1,377	$3,346	3,260	-85	-2.55
25 to 50	866	3,092	3,021	-71	-2.29
50 to 65	100	674	603	-71	-10.49
Greater than 65	24	81	86	5	6.66

Source: Dobson | DaVanzo analysis of 2018 and 2019 Hospital Cost Reports.

*Dollar uncompensated care payments calculated by [0.75 * estimated section 1886(d)(5)(F) payments * Factor 2 * Factor 3]. When summed across all hospitals projected to receive DSH payments, uncompensated care payments are estimated to be $7,192 million in FY 2022 and uncompensated care payments and supplemental payments are estimated to be $6,971 million in FY 2023.

** For IHS/Tribal hospitals and Puerto Rico hospitals, this impact table reflects the supplemental payments.

*** Percentage change is determined as the difference between Medicare uncompensated care payments and supplemental payments modeled for this FY 2023 IPPS/LTCH PPS final rule (column 3) and Medicare uncompensated care payments modeled for the FY 2022 IPPS/LTCH PPS final rule correction and correcting amendment (column 2) divided by Medicare uncompensated care payments modeled for the FY 2022 IPPS/LTCH PPS final rule correction and correcting amendment (column 2) times 100 percent.

****Hospitals with missing or unknown Medicare utilization or Medicaid utilization are not shown in the table.

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8. On page 49473, lower one-fourth of the page, second column, partial paragraph, line 6, the figure ''2,368'' is corrected to ''2,367''.

9. On page 49474, first column, second full paragraph, line 5 through the second column, second full paragraph, last line, the language (beginning with the phrase ''Rural hospitals with 250+ beds are projected to receive'' and ending with the sentence ''Hospitals with greater than 65 percent Medicaid utilization are projected to receive an increase of 6.67 percent.'') is corrected to read as follows: ''Rural hospitals, in general, are projected to experience larger decreases in uncompensated care payments and supplemental payments compared to their uncompensated care payments in FY 2022, as compared to their urban counterparts. Overall, rural hospitals are projected to receive a 6.00 percent decrease in payments, which is a greater decrease than the overall hospital average, while urban hospitals are projected to receive a 2.90 percent decrease in payments, which is a slightly smaller decrease than the overall hospital average.

Among rural hospitals, by bed size, larger rural hospitals are projected to receive the smallest decreases in uncompensated care payments and supplemental payments. Rural hospitals with 250+ beds are projected to receive a 4.53 percent payment decrease, and rural hospitals with 100–249 beds are projected to receive a 6.82 percent decrease. Smaller rural hospitals with 0–99 beds are projected to receive a 5.81 percent payment decrease. Among urban hospitals, the smallest hospitals, those with 0–99 beds, are projected to receive a 6.55 percent decrease in payments, which is a greater decrease than the overall hospital average. In contrast, urban hospitals with 100–249 beds and those with 250+ beds are projected to receive decreases in payments of 2.68 and 2.76 percent, respectively, which are smaller decreases than the overall hospital average.

In most regions, rural hospitals are generally expected to receive larger than average decreases in uncompensated care payments and supplemental payments. The exceptions are rural hospitals in the South Atlantic Region, which are projected to receive a smaller than average decrease of 1.81 percent in payments and rural hospitals in the East North Central Region and the Pacific Region, which are projected to receive payment increases of 8.09 and 24.44 percent, respectively. Regionally, urban hospitals are projected to receive a more varied range of payment changes. Urban hospitals in the New England, Middle Atlantic, and South Atlantic Regions, as well as hospitals in Puerto Rico, are projected to receive larger than average decreases in payments. Urban hospitals in the East South Central, West North Central, West South Central, and Mountain Regions are projected to receive smaller than average decreases in payments. Urban hospitals in the East North Central and Pacific Regions are projected to receive increases in payments of 1.02 percent and 0.54 percent, respectively.

By payment classification, although hospitals in urban payment areas overall are expected to receive a 2.50 percent decrease in uncompensated care payments and supplemental payments, hospitals in large urban payment areas are expected to see a decrease in payments of 1.26 percent, while hospitals in other urban payment areas are projected to receive the largest decrease of 4.88 percent. Hospitals in rural payment areas are expected to

receive a decrease in payments of 4.03 percent.

Nonteaching hospitals are projected to receive a payment decrease of 2.82 percent, teaching hospitals with fewer than 100 residents are projected to receive a decrease of 2.46 percent, and teaching hospitals with 100+ residents have a projected payment decrease of 3.82 percent. Proprietary and voluntary hospitals are projected to receive smaller than average decreases of 2.38 and 1.95 percent respectively, while government hospitals are expected to receive a larger than average payment decrease of 5.65 percent. Hospitals with less than 25 percent Medicare utilization and hospitals with 50 to 65 percent Medicare utilization are projected to receive smaller than average payment decreases of 2.89 and 0.38 percent, respectively, while hospitals with 25–50 percent and hospitals with greater than 65 percent Medicare utilization are projected to receive larger than average payment decreases of 3.29 and 23.83 percent, respectively. All hospitals with less than 50 percent Medicaid utilization are projected to receive smaller decreases in uncompensated care payments and supplemental payments than the overall hospital average percent change, while hospitals with 50–65 percent Medicaid utilization are projected to receive a larger than average decrease of 10.49 percent. Hospitals with greater than 65 percent Medicaid utilization are projected to receive an increase of 6.66 percent.''

10. On page 49482, third column, first full paragraph, last line, the figure ''0.9448'' is corrected to read ''0.9449''.

11. On page 49483,

a. First column, first partial paragraph, line 1, the figure ''5.52 percent'' is corrected to read ''5.51 percent''.

b. Second column, second full paragraph,

(1) Line 5, the figure ''1.6 percent'' is corrected to read ''1.7 percent''.

(2) Line 10, the figure ''1.2 percent'' is corrected to read ''1.4 percent''.

c. Third column, last paragraph, last line, the figure ''0.3 percent'' is corrected to read ''0.1 percent''.

12. On pages 49484 and 49485, the table titled ''TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE [FY 2022 PAYMENTS COMPARED TO FY 2023 PAYMENTS]'' is corrected to read as follows:

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TABLE III.-- COMPARISON OF TOTAL PAYMENTS PER CASE
[FY 2022 PAYMENTS COMPARED TO FY 2023 PAYMENTS]

	Number of Hospitals	Average FY 2022 Payments/Case	Average FY 2023 Payments/Case	Change
All Hospitals	3,142	1,086	1,092	0.6
By Geographic Location:				
Urban hospitals	2,420	1,119	1,125	0.5
Rural hospitals	722	764	767	0.4
Bed Size (Urban):				
0-99 beds	653	883	884	0.1
100-199 beds	700	941	949	0.9
200-299 beds	411	1,035	1,043	0.8
300-499 beds	409	1,105	1,112	0.6
500 or more beds	245	1,326	1,329	0.2
Bed Size (Rural):				
0-49 beds	358	656	655	-0.2
50-99 beds	201	731	734	0.4
100-149 beds	84	742	750	1.1
150-199 beds	46	858	857	-0.1
200 or more beds	33	876	885	1.0
Urban by Region:				
New England	107	1,196	1,197	0.1
Middle Atlantic	295	1,253	1,259	0.5
East North Central	373	1,052	1,058	0.6
West North Central	156	1,070	1,077	0.7
South Atlantic	402	982	986	0.4
East South Central	140	945	951	0.6
West South Central	362	1,031	1,035	0.4
Mountain	176	1,115	1,134	1.7
Pacific	359	1,455	1,461	0.4
Puerto Rico	50	633	642	1.4
Rural by Region:				
New England	19	1,032	1,031	-0.1
Middle Atlantic	49	725	733	1.1
East North Central	113	753	755	0.3
West North Central	86	783	782	-0.1
South Atlantic	109	715	722	1.0
East South Central	141	723	733	1.4
West South Central	134	713	713	0.0
Mountain	47	857	851	-0.7
Pacific	24	977	978	0.1
By Payment Classification:				
Urban hospitals	1,861	1,080	1,088	0.7
Rural areas	1,281	1,094	1,098	0.4
Teaching Status:				
Nonteaching	1,939	904	909	0.6
Fewer than 100 residents	929	1,025	1,032	0.7
100 or more residents	274	1,471	1,477	0.4
Urban DSH:				
Non-DSH	369	970	973	0.3
100 or more beds	1,129	1,112	1,121	0.8

	Number of Hospitals	Average FY 2022 Payments/Case	Average FY 2023 Payments/Case	Change
Less than 100 beds	363	821	824	0.4
Rural DSH:				
Non-DSH	105	1,012	1,020	0.8
SCH	264	793	788	-0.6
RRC	674	1,147	1,151	0.3
100 or more beds	22	918	918	0.0
Less than 100 beds	216	647	653	0.9
Urban teaching and DSH:				
Both teaching and DSH	663	1,175	1,184	0.8
Teaching and no DSH	60	1,044	1,050	0.6
No teaching and DSH	829	958	965	0.7
No teaching and no DSH	309	932	934	0.2
Special Hospital Types:				
RRC	148	878	885	0.8
RRC with section 401 Rural Reclassification	470	1,215	1,218	0.2
SCH	256	745	744	-0.1
SCH with section 401 Rural Reclassification	47	906	896	-1.1
SCH and RRC	122	844	849	0.6
SCH and RRC with section 401 Rural Reclassification	39	1,005	1,017	1.2
Type of Ownership:				
Voluntary	1,915	1,090	1,095	0.5
Proprietary	789	1,000	1,009	0.9
Government	438	1,177	1,184	0.6
Medicare Utilization as a Percent of Inpatient Days:				
0-25	790	1,220	1,228	0.7
25-50	2,072	1,061	1,065	0.4
50-65	225	883	893	1.1
Over 65	30	690	690	0.0
Medicaid Utilization as a Percent of Inpatient Days:				
0-25	2,082	1,006	1,010	0.4
25-50	942	1,220	1,228	0.7
50-65	94	1,447	1,457	0.7
Over 65	24	1,523	1,564	2.7
Hospitals with 5% or more of cases that reported experiencing homelessness	45	1,379	1,404	1.8
FY 2023 Reclassifications:				
All Reclassified Hospitals	1,004	1,113	1,118	0.4
Non-Reclassified Hospitals	2,138	1,064	1,070	0.6
Urban Hospitals Reclassified	840	1,149	1,153	0.3
Urban Non-Reclassified Hospitals	1,594	1,090	1,098	0.7
Rural Hospitals Reclassified Full Year	282	781	788	0.9
Rural Non-Reclassified Hospitals Full Year	426	741	740	-0.1
All section 401 Rural Reclassified Hospitals	615	1,175	1,178	0.3
Other Reclassified Hospitals (section 1886(d)(8)(B))	56	754	758	0.5

13. On page 49494, third column, third full paragraph,

a. Lines 2 and 3, the figure ''$1.4 billion'' is corrected to read ''$1.5 billion''.

b. Line 14, the figure ''$0.039 billion'' is corrected to read ''0.040 billion''.

c. Lines 17 and 18, the figure ''-$0.747 billion'' is corrected to read ''-$0.671 billion''.

14. On page 49495,

a. First column, first line, the figure ''$39 million'' is corrected to read ''$40 million''.

b. Third column, second full paragraph, last line, the figure ''$1.4 billion'' is corrected to read ''$1.5 billion''.

c. Middle of page, Table V. ''ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES UNDER THE IPPS FROM FY 2022 TO FY 2023'' is corrected to read as follows:

TABLE V.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES UNDER THE IPPS FROM FY 2022 TO FY 2023

Category	Transfers
Annualized Monetized Transfers	$1.5 billion
From Whom to Whom	Federal Government to IPPS Medicare Providers

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List of Subjects in 42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 482:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 1. The authority citation for part 482 continues to reads as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr, unless otherwise noted.

§ 482.42 [Amended]

■ 2. In § 482.42, redesignate the second paragraph (f)(2)(ii) as paragraph (f)(2)(iii).

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2022–24077 Filed 11–3–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10, 11, and 15

[Docket No. USCG–2020–0069]

RIN 1625–AC63

Pilots' Medical Certificate Validity Period

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing this final rule to extend the maximum validity period of merchant mariner medical certificates issued to first-class pilots, and masters or mates serving as pilot, from 2 years to 5 years. We are issuing this rule in response to federal advisory committee recommendations and a petition for rulemaking. This rule will reduce the frequency of medical certificate application submissions to the Coast Guard. The rule maintains the requirement for pilots to complete annual physicals and provides the Coast Guard opportunity to review the medical examinations of pilots who may become medically unqualified between medical certificate applications; therefore, the rule does not compromise safety.

DATES: This final rule is effective February 1, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0069 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Eric Malzkuhn, U.S. Coast Guard Office of Merchant Mariner Credentialing; telephone 202–372–1425, email *eric.f.malzkuhn@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
DHS Department of Homeland Security
FCP First-class pilot
FR Federal Register
GRT Gross registered tons
GS General service
GSA General Services Administration
MMC Merchant Mariner Credential
MMLD Merchant Mariner Licensing and Documentation database
MMD Merchant Mariner's Document
MPH Miles per hour
NMC National Maritime Center
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
REC Regional Examination Center
§ Section
STCW Code Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended
STCW Convention International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
STCW final rule ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to National Endorsements'' final rule
U.S.C. United States Code
USPS U.S. Postal Service

II. Purpose, Basis, and Regulatory History

The purpose of this rule is to extend the maximum validity period of merchant mariner medical certificates issued to first-class pilots (FCPs), and masters or mates serving as pilot, from 2 years to 5 years, which will reduce the frequency that they must submit a medical certificate application to the Coast Guard. Reducing the frequency of medical certificate applications will reduce the administrative burden on the mariner submitting the application and on the Coast Guard when processing the application and issuing the medical certificate. First-class pilots, and masters and mates serving as pilot on vessels of 1,600 gross registered tons or more, will be required to submit the results of their annual physical examinations to the Coast Guard between medical certificate applications if the mariner (1) does not meet the physical ability requirements; (2) has a condition that does not meet the medical, vision, or hearing requirements; (3) is deemed ''not recommended'' by a medical practitioner for a medical certificate; or (4) if the results are requested by the Coast Guard. We are delaying the

effective date of this final rule several months after publication in the **Federal Register** because the Coast Guard needs additional time to fully implement the necessary changes to the Merchant Mariner Licensing and Documentation database used by the National Maritime Center to issue Merchant Mariner Credentials and maintain records of U.S. merchant mariners.

The legal basis of this rule is Title 46 of the United States Code (U.S.C.), Section 7101(c), which authorizes the Coast Guard to issue licenses to pilots who are found qualified as to physical fitness and other qualifications in Section 7101(c). Title 46 U.S.C. Section 7101(e)(2) further specifies that an individual may only be issued a license as pilot if they are found to be of sound health and have no physical limitations that would hinder or prevent them in the performance of a pilot's duties. Section 7101(e)(3) also requires each pilot serving on vessels 1,600 gross registered tons (GRT) or greater to have a thorough physical examination each year while holding the license. The Secretary of the Department of Homeland Security (DHS) has delegated these statutory authorities to the Coast Guard through DHS Delegation No. 00170.1(92)(e), Revision No. 01.2, which generally authorizes the Coast Guard to determine and establish the experience and professional qualifications required for the issuance of credentials. Additionally, 14 U.S.C. 102(3) grants the Coast Guard broad authority to issue and enforce regulations for the promotion of safety of life and property on waters subject to the jurisdiction of the United States.

On August 27, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Pilots' Medical Certificate Validity Period'' (volume 86 of the **Federal Register** (FR) at page 48090), requesting comments on extending the pilot medical certificate validity period to 5 years and adding specific reporting requirements for the interim years. The Coast Guard received six comment submissions to the docket. A detailed description of the background and discussion of the proposed changes can be found in that NPRM.

III. Background

The Coast Guard issues Merchant Mariner Credentials (MMCs) and medical certificates to qualified mariners who meet the requirements in Title 46 of the Code of Federal Regulations (CFR), subchapter B, parts 10 through 13. The requirements for medical certification are described in 46 CFR part 10, subpart C. According to § 10.301, a medical certificate will be issued for various periods of time based upon the endorsements the mariner holds. Under this final rule, the maximum validity period of the medical certificate for mariners serving as an FCP, or masters or mates serving as pilot under 46 CFR 15.812, for which the maximum validity period of the medical certificate had been 2 years, will now have a maximum validity period of 5 years. The validity period of the medical certificate will remain 5 years for mariners serving on national MMC endorsements, and will remain 2 years for mariners engaged on vessels to which the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention) applies. Mariners may not be employed in a position requiring an MMC unless they hold a valid medical certificate, as described in § 15.401(c).

In accordance with § 11.709, FCPs, and masters or mates serving as pilot on vessels of 1,600 GRT or more, are required to have an annual physical examination that meets the medical and physical requirements described in part 10 subpart C. This annual physical examination requirement for pilots serving on vessels of 1,600 GRT or more has been in place since the enactment of the Port and Tanker Safety Act of 1978 (Pub. L. 95–474) and is codified in 46 U.S.C. 7101(e)(3). This annual physical examination is a statutory requirement and will still be required after this rulemaking.

In July 2017, the Coast Guard tasked the Merchant Marine Personnel Advisory Committee, the Merchant Mariner Medical Advisory Committee, and the Great Lakes Pilotage Advisory Committee with identifying regulations, guidance, or information collections that that were outdated, ineffective, or exceeded benefits and imposed administrative burdens or costs on the maritime industry (see 82 FR 32511, 82 FR 32513, and 82 FR 34909).

The advisory committees concluded that the 2-year maximum validity period of the medical certificate for FCPs poses a burden on mariners and suggested the Coast Guard extend the period of validity to 5 years. Additionally, in July 2018, the Coast Guard received a petition for rulemaking from the American Pilots Association requesting that we change the maximum period of validity of the medical certificate from 2 years to 5 years for FCPs and masters or mates serving as pilot. You can view the American Pilots' Association's petition for rulemaking and our response by searching the docket number ''USCG–2018–0709'' on *https://www.regulations.gov.*

IV. Discussion of Comments and Changes From Proposed Rule

In response to the August 27, 2021 NPRM (86 FR 48090), the Coast Guard received six comment submissions to the docket. Three comments expressed support for the proposed rule, two comments disagreed with the proposed rule, and the final comment neither expressed support nor disagreement with the proposed rule. We summarize the comments below. In situations where multiple commenters raised similar issues, we attempt to provide one response.

At the end of this section, we also discuss three clarifying changes to the regulatory text from what was proposed in the NPRM.

A comment from a towing company supported the Coast Guard's proposed rule, stating that it would consolidate all phases of the process to renew an MMC and make the process, as a whole, less burdensome. The commenter also expressed belief that the overall risk of a marine incident occurring on navigable waters due to a pilot's or master's medical condition to be relatively low.

A comment from the American Pilots Association supported the changes in the proposed rule, including the reporting requirements. The American Pilots Association concurred with our statement in the NPRM that this change would not compromise or decrease navigational safety. The American Pilots Association asserted that these changes would actually increase safety because of the new requirement that pilots must submit the results of their annual physical examination to the Coast Guard for review if the medical practitioner determines that they no longer meet the medical and physical standards of 46 CFR, part 10, subpart C.

Another comment simply stated that they agreed with the NPRM.

Two comments from mariners disagreed with the proposed rule. Both raised concerns that the proposed rule would decrease safety because pilots would receive less medical scrutiny at a time when aging pilots are more likely to develop physical ailments and limitations. One of these comments suggested that the proposed rule would mean that the Coast Guard would have less opportunity to remove an endorsement or review further medical proof of ability to act in the capacity of shipboard pilot. This same comment also pointed out that the actual physical examination is only a few hours long and should be considered part of the requirements of the job. The other comment disagreeing with the NPRM

suggested that it would be better to require a stress test from a board-certified cardiologist for those mariners seeking to hold a first class pilot endorsement.

The Coast Guard disagrees that the rule would decrease safety and that we should add a stress test for FCPs. We expect the final rule will not decrease safety because it maintains the current medical and physical requirements for FCPs and for masters and mates serving as pilot. Specifically, the final rule maintains the provisions of 46 CFR 11.709 requiring an annual physical examination for FCPs and those serving as pilot. Each annual physical examination must meet the requirements of 46 CFR part 10 subpart C by ensuring that the mariner has no conditions that pose a significant risk of sudden incapacitation or debilitating complication, and by documenting any condition requiring medication that impairs cognitive ability, judgment, or reaction time. The examination must also document the individual's ability to meet the physical ability requirements of 46 CFR 10.304(c), the vision requirements of 46 CFR 10.305, and the hearing requirements of 46 CFR 10.306. Therefore, this final rule will continue to provide an opportunity to identify individuals who no longer meet the medical standards of 46 CFR part 10 subpart C.

The Coast Guard also expects the final rule to maintain the same level of safety on navigable waters because the rule will require FCPs and those serving as pilot to submit the results of their annual physical examinations to the Coast Guard no later than 30 calendar days after completion of the physical examination if the mariner does not meet the physical ability requirements or the medical, vision, or hearing requirements; if the mariner is deemed ''not recommended'' by a medical practitioner for a medical certificate; or within 30 days upon request by the Coast Guard. If the results of an examination are requested by the Coast Guard, the mariner must submit the results no later than 30 days after the date of the request. This will allow the Coast Guard the opportunity to review the examination to determine whether the individual is physically and medically fit to pilot a vessel.

Furthermore, the Coast Guard expects the final rule to maintain the same level of safety on navigable waters because it retains the provisions of revised 46 CFR 11.709(c), which declares, in part, that an individual's FCP endorsement becomes invalid if the person does not meet the physical examination and reporting requirements in this section. Individuals may not operate under the authority of an invalid endorsement, and those who do may be subject to enforcement action, up to and including suspension and revocation under § 10.235. Additionally, the revised provision in § 11.709(d) states that masters and mates may not serve as pilot on vessels 1600 GRT or more if they do not comply with the physical examination and reporting requirements.

Lastly, Coast Guard expects that the final rule will maintain the same level of safety on navigable waters because it does not extend the medical certificate validity period for individuals who have medical conditions that warrant time-limited medical certificates; nor does it remove reporting requirements for individuals with medical waivers.

With regard to the comment that all FCPs should be required to undergo stress testing by a cardiologist, changing the components of the physical examination requirements for FCPs and masters and mates is outside the scope of this rulemaking. It is important to note that the Coast Guard did not propose any changes to the components of the physical examination requirements for FCPs and masters and mates. The Coast Guard believes that the current physical examination requirements are sufficient for pilots at this time and would not propose changes to the physical examination requirements without information to support such a proposal. No changes to the physical examination requirements would be made without first issuing a proposed rulemaking and following notice-and-comment procedures.

The sixth comment submission we received was from an instructor who stated that their students reviewed the NPRM while studying regulatory policy and took a vote, with the majority supporting the proposed changes.

There are three clarifying changes to the regulatory text of this final rule from the NPRM.

The first change is separating the two general physical examination reporting requirements that, in the NPRM, were combined in § 11.709(b). In the final rule, we are placing the 5-year physical exam submission requirement into new paragraph (b)(1), and the four supplemental reporting requirements into paragraph (b)(2). The four reporting requirements, for when the mariner does not meet the medical requirements or when requested by the Coast Guard, will be in (b)(2)(i) through (b)(2)(iv). Separating the reporting requirements into subparagraphs will make it clearer to the reader that there are multiple reporting requirements.

The second clarifying edit is in § 11.709(b)(2)(iii), regarding when the examining medical practitioner documents that the individual is not recommended for a medical certificate or needs further review by the Coast Guard. This edit clarifies that the recommendation should be recorded on form CG–719K, the ''Application for Medical Certificate.''

The third clarifying change is in § 11.709(b)(2)(iv). This edit clarifies that the physical examination results must be submitted to the Coast Guard no later than 30 days from the date of the request, and not within 30 days of completion of the physical examination, as stated in the proposed rule. Because submission within 30 days of completion of the physical examination would not have been applicable in all cases where the Coast Guard requests the results, we clarified that the mariner must submit the results of an examination no later than 30 days after the request.

A detailed description of the regulatory changes implemented by this final rule follows.

V. Discussion of the Rule

This rule increases the 2-year maximum period of validity of the medical certificate for FCPs and masters or mates serving as pilot to a 5-year maximum period of validity. FCPs and masters or mates serving as pilot will be required to submit the results of a physical examination, recorded on form CG–719K, the ''Application for Medical Certificate,'' every 5 years to the Coast Guard. The following provides a section-by-section discussion of the changes.

A. 46 CFR 10.301: Pilot Medical Certificate Period of Validity

The Coast Guard is amending 46 CFR 10.301, which contains the general requirements for meeting the medical and physical standards for the issuance of medical certificates to mariners. We are extending the 2-year maximum period of validity of the medical certificate for FCPs, and those serving as pilot, by deleting § 10.301(b)(2), which contains the 2-year maximum provision. This section will state that pilots will be issued a medical certificate with a maximum validity period of 5 years.

The standard maximum periods of validity for medical certificates in § 10.301(b)(1) for all persons employed or engaged onboard vessels to which the STCW Convention applies remains 2 years. With this final rule, the standard maximum period of validity for medical certificates in § 10.301(b) for national endorsements (including FCPs and

mariners serving as pilot) will be 5 years. FCPs and masters or mates serving as pilot will generally only have to submit a medical certificate application to the Coast Guard every 5 years. Pilots holding a medical certificate with a 2-year validity period will be issued a medical certificate with 5-year maximum period of validity at their next medical certificate issuance, unless the certificate is time-limited due to a medical condition. This change reduces the administrative burden on FCPs, masters and mates serving as pilot, and the Coast Guard.

This rule does not change the regulations in § 10.303 regarding medical waivers, limitations, and restrictions for not meeting the medical and physical requirements of § 10.302. If the medical or physical standards are not met, the Coast Guard may grant waivers with conditions, such as operational limitations or restrictions on the medical certificate. Certain conditions, such as a need for more frequent monitoring of the mariner's medical condition, may result in the issuance of a time-limited medical certificate that would be valid for a shorter period than the maximum period of 5 years.

The medical certificate maximum validity period of 5 years will apply to all pilots (excluding pilots with time limited medical certificates due to medical condition), regardless of the tonnage of the vessel they are serving on. The Coast Guard believes that this increase in the validity period will not compromise maritime safety, as the rule does not relax the annual physical examination requirement for FCPs or masters and mates serving as pilot. Instead, we expect that the rule will support greater transparency regarding a pilot's medical fitness because it includes a new requirement that pilots must submit the results of their annual examination to the Coast Guard for review if the medical practitioner determines that they no longer meet the medical and physical standards of 46 CFR, part 10, subpart C.

Prior to this final rule taking effect, FCPs and masters or mates serving as pilot exclusively on vessels of less than 1,600 GRT were issued medical certificates with a maximum validity period of 2 years, and were required to submit the physical examination results with their application for a new medical certificate every 2 years. These mariners are not subject to the annual physical examination requirement in § 11.709 and are not subject to the new submission requirements in § 11.709 of this rule. Pilots, masters, and mates who serve as pilot only on vessels less than 1,600 GRT will be issued medical certificates with a maximum validity period of 5 years and will submit the results of a physical examination to the Coast Guard every 5 years when applying for a new medical certificate.

In the rule titled ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to National Endorsements,'' (78 FR 77796, Dec. 24, 2013)(STCW final rule), which took effect on March 24, 2014, an error was made in Table 15.812(e)(1) indicating that mariners serving as pilot on vessels less than 1,600 GRT were required to complete an annual physical examination. The supporting text in § 15.812 remained accurate and did not require these mariners to complete the annual physical examination. This rule corrects the table by removing the requirement for an annual physical examination. Masters and mates serving as pilots on vessels less than 1,600 GRT were not required to take an annual physical examination either before or after the STCW final rule.

Lastly, paragraph § 10.301(b) is dedicated to establishing periods of validity, and § 10.301(b)(4) is not related to periods of validity. Therefore, in this rule, § 10.301(b)(4) is redesignated into its own paragraph in § 10.301(c). As a result, current § 10.301(c) is redesignated as § 10.301(d).

B. 46 CFR 11.709: Annual Physical Examination Requirements for Pilots of Vessels of 1,600 GRT or More

Section 11.709 contains the requirement for pilots of vessels 1,600 GRT or more to undergo an annual physical examination. This section specifies when the annual physical examinations must be conducted, how the examination results are recorded, and how often the examination results are reported to the Coast Guard.

To ensure consistency with 46 U.S.C. 7101(e)(3), we clarify the applicability of this section by including masters or mates serving as pilot on vessels of 1,600 GRT or more, under § 15.812, in the introductory text of § 11.709(b). Adding these mariners to § 11.709(b) clarifies the applicability of the annual physical examination requirements.

Paragraph (b) of this section currently states that the examination results are to be reported to the Coast Guard every other year to coincide with the current 2-year maximum period of validity of medical certificates. Because this rule extends the pilot's medical certificate to a 5-year maximum period of validity, we are also removing the every-other-year submission requirement of form CG–719K for pilots. This rule revises the section to state that the physical examination results must be submitted on form CG–719K to the Coast Guard every 5 years, in accordance with the medical certificate application requirements in §§ 10.301 and 10.304. In practice, pilots who meet the medical and physical standards in 46 CFR part 10 will generally be required to report the results of the annual examination to the Coast Guard only when applying for a medical certificate, every 5 years.

The Coast Guard recognizes that when medical certificates remain valid for 5 years, as opposed to 2 years, there is a higher risk that someone could have a valid medical certificate for a significant period after developing a disqualifying medical condition. In order to reduce the risk created by extending the validity period of the medical certificate, this rule requires FCPs and masters or mates who serve as pilot on vessels of 1,600 GRT or more to submit their annual physical examination results to the Coast Guard no later than 30 days after completion of the physical examination if any of the following circumstances occur: (1) the examining medical practitioner documents that the individual does not meet the physical ability requirements described in § 10.304(c); (2) the examining medical practitioner documents that the individual has a condition that does not meet the general medical examination requirements described in § 10.304(a), the vision requirements described in § 10.305, or the hearing requirements described in § 10.306; (3) the examining medical practitioner documents that the individual is not recommended for a medical certificate or needs further review by the Coast Guard; or (4) if the Coast Guard requests the results. If the Coast Guard requests the results, they should be submitted no later than 30 calendar days after the request.

We are requiring self-submission of medical examinations to the Coast Guard when the examined pilot does not meet the requirements for physical abilities, general medical examination, vision, or hearing, or is not recommended for a medical certificate, so that the Coast Guard can further review the results of the medical examination. As part of the review, the Coast Guard may request additional information in the interest of mariner safety and full performance of the pilot's duties.

Service on vessels may be arduous, and imposes unique physical and medical demands on pilots. The submission requirements support our statutory responsibility under 46 U.S.C. 7101 to ensure that pilots are physically

and medically fit to pilot a vessel. The public safety risks associated with the medical and physical condition of pilots on vessels are important considerations for the safe operation of vessels and the safety and well-being of the crew. As stated in § 11.709(b), the pilot's annual physical examination will continue to be recorded on form CG–719K, which documents physical ability, medical conditions, and hearing and vision requirements. Form CG–719K also documents whether a mariner is ''not recommended,'' which could prompt a submission under the requirements in § 11.709(b)(2)(i)–(iii). If a pilot or a master or mate serving as pilot on a vessel 1,600 GRT or more is ''not recommended'' on their Form CG–719K and fails to report their physical examination results as required under § 11.709(b), they may not serve as pilot on a vessel 1,600 GRT or more until they come into compliance and the Coast Guard makes a determination on whether they are fit to serve under the provisions in 46 CFR subchapter B. The annual physical examination documentation and scope are unchanged and remain the same under this rule.

Moreover, the Coast Guard can request the results of the physical examination as part of marine casualty investigations, where more frequent monitoring of a medical condition is specified in a waiver, and in other cases that prompt further review.

As stated in § 11.701(d), the Coast Guard only issues FCP endorsements for tonnages of 1,600 GRT or more. Therefore, all FCPs serving under the authority of their FCP endorsement will continue to be required to undergo the statutorily required annual physical examinations and will be subject to the submission requirements in § 11.709.

In § 11.709, we also move the text specifying that each annual physical examination must meet the requirements in 46 CFR, part 10, subpart C, and be recorded on form CG–719K, from existing paragraph (c) into paragraph (b). We move this requirement into paragraph (b) so that all information regarding annual physical examination requirements is in the same paragraph.

In conjunction with moving paragraph (c) into paragraph (b), this rule redesignates current § 11.709(d) as § 11.709(c), without change.

Finally, this rule adds a new paragraph 11.709(d) to clarify that masters or mates serving as pilot on vessels of 1,600 GRT or more under § 15.812 may not serve on these vessels if they do not meet the annual physical examination and submission requirements specified in § 11.709(b). New paragraph (d) does not change any of the current requirements or consequences for masters or mates serving as pilot on vessels of 1,600 GRT or more, but reiterates the annual physical examination requirements for masters or mates serving as pilot already required in § 15.812. Masters or mates serving as pilot on vessels of 1,600 GRT or more who do not comply with the physical examination or reporting requirements in § 11.709(b) may still operate under the authority of their master or mate endorsement, but cannot pilot a vessel of 1,600 GRT or more until they come into compliance and the Coast Guard makes a determination on whether they are fit to serve under the provisions of 46 CFR 15.812 and 46 CFR subchapter B.

C. 46 CFR 15.401: Employment and Service Restrictions Within the Credential

This rule also aligns the employment requirements in § 15.401 with the 5-year maximum period of validity of medical certificates for FCPs or masters or mates serving as pilot so that it reflects the change made in § 10.301(b). Section 15.401(c) states that a person may not employ or engage an individual in a position required to hold an MMC unless that individual maintains a current medical certificate. This section currently lists the maximum validity period of the medical certificate as 2 years for FCPs and masters or mates serving as a pilot. This rule amends this section to say that the maximum validity period of the medical certificate for FCPs and masters or mates serving as pilot is 5 years.

Additionally, throughout § 15.401, this rule removes obsolete terminology referring to licenses, certificates of registry, and Merchant Mariner's Documents (MMDs). The Coast Guard ceased issuing licenses, certificates of registry, and MMDs in 2009 when we transitioned to the streamlined MMC with the ''Consolidation of Merchant Mariner Qualification Credentials'' final rule (see 74 FR 11195, March 16, 2009). All credentialed mariners now hold an MMC.

We also revise § 15.401(c)(1) by removing the outdated grandfathering clause, ''[a]fter January 1, 2017,'' because the referenced date has passed and the section is now applicable to all medical certificates issued to individuals serving on vessels where the STCW Convention applies.

D. 46 CFR 15.812, Table 1 to § 15.812(e)(1): Masters or Mates Serving as Pilot on Vessels of 1,600 GRT or More

This rule includes a correction to Table 1 to § 15.812(e)(1). Section 15.812(b)(2) contains the requirements for masters or mates to serve as pilot on vessels of not more than 1,600 GRT. There is no requirement in paragraph (b)(2) of this section for these masters and mates serving on vessels less than 1,600 GRT to undergo an annual physical examination. This is consistent with § 11.709(a), which stipulates that the annual physical examination requirement only applies to individuals who pilot a vessel of 1,600 GRT or more. However, in Table 1 to § 15.812(e)(1), ''Quick Reference Table for Federal Pilotage Requirements for U.S.-Inspected, Self-Propelled Vessels, Not Sailing on Register,'' the requirement for a master or mate serving as pilot on vessels not more than 1,600 GRT to have an annual physical examination was added in error. This error was incorporated into the table with the implementation of the STCW final rule, which took effect on March 24, 2014. We are removing the erroneous annual physical examination requirement in Table 1, under the third column, ''Non-designated areas of pilotage waters (between the 3-mile limit and start of traditional pilotage routes).'' This correction aligns the table with the corresponding regulatory text in section § 15.812(b)(2), as well as the applicability of the annual physical examination requirements in § 11.709(a). This correction does not change the requirements for these mariners, because the Coast Guard has not required masters or mates serving as a pilot on vessels of less than 1,600 GRT to complete an annual physical examination.

VI. Regulatory Analyses

The Coast Guard received six comment submissions during the 60-day comment period that ended on October 26, 2021. We received no public comments on the estimated benefits and costs; therefore, the methodology employed in the regulatory analyses in the NPRM remains unchanged.

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory

Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. A regulatory analysis follows.

Summary of Affected Population, Costs Savings, and Benefits

This rule extends the maximum validity period of merchant mariner medical certificates issued to FCPs and masters or mates serving as pilot from 2 years to 5 years. This rule reduces the frequency of medical certification application submissions to the Coast Guard. FCPs and masters and mates who serve as pilot on vessels of 1,600 GRT or more will be required to submit the results of their annual physical examinations to the Coast Guard between medical certificate applications if the mariner: (1) does not meet the physical ability requirements; (2) has a condition that does not meet the medical, vision, or hearing requirements; (3) is deemed ''not recommended'' by a medical practitioner for a medical certificate; or (4) is so requested by the Coast Guard.

TABLE 1—SUMMARY OF THE AFFECTED POPULATION, COST SAVINGS, AND BENEFITS FOR THIS RULE

Category	Summary
Applicability	Amend 46 CFR 10.301 and 15.401 to extend the maximum period of validity of merchant mariner medical certificates issued to FCPs, and masters or mates serving as pilot, from 2 years to 5 years. Amend 46 CFR 11.709 by modifying the medical certificate application submission requirement for FCPs, as well as masters and mates who serve as pilot on vessels of 1,600 GRT or more, from 2 years to 5 years.
Affected Population	There are currently 3,897 mariners who hold MMC endorsements as FCPs, as of June 1, 2020. This number does not include masters or mates who could serve as pilot. The affected population for this rule is 95 percent of that population, or 3,702 mariners (net affected population).
Benefits	Fewer medical certificate applications will reduce the National Maritime Center's (NMC's) workload and generate cost savings to the government and to mariners. There could be unquantified benefits for some pilots due to a decrease in the likelihood of a lapse in medical certification from less frequent medical certificate application submissions. A lapse in medical certification can have significant costs for individual pilots and for employers, because pilots may not work under the authority of their credential without a valid medical certificate.
Cost savings (in $2020, 7% discount rate) *	Industry cost savings: $20,908 annualized and $146,847 over a 10-year period of analysis. Government cost savings: $15,756 annualized and $110,664 over a 10-year period of analysis. Total cost savings to industry and government: $36,664 annualized and $257,511 over a 10-year period of analysis.

* Totals may not sum due to rounding.

Affected Population

The Merchant Mariner Licensing and Documentation database (MMLD) is used by the NMC to issue MMCs and maintain records of U.S. merchant mariners. Based on data obtained from the MMLD, we determined that a total of 3,897 mariners hold MMC endorsements as FCPs. This rule will not impact FCPs holding medical certificates issued with waivers requiring more frequent reporting of medical examination results to the Coast Guard. Based on data from the MMLD, this group currently consists of 195 mariners, which is 5 percent of the total affected population of 3,897 mariners. We reduced the total population (3,897 mariners) by this number (195) to obtain a net affected population of 3,702 mariners who will be impacted by this rule.

Additionally, we determined that there are 89,713 mariners who hold an MMC endorsement as master or mate, without holding an FCP endorsement, who could serve as pilot. Because there is no requirement to report when a master or mate serves as pilot, we are unable to determine how many masters or mates are serving as pilot; therefore, we limited the affected population in this analysis to mariners holding FCP endorsements and medical certificates without time-limited medical waivers. Table 2 presents this population.

TABLE 2—SUMMARY OF POPULATION BY ENDORSEMENT

Population	Number of mariners
Total number of mariners holding an MMC endorsement as FCP and holding a medical certificate with or without time-limited medical waivers (total potentially affected FCP population)	3,897
Those mariners holding an MMC endorsement as FCP and holding a medical certificate with time-limited medical waivers (unaffected FCP population due to waiver status resulting in no change in the period of validity of the medical certificate)	195

TABLE 2—SUMMARY OF POPULATION BY ENDORSEMENT—Continued

Population	Number of mariners
Those mariners holding an MMC endorsement as FCP and holding a medical certificate without time-limited medical waivers (affected FCP population due to change in the period of validity of the medical certificate)	3,702

Costs and Cost Savings

This final rule reduces the frequency of mariner medical certificate applications to the Coast Guard, resulting in a cost savings to both mariners and the government. Industry cost savings are the costs avoided by reducing the frequency with which FCPs and masters or mates serving as pilot apply for a medical certificate. Consequently, fewer applications will reduce the NMC's workload, generating cost savings for the government. The total 10-year discounted cost savings of this rule will be $257,511, and the annualized total cost savings will be approximately $36,664, both discounted at 7 percent. This includes the 10-year industry and government savings of $146,847 and $110,664 respectively, discounted at 7 percent.

Turnover Rate

We did not factor mariner turnover into this analysis. ''Mariner turnover'' means the number or percentage of mariners leaving employment within a certain period of time, combined with the number or percentage of mariners obtaining employment within the same period of time. There are two reasons for not factoring in mariner turnover. First, the MMC serves as a certificate of mariner identity, service, and qualification. In order to serve under the authority of an endorsement on an MMC, a mariner must be physically and medically qualified for that endorsement, as evidenced by holding a valid medical certificate. Medical certification is not an endorsement of qualification on an MMC, but, instead, is a separate document certifying medical and physical fitness to serve in the capacity of an endorsement listed on the MMC.

The second reason mariner turnover is not factored into this analysis is because the FCP endorsement represents a maritime qualification that can lead to permanent employment with a pilot association. This career path is highly competitive, due to the rigorous, time-consuming, and highly specialized training required. As presented in table 3, data from the MMLD indicates that the number of mariners holding an FCP endorsement has declined at an annual average rate of 0.48 percent in the last 11 years. We did not include mariner turnover because the Coast Guard believes it will have a negligible effect in assessing the costs or cost savings for this regulatory analysis. We did not receive any comments related to the impact of mariner turnover in response to the NPRM.

Industry Cost Savings

This final rule amends requirements so that the results of the annual physical examinations for pilots, and masters or mates serving as pilot, on vessels of 1,600 GRT or more will be submitted to the Coast Guard on form CG–719K every 5 years instead of every 2 years, unless one of the four conditions noted previously, and listed in § 11.709(b), is applicable.[1] Although mariners will still be required to complete an annual physical examination, the cost savings to industry will include the time savings of the affected population not having to submit an application for a merchant mariner medical certificate every 2 years, after the second year of the implementation of this rule.

Mariners may submit medical certificate applications either directly to the NMC via email or to a Regional Examination Center (REC) via email, fax, or mail. Additionally, applications may be submitted at a REC in person. Cost savings to industry will include the time saved by mariners by faxing, emailing, mailing, or delivering in-person the form CG–719K to the Coast Guard on a less frequent basis. According to data obtained from the MMLD, 95 percent of medical certificates issued to FCPs, or 3,702 ($0.95 \times 3{,}897$), are renewed every 2 years. The remaining 5 percent are renewed annually, for those pilots with time-limited certificates due to medical waivers. Since the merchant mariner medical certificate for FCPs and masters or mates serving as pilot is only valid for 2 years under current regulations, half the total number of FCPs and masters or mates serving as pilot are currently applying for a new medical certificate each year.

Current data from the MMLD indicates that 195 mariners from the affected population will not benefit directly under this rule. This is the number of FCPs and masters or mates serving as pilot who have been issued medical certificates with a waiver, which require more frequent reporting of the results of their annual physical examinations to the Coast Guard. These mariners will still be required to submit the form CG–719K to the Coast Guard on an annual basis.

Growth Rate of Affected Population

We analyzed the number of endorsed FCPs who will experience a reduction in burden from only needing to submit their medical certificate applications once every 5 years, after the second year of the implementation of this rule, as opposed to once every 2 years under the regulations that existed prior to this final rule. We then analyzed the number of endorsed FCPs to estimate a population growth rate for mariners with MMCs who will become newly endorsed as FCPs. Using 11 years of data from the MMLD, from 2010 to 2020,[2] which is presented in table 3, we found that the number of endorsed FCPs is declining at an average rate of 0.48 percent per year. The highest number of endorsed FCPs was observed in 2017, while the lowest number of endorsed FCPs was observed in 2020.

We used this estimated annual average decline of 0.48 percent as a constant when forecasting the endorsed FCP population for the next 10 years. This constant rate represents the average decline experienced by FCPs throughout a 10-year period of analysis. We applied this 0.48 percent rate of decline to both the affected population in former regulations (the baseline) and the affected population in this final rule to determine the number of medical certificate application submissions in a given year. Table 3 presents the data from the MMLD used to determine the estimated annual rate of decline for the endorsed FCP population where *t*

[1] Pilots must still undergo annual physical examinations. However, those pilots who are not required to submit the results to the Coast Guard during the 5 years will simply maintain personal copies.

[2] Data for each year are complete because the data are captured and recorded each July.

denotes the period of time, and *t* is discrete and positive.

TABLE 3—SUMMARY OF ENDORSED FCPS

Year	Endorsed FCPs (a)	Growth rate (%) $(b)_t = [(a_t—a_{t-1}) \div a_{t-1}] \times 100$
2010	4,259	
2011	4,292	0.77
2012	4,262	−0.70
2013	4,237	−0.59
2014	4,200	−0.87
2015	4,171	−0.69
2016	4,219	1.15
2017	4,297	1.85
2018	4,263	−0.79
2019	4,217	−1.08
2020	4,055	−3.84
Avg.	4,225	−0.48
Max.	4,297	
Min.	4,055	

Baseline

Table 4 illustrates the following discussion of our baseline analysis. In order to calculate the cost savings of this rule, and to determine our baseline industry costs, we first estimated the number of endorsed FCPs who will be applying for a merchant mariner medical certificate in any given year for the next 10 years, excluding those with medical waivers. To obtain this number, we took the total number of endorsed FCPs holding a medical certificate with or without time-limited medical waivers, 3,897, as shown in table 2. We then subtracted the number of endorsed FCPs who submit medical certificate applications on an annual basis due to time-limited restrictions, 195. We obtained a population of 3,702 endorsed FCPs who will submit their medical certificate applications every 5 years under the rule. We then divided this number (3,702) by 2, which is the application rate of FCPs who are currently issued medical certificates (1 application every 2 years) to obtain an annual estimate of 1,851 medical certificates issued (3,702 ÷ 2). However, the number of endorsed FCPs has decreased over time, at an average annual rate of 0.48 percent from 2011–2020. We incorporated this average annual rate of decline in order to obtain the expected number of endorsed FCPs in a 10-year period of analysis. Column (d) in table 4, ''Pre-NPRM Regulation Medical Certificate Applications With Decline,'' captures the affected population after applying the annual average rate of decline in column (b) and the application rate in column (c). The equation for column (d) is represented as $(d)_t = (c)_t + ([1 + (b)]^t)$ for all *t*. Table 4 presents the number of medical certificate applications under the baseline analysis.

TABLE 4—BASELINE ANALYSIS OF FCPS MARINER MEDICAL CERTIFICATE APPLICATIONS

Year	Population (a)	Growth (%) (b)	Pre NPRM regulation medical certificate applications not incorporating growth $(c)_t = (a) \div 2$	Pre-NPRM regulation medical certificate applications with decline $(d)_t = (c)_t \times ([1 + (b)]^t)$ for all *t*
1	3,702	−0.48	1,851	1,842
2			1,851	1,833
3			1,851	1,825
4			1,851	1,816
5			1,851	1,807
6			1,851	1,799
7			1,851	1,790
8			1,851	1,781
9			1,851	1,773
10			1,851	1,764
Total			18,511	18,030
Average			1,851	1,803

Revised Regulation

Table 5 illustrates the following discussion of our methodology for estimating the number of medical certificate applications for the affected population under this rule. This is similar to the previously discussed ''Baseline'' section. The population and the estimated rate of decline are assumed to be identical under both the baseline scenario and the final rule. The difference in the methodology for the final rule is reflected in the application frequency for FCPs. We calculated this

by taking the number of FCPs expected to submit a medical certificate application in a given year, incorporating the rate of decline, and assuming that each eligible remaining FCP will only submit a medical certificate application at intervals of 5 years, starting in year 1. Column (e) reflects this periodicity; FCPs who submit a medical certificate application in year 1 will not have to submit a new medical certificate application until year 6. FCPs who submit their medical certificate application in year 2 will not have to submit their medical certificate application until year 7. After accounting for the yearly attrition projected for this analysis, values for column (e) will be equivalent to values of column (d) $_t$ for t = 1,2,6,7, and 0 for any other period. This periodicity holds true for any given 10-year interval into the future.

In contrast, column (f) reflects the reduction in medical certificate applications under this rule. For any given period *t,* the reduction in medical certificate applications is calculated as the difference between FCPs who otherwise submit a medical certificate application every other year under the regulations that existed prior to this final rule, column (d), and the number of FCPs who no longer have to submit a medical certificate application during years 3,4,5,8,9,10. Hence, column (f) $_t$ = 0 for t = 1,2,6,7, and column (f) $_t$ = (d) $_t$ − (e) $_t$ for any other year. Finally, column (g) reflects the number of FCPs lost to the industry on a given year due to the projected attrition.

Reduction in Merchant Mariner Medical Certificate Applications From Baseline to Final Rule

As reflected in sum of column (f) of table 5, we project an aggregate reduction in medical certificate applications of 10,766 over a 10-year period following the implementation of this rule. Under this final rule, on average, FCPs will not have to submit 1,794 medical certificate applications in 3 years out of a given 5-year period horizon.

TABLE 5—RULE ANALYSIS OF FCPS MEDICAL CERTIFICATE APPLICATIONS

Year	Population (a)	Growth (%) (b)	Prior regulation medical certificate applications without growth (c) $_t$ = (a) ÷ 2	Prior rule medical certificate applications with growth (d) $_t$ = (c) $_t$ × ([1 + (b)] $_t$) for all t	Final rule regulation medical certificate applications with growth (e) $_t$ = (d) $_t$ for t = 1,2,6,7, and (e) $_t$ = 0 otherwise	Difference in medical certificate applications (f) $_t$ = 0 for t = 1,2,6,7, otherwise (f) $_t$ = (d) $_t$ − (e) $_t$	Population change on a given year (g) $_t$ = d $_t$ − d $_{t-1}$
1	3,702	−0.48	1,851	1,842	1,842		
2			1,851	1,833	1,833		−9
3			1,851	1,825		1,825	−9
4			1,851	1,816		1,816	−9
5			1,851	1,807		1,807	−9
6			1,851	1,799	1,799		−9
7			1,851	1,790	1,790		−9
8			1,851	1,781		1,781	−9
9			1,851	1,773		1,773	−9
10			1,851	1,764		1,764	−8
Total			18,511	18,030	7,264	10,766	−78
Average			1,851	1,803	1,816	1,794	−9

Medical Certificate Applications Submitted by Mail—Opportunity Cost of Time

Table 6 illustrates the analysis of cost savings to industry as discussed in the following paragraphs. We first determine the number of FCPs who will submit a medical certificate application via mail, previously estimated by the NMC at 15 percent of the affected population. The number of FCPs who no longer have to submit a medical application on a given year is reflected on column (f) of table 5. Therefore, column (a) of table 6 is the product of reduced FCPs × 15%. We then estimate the reduction in hours under the final rule.

We calculate the reduction in time burden in a given year from FCPs who no longer have to submit a medical certificate application. The reduction in time burden is calculated as the product of the average time per medical certificate application submitted by mail for evaluation, and the number of FCPs who no longer have to submit a medical certificate application in a given year. The current collection of information approval for MMC application forms estimates the total time required to fill out and submit the medical certificate application by mail to be 18 minutes. Subject matter experts holding MMCs, with experience submitting a medical certificate application, estimate that, on average, 13 minutes are required to fill out the application and the remaining 5 minutes, or 0.083 hours (5 ÷ 60), are required to mail the application. Column (f) in table 6 is the product of (a) and (b). In order to calculate the government cost savings from time saved by NMC employees having fewer medical certificate applications to evaluate, we use an estimated loaded hourly wage rate of $94.03.[3] We derive the estimated wage by using the Office of Personnel Management's 2020 Salary Table for the locality adjusted general service (GS) pay scale for the Washington, DC metropolitan area.

We estimate that the average hourly wage rate for a GS–13 medical evaluator at the NMC is $56.57.[4] To account for employee benefits, we use a load factor of 1.66, which we calculate from the Congressional Budget Office report, ''Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015.'' [5] We obtain this figure (the loaded factor) by dividing the total hourly compensation of a typical GS–13

[3] A loaded hourly wage rate is what a company pays per hour to employ a person, not the hourly wage an employee receives. The loaded hourly wage rate includes the cost of non-wage benefits (health insurance, vacation, etc.).

[4] *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf.*

[5] *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf.*

employee, $74.80,[6] by the hourly wage of a typical GS–13 employee, $45.00;[7] hence, $74.80 ÷ $45.00 = 1.66.[8] Therefore, we estimate the loaded wage rate of a typical GS–13 employee as the product of the wage rate and the load factor, or $56.57 × 1.66 = $94.03.

We recognize that many mariners holding FCP endorsements are compensated at higher wage rates than what is published by the Bureau of Labor Statistics (BLS); however, we used the BLS Occupational Series due to the lack of official records for FCP wages and salaries.

In order to calculate the cost of time saved by FCPs submitting fewer applications under this rule, we use the loaded hourly wage rate per FCP, estimated at $64.90. We obtain an estimated hourly wage rate for a mariner of $43.14, using BLS' Occupational Series 53–5021, Captains, Mates, and Pilots of Water Vessels (May 2020).[9] To determine the load factor per FCP, we divide the BLS total compensation for the transportation and material moving series,[10] $32.27, by the wages and salaries for the same series, which is $21.45. We estimate the load factor as 1.50, as $32.27 ÷ $21.45 = 1.50. Therefore, we calculate the loaded hourly wage rate by multiplying the hourly wage rate by the loaded factor, or $43.14 × 1.50 = $64.90.[11]

After determining the total reduction in time for FCPs not submitting medical certificates in a given year, we estimate the aggregate cost of the time for all FCPs to submit their medical certificates applications to the Coast Guard by multiplying the loaded hourly wage-rate per each endorsed FCP, $64.90, by the total annual reduction in time burden. Therefore, the cost-time burden, column (g) of table 6, is the product of column (d) and column (f).

Submission Costs

Mariners may submit medical certificate applications either directly to the NMC or to a REC. Whether submitting to the NMC or a REC, applications can be submitted by email, fax, or mail. An application may also be submitted to a REC in person.

Using data from the NMC on the submission of medical certificate applications, we estimate that approximately 39 percent of medical certificate applications are submitted directly to the NMC. Of these applications, 89 percent are submitted by email, 6 percent are submitted by fax, and 5 percent are submitted by mail. The remaining 61 percent of medical certificate applications are submitted to RECs, where 52 percent of the applications are submitted by email, 1 percent are submitted by fax, 22 percent are submitted by mail, and 25 percent are submitted in person.[12] Therefore, of the total medical certificate applications submitted to the Coast Guard (to both the NMC and RECs), approximately 66 percent are submitted via email, 3 percent are submitted via fax, 15 percent are submitted via mail, and 15 percent are submitted in person.[13]

We estimate the expected cost of mailing applications through the U.S. Postal Service (USPS) in any given year as the product of the total number of medical certificate applications that will be submitted under this rule, the 55-cent cost of mailing an application to the Coast Guard through the USPS using a first-class letter postage stamp, and the percentage of endorsed FCPs expected to submit their medical certificate applications through the mail, approximately 15.4 percent. Thus, column (h) of table 6 = (a) × (c). Finally, the undiscounted industry cost savings, column (i), is the sum of the cost-time burden, column (g), and the USPS cost, column (h).

TABLE 6—MEDICAL APPLICATIONS MAILING COSTS ESTIMATES OVER A 10-YEAR PERIOD OF ANALYSIS IN $2020 DOLLARS USING 7- AND 3-PERCENT DISCOUNT RATES

Year	Mailed submission (a) $_t$ = reduced FCPs × 15%	Avg. time per form submission (hrs.) (b)	Cost per letter mailed (1 oz.) (c)	FCP hourly wage (d)	Total apps received (%) (e)	Reduction in time burden (hrs.) (f) $_t$ = (a) $_t$ × (b)	Cost-time burden (g) $_t$ = (d) × (f) $_t$	Mail costs (USPS) (h) $_t$ = (a) $_t$ × (c)	Undiscounted industry cost savings (i) $_t$ = (g) $_t$ + (h) $_t$	Discounted 7%	Discounted 3%
1		0.083	$0.55	$64.90	15						
2											
3	280					23	1,517	154	1,671	1,364	1,529
4	279					23	1,509	154	1,663	1,269	1,478
5	278					23	1,502	153	1,655	1,180	1,428
6											
7											
8	274					23	1,481	151	1,631	949	1,288
9	272					23	1,474	150	1,624	883	1,244
10	271					23	1,467	149	1,616	821	1,202
Total	1,655					138	8,950	910	9,860	6,467	8,169
Average	276					23	1,492	152	1,643	1,078	1,361
Annualization										921	958

*Totals may not add due to rounding.

Medical Certificates Applications Submitted in Person—Opportunity Cost of Time

Table 7 illustrates the analysis of cost savings to industry, as discussed in the following sections. We first determine the number of FCPs who will submit a medical certificate application in person, previously estimated by the NMC at 15 percent of the affected population. Therefore, column (a), the expected number of medical certificate applications submitted in person in a given year = reduced FCPs × 15%. We assume that each eligible FCP will commute an average of 27.6 minutes in each direction[14] to submit their medical certificate application to a REC, for an average total commuting time of 55.2 minutes, shown in column (c). We assume that FCPs who have a longer commute to the REC will submit the applications by mail or email. We also assume that FCPs will drive at an

[6] Id, table 4. For this analysis we assumed a GS–13 was a federal employee with a Master's degree, as specified in table 2 and table 4 of the report.

[7] Id, table 2.

[8] Totals may not add due to rounding.

[9] *https://www.bls.gov/oes/2020/may/oes535021.htm* (see Mean Hourly Wage value, National estimates for this occupation box).

[10] *https://www.bls.gov/news.release/archives/ecec_03192020.pdf,* found in table 2.

[11] Total may not add due to rounding.

[12] Total may not add to 100 percent due to rounding.

[13] Total may not add to 100 percent due to rounding.

[14] *https://www.census.gov/newsroom/press-releases/2021/one-way-travel-time-to-work-rises.html.*

average speed of approximately 57 miles per hour (MPH) based on calculations from data in the Department of Transportation's National Traffic Speeds Survey II, Overall Speed Estimates (in MPH) by Road Class (Free-Flow) by Year. That survey provided mean speed figures for three road classes: limited access (70.5 MPH), major arterial (53.28 MPH), and minor arterial (47.01 MPH). We took the mean of those values to obtain an average speed of 56.93 MPH [(70.5 + 53.28 + 47.01) ÷ 3].[15] Considering the estimated average speed, we assume that 55.2 minutes of commuting time will be traveled in approximately 1 hour (55.2 minutes ÷ 57 miles per hour ≈ 0.97 hrs.), reflected in column (b).

In order to calculate the opportunity cost of having to commute to submit a medical certificate application to a REC on a less frequent basis, we use the General Services Administration's (GSA's) ''Privately Owned Vehicle (POV) Mileage Reimbursement Rates,'' [16] which is used as a proxy for the wear and tear incurred while commuting to a REC. As of January 2021, the reimbursement rate is $0.56 per mile, column (d). We then estimate the net reduction in time burden hours in column (e).

The net reduction in time burden is calculated as the product of the average time it will take FCPs to commute to and from a REC, column (b), and the number of FCPs who no longer have to submit a medical certificate on a given year, column (a). Hence, column (e) = (a) × (b). Next we estimate the net reduction in distance (miles avoided) by FCPs who no longer have to drive to submit a medical certificate application in a given year. The net reduction in distance (miles), column (f), is the product of the average miles avoided by FCPs who would otherwise commute to and from a REC, column (c), and the aggregate time of commuting avoided by FCPs in hours. Finally, we estimate the undiscounted cost savings of FCPs who no longer have to submit a medical certificate application in person, column (g). This column is calculated as the product of GSA's reimbursement rate, column (d), and the aggregate distance (miles) avoided by FCPs on a given year, column (e). Hence, column (g) = (d) × (f).

TABLE 7—OPPORTUNITY COST OF COMMUTE AVOIDED IN TERMS OF TIME AND REIMBURSEMENT IMPACT

Year	In person submission (a) $_t$ = reduced FCPs × 15%	Total time allotted for driving to/ from USCG facilities (hrs.) (b)	Average time commuted per FCP (c)	Reimbursement rate per mile driven (d)	Net reduction in time burden (hrs.) (e) $_t$ = (a) $_t$ × (b)	Net reduction in time (minutes) (f) $_t$ = (c) × (e) $_t$	Undiscounted industry cost savings (g) $_t$ = (d) × (f) $_t$	Discounted 7%	Discounted 3%
1		1.000	55.2	$0.56	.....	.....	.....	.....	.....
2	.....	.....	.....	.....	.....	.....	.....	.....	
3	280				280.44	15,481	$8,669	$7,077	$7,933
4	279				279.10	15,406	8,628	6,582	7,666
5	278				277.77	15,333	8,586	6,122	7,407
6	.....				.....	.....	.....	.....	.....
7	.....				.....	.....	.....	.....	.....
8	274				273.80	15,114	8,464	4,926	6,681
9	272				272.49	15,041	8,423	4,582	6,456
10	271				271.18	14,969	8,383	4,261	6,238
Total	1,655	.....	.....	.....	1,654.77	91,344	51,152	33,549	42,380
Average	276	.....	.....	.....	275.80	15,224	8,525	5,592	7,063
Annualization	.....	.....	.....	.....	.....	.....	.....	4,777	4,968

*Totals may not add due to rounding.

Medical Certificate Applications Submitted in Person—Opportunity Cost of Time (Compensation)

Table 8 illustrates an analysis similar to table 7, but in terms of the compensation that FCPs will otherwise forgo in order to commute to a REC to submit a medical certificate application. Based on data provided from each REC, we determined that, considering security protocols, a mariner requires an average of 25 minutes to arrive at, enter, and then exit a REC, column (c). It requires, on average, an additional 5 minutes of wait time to be seen by the legal instruments examiner at the customer service counter, column (d), and an additional 1 minute for the examiner to verify that the medical certificate application is complete and filled out properly, column (e). The time burden for FCPs is no different than for any other mariner.

To quantify the savings associated to mariners not using a full hour of their time to commute to a REC, column (b), we use the FCP's loaded hourly wage rate, estimated at $64.90, column (f). The undiscounted cost savings associated to FCPs who no longer have to commute to submit a medical certificate application, column (g), is calculated as the product of the number of reduced FCPs, column (a), the average commuting time to and from a REC, column (b), the average time to it takes an FCP to enter and exit a REC, column (c), the average time to it takes for an FCP to be seen by a legal instruments examiner at the customer service counter, column (d), and the average time it takes for the examiner to verify that the medical certificate application is complete and filled out properly, column (e). Hence, (g) $_t$ = (a) $_t$ × [(b) + (c) + (d) + (e)] × (f).

[15] Table 1. Overall Speed Estimates (in MPH) by Road Class (Free-Flow) by Year, Fact Sheet, Publication No. DOT HS 811 647, August 2012, *https://safety.fhwa.dot.gov/speedmgt/data_facts/.*

[16] *https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates.*

TABLE 8—OPPORTUNITY COST OF COMMUTE AVOIDED IN TERMS OF HOURLY WAGE COMPENSATION

Year	In person submission (a) $_t$ = reduced FCPs × 15%	Avg. commuting time to/from RECs (hrs.) (b)	Avg. time to enter and exit RECs (hrs.) (c)	Avg. time to be seen by legal instruments examiner (hrs.) (d)	Avg. time perform submission (hrs.) (e)	FCP hourly wage (f)	Undiscounted industry cost savings (g) $_t$ = (a)$_t$ × [(b) + (c) + (d) + (e)] × (f)	Discounted 7%	Discounted 3%
1		1.000	0.417	0.083	0.017	$64.90			
2									
3	280						$27,605	$22,534	$25,263
4	279						27,473	20,959	24,409
5	278						27,341	19,494	23,585
6									
7									
8	274						26,951	15,686	21,275
9	272						26,822	14,589	20,557
10	271						26,693	13,569	19,862
Total	1,655						162,885	106,831	134,951
Average	276						27,147	17,805	22,492
Annualization								$15,210	$15,820

*Totals may not add due to rounding.

Total Cost Savings to Industry

Using a 7-percent discount rate, we estimate the annualized cost savings for this rule at $20,908 and the 10-year total at $146,847. We obtain this value by adding the yearly cost savings associated with the number of medical certificate applications not submitted in a given period, which is column (i) of table 6, and the number of medical certificate applications not delivered to the Coast Guard in a given period, which is the sum of column (g) of table 7 and column (g) of table 8. We present these industry cost-savings amounts, discounted at 7 percent and 3 percent, in table 9.

TABLE 9—TOTAL INDUSTRY COST SAVINGS OVER A 10-YEAR PERIOD OF ANALYSIS IN $2020 DOLLARS USING 7- AND 3-PERCENT DISCOUNT RATES

Year	Undiscounted mail submission (a) $_t$	Undiscounted in person submission (b) $_t$	Undiscounted industry savings (c) $_t$	Discounted 7%	Discounted 3%
1					
2					
3	$1,671	$36,274	$37,945	$30,975	$34,725
4	1,663	36,100	37,763	28,810	33,552
5	1,655	35,928	37,583	26,796	32,419
6					
7					
8	1,631	35,414	37,046	21,561	29,244
9	1,624	35,245	36,868	20,054	28,256
10	1,616	35,076	36,692	18,652	27,302
Total	9,860	214,037	223,897	146,847	185,499
Average	1,643	35,673	37,316	24,475	30,917
Annualization				20,908	21,746

*Totals may not add due to rounding.

Government Cost Savings

Table 10 illustrates the following methodology to calculate the cost savings to the government. We first estimate the reduction in hours associated with the reduction in medical certificate application submissions previously discussed as the product of the reduction in medical certificate applications and the estimated time it will take a GS–13 employee at the NMC to process an application for a medical certificate. Using medical certificate application information records obtained from NMC medical evaluation staff, we estimate that the time needed to evaluate a medical certificate application is approximately 10 minutes, or 0.166 hours (10 ÷ 60 = 0.166 hours).

Using the loaded hourly wage rate of $94.03 for a GS–13 employee, we estimate that the government will save $15.67 ($94.03 × 0.17 hour) on each application it no longer has to evaluate. The annual reduction in the number of medical certificate applications for the rule is the product of the number of applications the government will no longer have to review and the hours saved by not having to review an additional medical application. Therefore, (d) = (a) × 0.166 hrs. On average, the government will save 299 hours annually under this final rule.

Next, we estimate the total undiscounted government cost savings in a given year. We calculated this by multiplying the estimated loaded hourly wage rate for a GS–13 employee, $94.03, by the yearly reduction in hours. This captures the difference in the medical certificate applications under the former regulations and the final rule. On average, the government will save $18,444 annually under this rule, discounted at 7 percent, as presented in table 10.

TABLE 10—GOVERNMENT COST SAVINGS OVER A 10-YEAR PERIOD OF ANALYSIS IN $2020 DOLLARS USING 7- AND 3-PERCENT DISCOUNT RATES

Year	Reduction in medical certificate applications (a) $_t$	GS–13 wage rate (b)	Time per evaluation (hrs.) (c)	Reduction in time burden (hrs.) (d) $_t$ = (a) × (c)	Undiscounted government cost savings (e) $_t$ = (b) × (d) $_t$	Discounted 7%	Discounted 3%
1		$94.03	0.17				
2							
3	1,825			304.10	$28,595	$23,342	$26,169
4	1,816			302.65	28,459	21,711	25,285
5	1,807			301.20	28,322	20,193	24,431
6							
7							
8	1,781			296.89	27,918	16,248	22,038
9	1,773			295.47	27,784	15,113	21,294
10	1,764			294.06	27,651	14,056	20,575
Total	10,766				168,729	110,664	139,792
Average	1,794				28,121	18,444	23,299
Annualization						15,756	16,388

*Totals may not add due to rounding.

Total Estimated Cost Savings of This Rule Over a 10-Year Period of Analysis

Over a 10-year period of analysis, the total estimated cost savings of this rule to mariners and the government is $257,511, discounted at 7 percent. The annualized cost savings are $36,664, also discounted at 7 percent. Table 11 presents the total cost savings of this rule, which is the sum of the undiscounted industry savings, column (c) of table 9, and the undiscounted government savings, which is column (e) of table 10. Therefore, the undiscounted total cost savings is the sum of the undiscounted industry savings and the undiscounted government savings.

TABLE 11—TOTAL ESTIMATED COSTS SAVINGS OF RULE OVER A 10-YEAR PERIOD OF ANALYSIS IN $2020 USING 7-PERCENT AND 3-PERCENT DISCOUNT RATES

Year	Undiscounted industry cost savings (a) $_t$	Undiscounted government cost savings (b) $_t$	Undiscounted total cost savings (c) $_t$ = (a) $_t$ + (b) $_t$	Discounted 7%	Discounted 3%
1					
2					
3	$37,945	$28,595	$66,541	$54,317	$60,894
4	37,763	28,459	66,222	50,520	58,837
5	37,583	28,322	65,905	46,989	56,850
6					
7					
8	37,046	27,918	64,963	37,809	51,283
9	36,868	27,784	64,652	35,167	49,551
10	36,692	27,651	64,343	32,709	47,877
Total	223,897	168,729	392,626	257,511	325,292
Average	37,316	28,121	65,438	42,918	54,215
Annualization				36,664	38,134

*Totals may not add due to rounding.

Benefits

The cost savings accounted for above, including savings to mariners from less frequent submissions of medical certificate applications, are quantifiable benefits from this rule. This rule will reduce the NMC's workload and generate government cost savings.

Alternatives

When analyzing alternatives, we considered two factors: the period of validity of the medical certificate for FCPs; and the requirement to submit physical examination results to the Coast Guard. Prior to this final rule, the period of validity of the medical certificate was 2 years for FCPs, and the submission of physical examination results was correspondingly every other year, unless the medical certificate contained a waiver requiring more frequent submission of the physical examination results.

Alternative 1. The first alternative we considered in this analysis was no change, where FCPs would continue to apply for their medical certificates every other year. This alternative would also continue to require FCPs to report their physical examination results every other year, unless their medical certificate contains a waiver requiring more frequent submission. As shown in table 11, we estimate the opportunity cost of maintaining a 2-year pilot medical certificate validity period at $36,664, annualized at 7 percent; or a total of $257,511 over a 10-year period of analysis, also discounted at 7 percent. We rejected this alternative. Although there would be no additional costs to mariners or the government, there would also be no cost savings, and this alternative would not lead to an

increase in safety in the maritime industry.

Alternative 2. The second alternative we considered was extending the maximum period of validity of medical certifications to 5 years without interim self-reporting requirements, which require mariners to submit the results of their medical examination to the Coast Guard if they no longer meet the medical standards. FCPs would only submit the results of the physical examination every 5 years with a medical certificate application, unless their medical certificate contains a waiver and requires more frequent submission. We rejected this alternative. The Coast Guard finds the potential for increased risk from mariners with underlying health issues operating as FCPs, and not self-reporting medical or health conditions that may impact their piloting performance and maritime safety, unacceptable. We made this determination after considering the unique physical and cognitive demands placed on pilots in performing their duties, and maritime casualties that were directly related to a FCP's physical ability to perform their duties. We considered casualties such as the 2003 Staten Island Ferry allision, which resulted in more than $8 million in damages and losses, and the 2007 Cosco Busan incident, which resulted in more than $70 million in environmental damages and other losses. Both casualties were directly attributed to the pilot's inability to properly manage the vessel due to underlying medical conditions that were not reported to the Coast Guard within the 5-year medical certificate validity period. The risk that mariners can develop new medical conditions within the 5-year medical certificate validity period is mitigated by the self-reporting requirements. Taking into account these maritime casualties, and the potential for extraordinary damages to the public, the environment, and the maritime industry, the Coast Guard does not deem any potential benefit derived from excluding the interim self-reporting requirement on behalf of FCPs to be worth the risk involved.

Alternative 3. The third alternative we considered was extending the maximum period of validity of the medical certificate to 5 years, and requiring FCPs to submit the results of their annual physical examinations to the Coast Guard between medical certificate applications if the mariner: (1) does not meet the physical ability requirements; (2) has a condition that does not meet the medical, vision, or hearing requirements; (3) is deemed ''not recommended'' by a medical practitioner for a medical certificate; or (4) is so requested by the Coast Guard. With this third alternative, FCPs would apply for the medical certificates every 5 years and would have to report the results of their medical examination between applications only if any of the four conditions apply. This alternative mitigates the potential for increased safety risks identified under the second alternative, resulting from having mariners with underlying medical issues operating as FCPs. The potential for risk is increased when the Coast Guard does not have the opportunity to review the physical examinations of mariners whose medical practitioners have diagnosed them with medical conditions that may impact their piloting performance. Therefore, the third alternative was chosen in this rule.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will reduce the burden on industry by extending the maximum period of validity of merchant mariner medical certificates for FCPs and masters and mates serving as pilot from 2 years to 5 years. Because the medical certificate application is submitted by the mariner and not an employer, the affected mariners will receive the cost savings from this rule. Hence, the changes in this rule will affect individuals, not businesses or other small entities as defined by the Small Business Administration in 13 CFR 121.201.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for a change to an existing collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The information collection associated with this rule is the currently approved collection, OMB Control No. 1625–0040, Application for Merchant Mariner Credentials and Medical Certificates, which covers all information collected for merchant mariner credentialing. The revisions to 46 CFR 10.301 and 15.401 will extend the maximum validity period of the mariner medical certificate for FCPs and masters or mates serving as pilot from 2 years to 5 years. The change to the maximum validity period of the medical certificate for pilots will reduce the frequency and burden of response estimates of the current information collection request.

Title: Application for Merchant Mariner Credentials and Medical Certificates.

OMB Control Number: 1625–0040.

Summary of the Collection of Information: The Coast Guard currently collects information from merchant mariners with their applications for MMCs and merchant mariner medical certificates. This collection includes the following information requests: signature of the applicant and supplementary material required to show that the mariner meets the mandatory requirements for the credential or medical certificate sought; proof of the applicant passing all applicable vision, hearing, medical, and physical examinations; negative chemical test for dangerous drugs;

discharges or other documentary evidence of sea service indicating the name, tonnage, propulsion mode and power of the vessels, dates of service, capacity in which the applicant served, and on what waters; and disclosure documentation for narcotics, driving while intoxicated or under the influence, or other convictions.

Need for Information: Title 46 U.S.C. Subtitle II, Part E, 46 CFR part 10 subpart B, the STCW Convention and STCW Code, including the STCW final rule (78 FR 77796), require MMC and medical certificate applicants to apply at one of the Coast Guard's 17 RECs located nationwide, or any other location designated by the Coast Guard. MMCs are established for individuals who are required to hold a credential under Subtitle II. The Coast Guard has the responsibility of issuing MMCs and medical certificates to applicants found qualified as to age, character, and habits of life, experience, professional qualifications, and physical fitness. The instruments contained within OMB Control No. 1625–0040 serve as a means for the applicant to apply for an MMC and a medical certificate.

Proposed Use of Information: The Coast Guard conducts this collection of information solely for the purpose of determining eligibility for the issuance of an MMC or medical certificate, in accordance with applicable statutes and regulations. This evaluation is performed on occasion, meaning as submitted by the respondent when they apply for an MMC or medical certificate. In general, applicants for an MMC must submit the ''Application for Merchant Mariner Credential,'' form CG–719B, every 5 years for renewal, or when seeking a new endorsement or raise of grade, and applicants for a medical certificate must submit the form CG–719K every 2 years or every 5 years, depending upon the type of credential endorsements held and the applicant's medical status. The Coast Guard evaluates the collected information to determine whether applicants are qualified to serve under the authority of the requested credential with respect to their medical fitness, their professional qualifications, and their safety and suitability.

Description of the Respondents: All applicants for an MMC, whether original, renewal, duplicate, raise of grade, or a new endorsement on a previously issued MMC, are included in this collection. Medical certificates are issued with three expiration dates based on the endorsement type. The effective expiration date depends upon the authority upon which the mariner is currently sailing, which may be on a National MMC endorsement, an international STCW endorsement, or a pilot endorsement. This rule only changes the maximum validity period of the pilot endorsement merchant mariner medical certificate from 2 years to 5 years, which applies only to FCPs and masters or mates serving as pilot.

Number of Respondents: This rule will reduce the annual number of respondents by 7,324 over a 10-year period of analysis. As a result, the total annual respondents for this collection will change from 18,316 to 10,992.

Frequency of Response: For FCP endorsements, the annual average reduction will be 1,794. The responses are annual and will result in a reduction in the number of medical certificate submissions of the form CG–719K from 54,800 to 44,034 (54,800 − 10,766 = 44,034).

Burden of Response: The total hourly burden per response is estimated at 18 minutes, or 0.30 hours. This rule will reduce the aggregate burden of hours associated with the submission of the medical certification applications by extending the validity period from every 2 years to every 5 years. Therefore, the total annual response time for submitting a new medical certificate will decrease by approximately 3,587 hours (138 hrs. via mail submissions + 1,654 hrs. in person submissions + 1,794 government hrs. review). However, the hourly burden per response will remain unchanged.

Estimate of Total Annual Burden: The Coast Guard estimates that the total annual burden with the change to the medical certificate validity period for FCPs will be 16,286 hours a year, which is a 154-hour reduction in burden from the current corresponding collection total of 16,440 hours.

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000) (finding that the states are foreclosed from regulating tanker vessels). *See also Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 157 (1978) (state regulation is preempted where ''the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it [or where] the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'' (Citations omitted). Because this rule involves the credentialing of mariners under 46 U.S.C. 7101, it relates to personnel qualifications and, as a result, is foreclosed from regulation by the States. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, 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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

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

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This rule is categorically excluded under paragraphs L56 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev 1. Paragraph L56 pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel. Paragraph L54 pertains to regulations which are editorial or procedural. This rule involves amending the maximum period of validity of merchant mariner medical certificates from 2 years to 5 years for FCPs, and masters or mates serving as pilot on vessels of 1,600 GRT or more. Additionally, the rule includes an extension of the annual physical examination submission requirement from every other year to every 5 years, as long as circumstances do not require more frequent submissions of annual physical examination results to ensure maritime and public safety.

List of Subjects

46 CFR Part 10

Penalties, Personally identifiable information, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 11

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10, 11, and 15 as follows:

PART 10—MERCHANT MARINER CREDENTIAL

■ 1. The authority citation for part 10 is revised to read as follows:

Authority: 14 U.S.C. 503; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 73; 46 U.S.C. chapter 75; 46 U.S.C. 2104; 46 U.S.C. 7701, 8903, 8904, and 70105; E.O. 10173; DHS Delegation No. 00170.1, Revision No. 01.2.

§ 10.301 [Amended]

■ 2. Amend § 10.301 by:
■ a. Removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2);
■ b. Redesignating paragraph (c) as paragraph (d);
■ c. Redesignating paragraph (b)(4) as paragraph (c).

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

■ 3. The authority citation for part 11 is revised to read as follows:

Authority: 14 U.S.C. 503; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; E.O. 10173; DHS Delegation No. 00170.1, Revision No. 01.2. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

■ 4. Amend § 11.709 by:
■ a. Revising paragraph (b);
■ b. Removing paragraph (c);
■ c. Redesignating paragraph (d) as paragraph (c); and
■ d. Adding a new paragraph (d).

The revisions and additions read as follows:

§ 11.709 Annual physical examination requirements.

* * * * *

(b) Every person holding an MMC endorsement as first-class pilot, or a master or mate serving as a pilot under § 15.812 of this subchapter, must have a thorough physical examination each year. This annual physical examination must be completed by the first day of the month following the anniversary of the individual's most recently completed Coast Guard-required physical examination. Each annual physical examination must meet the requirements specified in 46 CFR, part 10, subpart C, and be recorded on the form CG–719K.

(1) Every five years, in accordance with the medical certificate requirements in §§ 10.301(b), 10.302(a), and 10.304(d) of this chapter, the results of the most recent physical examination must be submitted to the Coast Guard.

(2) The results of the physical examination must also be submitted to the Coast Guard no later than 30 calendar days after completion of the physical examination in any of the following circumstances:

(i) The examining medical practitioner documents that the individual does not meet the physical

ability requirements as set forth in § 10.304(c) of this subchapter;

(ii) The examining medical practitioner documents that the individual has a condition that does not meet the general medical exam requirements described in § 10.304(a), the vision requirements described in § 10.305, or the hearing requirements described in § 10.306 of this subchapter;

(iii) The examining medical practitioner documents on a CG–719K that the individual is not recommended for a medical certificate or needs further review by the Coast Guard as set forth in § 10.301(a) of this subchapter; or

(iv) If the Coast Guard requests the results of an examination, they must be submitted no later than 30 calendar days after the date of the request.

* * * * *

(d) A master or mate may not serve as a pilot on a vessel 1,600 GRT or more under § 15.812 of this subchapter if the person does not meet the physical examination requirements provided in paragraph (b) of this section.

PART 15—MANNING REQUIREMENTS

■ 5. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8103, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906 and 9102; and DHS Delegation No. 00170.1, Revision No. 01.2.

§ 15.401 [Amended]

■ 6. Amend § 15.401 by:

■ a. In paragraph (a), remove in the first sentence the words, ''license, certificate of registry, Merchant Mariner's Document (MMD),'' and remove from the second sentence the words, ''license, certificate of registry, MMD, or'';

■ b. In paragraph (c)(1), remove the words, ''After January 1, 2017, two'' and add, in its place the word, ''Two'';

■ c. Remove paragraph (c)(2) and redesignate paragraph (c)(3) as paragraph (c)(2); and

■ d. In paragraphs (d) and (e), remove wherever they appear the words, ''MMD or''.

■ 7. In § 15.812, amend Table 1 to § 15.812(e)(1), by revising the second row to read as follows:

§ 15.812 Pilots.

* * * * *

TABLE 1 TO § 15.812(e)(1)—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S.-INSPECTED, SELF-PROPELLED VESSELS, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First-Class Pilot's licenses or MMC officer endorsements are issued)	Non-designated areas of pilotage waters (between the 3-mile line and the start of traditional pilotage routes)
* *	* * *	* *
Inspected self-propelled vessels not more than 1,600 GRT, authorized by their COI to proceed beyond the Boundary Line, or operating on the Great Lakes.	First-Class Pilot, *or* Master or Mate may serve as pilot if he or she— 1. Is at least 21 years old; 2. Maintains current knowledge of the waters to be navigated; and[1] 3. Has four roundtrips over the route.[2]	Master or Mate may serve as pilot if he or she— 1. Is at least 21 years old; and 2. Maintains current knowledge of the waters to be navigated.[1]
* *	* * *	* *

[1] One roundtrip within the past 60 months.

[2] If the route is to be traversed during darkness, one of the four roundtrips must be made during darkness.

* * * * *

Dated: October 21, 2022.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2022–23339 Filed 11–3–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0059; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BE56

Endangered and Threatened Wildlife and Plants; Reclassification of Palo de Rosa From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying the palo de rosa (*Ottoschulzia rhodoxylon*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). This action is based on our evaluation of the best available scientific and commercial information, which indicates that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but it is still likely to become so in the foreseeable future. We are also finalizing a rule under section 4(d) of the Act that provides for the conservation of the palo de rosa.

DATES: This rule is effective December 7, 2022.

ADDRESSES: This final rule, supporting documents we used in preparing this rule, and public comments we received are available on the internet at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0059.

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; telephone (787) 851–7297. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants reclassification from endangered to threatened if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range). The palo de rosa was listed as endangered

May 10, 1990 (55 FR 13488, April 10, 1990), and we are finalizing our proposed reclassification of the palo de rosa as threatened. We have determined the palo de rosa does not meet the Act's definition of an endangered species but it does meet the definition of a threatened species (likely to become an endangered species throughout all or a significant portion of its range). Reclassifying a species as a threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule revises part 17 of title 50 of the Code of Federal Regulations (50 CFR part 17) to reclassify the palo de rosa from an endangered to a threatened species on the Federal List of Endangered and Threatened Plants and establish provisions under section 4(d) of the Act that are necessary and advisable to provide for the conservation of this species (a ''4(d) rule'').

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Based on the status review, the current threats analysis, and evaluation of conservation measures discussed in this rule, we conclude that the palo de rosa no longer meets the Act's definition of an endangered species and should be reclassified to a threatened species. The species is no longer in danger of extinction throughout all or a significant portion of its range, but is likely to become so within the foreseeable future. The palo de rosa is affected by the following current and ongoing threats: habitat loss, degradation, and fragmentation from urban development; agricultural practices and rights-of-way maintenance coupled with habitat intrusion by exotics; other natural or manmade factors, such as hurricanes; and the species' slow growth, limited dispersal, and low recruitment.

We are promulgating a section 4(d) rule. We are adopting the Act's section 9(a)(2) prohibitions as a means to provide protective mechanisms to the palo de rosa. We include specific tailored exceptions to these prohibitions to allow certain activities covered by a permit or actions with seeds of cultivated specimens accompanied by a statement of ''cultivated origin.''

Abbreviations and Acronyms Used

For the convenience of the reader, the following list explains abbreviations and acronyms used in this document:

CCF = Cambalache Commonwealth Forest
GCF = Guánica Commonwealth Forest
GuCF = Guajataca Commonwealth Forest
IPCC = Intergovernmental Panel on Climate Change
LCNWR = Laguna Cartegena National Wildlife Refuge
MAPR = herbarium of the Department of Biology at the University of Puerto Rico at Mayaguez
PLN = Para La Naturaleza, Inc.
PRDNER = Puerto Rico Department of Natural and Environmental Resources
PREPA = Puerto Rico Energy and Power Authority
PRHTA = Puerto Rico Highway and Transportation Authority
RACF = Río Abajo Commonwealth Forest
SCF = Susúa Commonwealth Forest
UPR = herbarium at the Rio Piedras Botanical Garden, of the University of Puerto Rico
UPRRP = herbarium of the University of Puerto Rico at Rio Piedras

Previous Federal Actions

Please refer to the proposed rule to reclassify the palo de rosa published on July 14, 2021 (86 FR 37091), for a detailed description of previous Federal actions concerning this species.

Summary of Comments and Recommendations

In the proposed rule published on July 14, 2021 (86 FR 37091), we requested that all interested parties submit written comments on the proposal by September 13, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices announcing the proposed rule and inviting general public comment were published in Spanish and English in the El Nuevo Dia newspaper. We did not receive any requests for a public hearing or public comments on the proposed rule.

Peer Review Comments

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270), and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we sought the expert opinion of five appropriate and independent specialists regarding scientific data and interpretations contained in the proposed rule and received no responses. We also requested review from our Federal and Territorial partners and received no comments.

Summary of Changes From the Proposed Rule

We have made minor typographical or stylistic changes and corrections, but no substantive changes, to the July 14, 2021, proposed rule (86 FR 37091).

I. Final Reclassification Determination

Species Information

A thorough review of the taxonomy, life history, ecology, and overall viability of the palo de rosa was presented in the 5-year review (USFWS 2017, entire) and the proposed rule published July 14, 2021 (86 FR 37091). Below, we present a brief summary of the biological and distributional information for the palo de rosa. Please refer to the 5-year review and proposed rule for more detailed information.

Taxonomy and Species Description

The palo de rosa is a small evergreen tree that may reach up to 15 meters (m) (49 feet (ft)) in height and is a member of the Icacinaceae family (USFWS 1994, p. 1). The branches are smooth and dark gray with ovate, round, or elliptic leaves (Liogier 1994, p. 41). Flowers are solitary or grouped in a three- to five-flower cluster, and the small fruit is smooth with a thin outer layer that turns dark purple when ripe. The seed is about 2 centimeters (cm) (0.8 inches (in)) long (Liogier 1994, p. 41; Santiago Valentín and Viruet-Oquendo 2013, p. 62). Palo de rosa trees may be difficult to identify based on sterile material.

Reproductive Biology

When the palo de rosa recovery plan was written, information about the flowering and fruiting pattern was limited due to the species not being well-studied and the infrequent observation of reproductive events, although flowering was observed in May and July 1993 (USFWS 1994, p. 5). The species bears hermaphrodite flowers, flowers for a short period at the beginning of the rainy season and develops fruits subsequently until November (Breckon and Kolterman 1993, p. 15; Santiago-Valentín and Viruet-Oquendo 2013, p. 62). Few buds and flowers occur from April to May with an explosive flowering in June coinciding with the beginning of the rainy season in May. Herbarium specimens demonstrated flowering and fruiting between May and July (Santiago-Valentin and Viruet-Oquendo 2013, p. 62). Flower and fruit production are documented in

individuals with diameters at breast height greater than 5 in (12.7 cm). Despite the high number of adult individuals reported, only a few reach that stem size (Breckon and Kolterman 1993, p. 15; USFWS 2009, unpubl. data).

The cluster distribution of seedlings under the parent trees indicates that seeds are dispersed by gravity. Subpopulations in northern Puerto Rico are located on top of limestone hills indicating that some disperser (*e.g.,* animal vector) took them there in the past although no species has been observed acting as a seed disperser (Breckon and Kolterman 1993, p. 15); USFWS 2017, p. 12). Dispersal by water has been hypothesized for the subpopulations in the southern coast located at the bottom of small drainages. However, establishment of seedlings in these drainages is low likely because seeds are buried by sediments and small plants are uprooted by high flows (Monsegur-Rivera 2007, pers. obs.).

Due to the infrequency of fruit production, germination experiments have been limited. Attempts to germinate seeds from the Dorado (Mogotes de Higuillar) population (northern Puerto Rico) have proven to be difficult (10 percent success) as the majority of seeds were attacked by insects (Coleoptera) (Ruiz Lebrón 2002, p. 2). The species also has been germinated by PRDNER and the University of Puerto Rico with a 50 percent germination success (Caraballo 2009, pers. comm.). Propagation of the species is feasible and may be used in palo de rosa recovery efforts. Palo de rosa saplings have been planted in the Susúa and Guajataca Commonwealth Forests as well as on lands within Fort Buchanan, which is owned by the U.S. Army. Palo de rosa is not known to reproduce vegetatively although multiple stems may regrow from a tree that has been cut.

Distribution, Abundance, and Habitat

The palo de rosa was described by Ignatius Urban (1908) from material collected by Leopold Krug near the municipality of Mayagüez in 1876 (Liogier 1994, p. 42). Based on the description of the type locality, the collection site may correspond to an area known as Cerro Las Mesas. At the time of listing, the palo de rosa was known from nine individuals in three areas and considered endemic to Hispaniola and Puerto Rico (55 FR 13488, April 10, 1990, p. 13489). Subpopulations and populations were not defined or identified at the time of listing. The species was known from the limestone hills near the municipality of Bayamón in northern Puerto Rico, several sites in the Guánica Commonwealth Forest (GCF) in southwest Puerto Rico, and one individual on the southern slopes of the Maricao Commonwealth Forest (55 FR 13488, April 10, 1990, p. 13489).

At the time the recovery plan was written in 1994, there was little information on the species' distribution, ecology, and reproductive biology; therefore, in the recovery plan, species experts considered each subpopulation or cluster of individuals as a population. The recovery plan describes additional individuals observed as a result of increased survey efforts in suitable habitat. In the 1994 recovery plan, we estimated 200 palo de rosa individuals in 16 populations (now defined as subpopulations and noted with ''(RP)'' in the table in the proposed rule). An additional population (now considered a subpopulation) was reported in 1996, increasing the total number of trees to 207 adult individuals (Breckon and Kolterman 1996, p. 4).

The current understanding of the palo de rosa's biological and ecological requirements has led us to define a population as a geographical area with unique features (substrate or climate) and continuous forested habitat that provides for genetic exchange among subpopulations (*i.e.,* cross-pollination) where the species occurs. We further considered natural barriers (*e.g.,* mountain ranges and river valleys) and extensive gaps of forested habitat to discern the boundaries of these broader populations because connectivity between subpopulations is critical to support a functional palo de rosa population due to the cross-pollination requirement of the species. Furthermore, the flowering of the palo de rosa is sporadic and not synchronized, thus prompting us to further define a population as groups of subpopulations that show connectivity to secure cross-pollination. Based on the above information, we have determined the palo de rosa to be distributed across Puerto Rico in 14 populations composed of 66 subpopulations containing 1,144 individuals (not including seedlings). Following this approach, 8 of the 14 current populations (containing 47 subpopulations with approximately 804 individuals) occur in the geographical areas associated with the 16 populations (now defined as subpopulations) included in the Service's 1994 recovery plan. Since 1994, we have identified 6 additional populations (as currently defined) composed of 19 subpopulations (342 individuals) ranging in size from 5 to 124 individuals in areas associated with remnants of forested habitat suitable for the species. Thus, these additional occurrences are key in understanding the current condition of the species.

Currently, the number of palo de rosa individuals has increased from 9 individuals on protected lands at the time of listing to 407 individuals (representing 36 percent of known individuals or 32 percent of subpopulations) occurring in areas managed for conservation (*e.g.,* Commonwealth Forest and Federal lands). An additional 396 individuals (38 percent of subpopulations) occur in areas subject to little habitat modification due to the steep topography in the northern karst region of Puerto Rico. The remaining 30 percent of the subpopulations (containing approximately 341 individuals) occur within areas severely encroached upon by and vulnerable to urban or infrastructure development. However, the resiliency of all subpopulations depends on interaction (cross-pollination) with nearby subpopulations. Despite the increase in the number of known subpopulations and individuals, there are no records of recruited individuals reaching reproductive size in the past three decades. We also do not have any records of recent dispersal and range expansion of the species. The following discussion provides the most updated information on these populations, and their respective geographical areas. Please refer to our July 14, 2021, proposed rule (86 FR 37097–37100) for a table of the currently known natural populations, subpopulations, and numbers of adult individuals of palo de rosa in Puerto Rico.

The distribution of the palo de rosa extends along the southern coast of Puerto Rico from the municipality of Cabo Rojo east to the municipality of Guayanilla in five geographical areas or populations: (1) Guánica Commonwealth Forest (GCF), (2) Montes de Barinas, (3) Guayanilla-Peñuelas, (4) Susúa Commonwealth Forest (SCF), and (5) Cerro Las Mesas-Sierra Bermeja. In addition, the palo de rosa extends along the northern coast of Puerto Rico from the municipality of Aguadilla east to the municipality of Fajardo in the following nine areas or populations: (1) Aguadilla-Quebradillas, (2) Camuy-Hatillo, (3) Arecibo, (4) Utuado-Ciales, (5) Arecibo-Vega Baja, (6) Dorado, (7) La Virgencita, (8) Mogotes de Nevares, and (9) San Juan-Fajardo (USFWS 2017, p. 11).

The range of the species extends to Hispaniola (Dominican Republic and Haiti) (Acevedo-Rodríguez and Strong, 2012, p. 369; Axelrod 2011, p. 184);

however, there is little information on the population structure and status of the palo de rosa in these countries, and information is limited to scattered herbarium collections. In the Dominican Republic, the species occurs in Provincia (Province) de La Altagracia, Provincia de Samaná, Provincia de Puerto Plata, Provincia de Pedernales, and Provincia de San Cristobal (Jardín Botánico Santo Domingo (JBSD), unpubl. data). On the northern coast of Haiti, the palo de rosa has been recorded at ''Massif du Nord'' along a dry river (JBSD, unpubl. data). However, these herbarium specimens provide no data on the subpopulation or population abundance or number of associated individuals. The palo de rosa is categorized as critically endangered according to the Red List of Vascular Flora in the Dominican Republic (*Lista Roja de la Flora Vascular en República Dominicana*), an assessment of the conservation status of all vascular plants in the Dominican Republic as determined by the Ministry of Higher Education Science and Technology Ministry (Garcia et al. 2016, p. 4).

The palo de rosa occurs in variable habitats but is dependent on the specific microhabitat conditions. On dry limestone forest like the GCF, the species occurs at the bottom of drainages that provide moisture, whereas at the SCF, the palo de rosa occurs along the borders of rivers. The subpopulations along the northern karst of Puerto Rico are found on the top of limestone hills, possibly because those areas have no agricultural value, and so were not impacted by conversion to agricultural lands. Such variability in habitats indicates the species' current fragmented distribution and lack of connectivity between populations are the result of earlier land-clearing and habitat modification. Information from specimens deposited at multiple herbaria (*i.e.,* New York Botanical Garden, Smithsonian Institution, UPR, UPRRP, and MAPR) suggests the palo de rosa was originally more common and widespread throughout Puerto Rico, even extending to the coastal lowlands of Puerto Rico, including dune ecosystems. Our July 14, 2021, proposed rule (86 FR 37097–37100) includes additional details and information on the current abundance, distribution, and habitat of palo de rosa populations in Puerto Rico.

Recruitment and Population Structure

At least 25 of the 66 subpopulations show evidence of fruit production and seedling or sapling recruitment (USFWS 2017, pp. 8, 11–12). Fruit production and seed germination have been documented in several subpopulations (Monsegur-Rivera 2016, pers. obs.). However, individual palo de rosa saplings and trees grow extremely slowly, with an estimated height of less than 1 m (3.3 ft) after 20 years growth. Under natural conditions, palo de rosa individuals may require at least 40 years to reach a reproductive size, and the currently known subpopulations are experiencing slow recruitment (Monsegur-Rivera 2018, pers. obs.). Palo de rosa seeds are dispersed by gravity, limiting recruitment to the proximity of the parental tree. Thus, the species' potential to colonize further suitable habitat is limited and survival of clustered seedlings may be reduced due to closed canopy conditions and competition with the parental tree.

Population dynamics and survey assessments support the hypothesis that the palo de rosa is a late-successional species whose saplings may remain dormant under closed canopy conditions until there is some natural disturbance that provides favorable conditions for the development of the saplings. Thus, the species may require an open canopy to promote seedling growth and is adapted to natural disturbances such as hurricanes (Breckon and Kolterman 1996). Under this scenario, the natural populations show a slow natural recruitment that requires stable habitat conditions with a regime of natural disturbance (*i.e.,* tropical storms or hurricanes). Although natural disturbances (e.g.*,* tropical storms or hurricanes) can promote the recruitment of saplings into adulthood, the palo de rosa population should be composed of different size classes in order to be able to withstand such stochastic events.

Reproductive events (*i.e.,* flowering and fruiting) have been associated with bigger trees as observed in four subpopulations, where tree diameters reach 13–20.5 cm (5.1–8.1 in) and canopies are higher (at least 10 m) (32.8 ft) (Breckon et al.1992, p. 8; USFWS 2009, p. 4). For example, one large tree in the El Costillar-Río Guajataca subpopulation had an estimated 1,000 seedlings under 1 tree with an almost 90 percent survivorship of 156 monitored seedlings after 18 months (Breckon et al. 1992, p. 8). Further visits to this subpopulation indicate the survival of seedlings and saplings remains high with evidence of additional recruitment (Monsegur-Rivera 2007, 2012, and 2014, pers. obs.).

Recruitment may be intermittent in some subpopulations. For example, a subpopulation with no seedling survival following a fruiting event in 2004 was noted to contain about 30 small saplings in the post-Hurricane María assessment in 2018, suggesting the subpopulation is slowly recruiting (USFWS 2018, p. 25). Since 2009, hundreds of seedlings have been recorded in the Fort Buchanan subpopulation (Monsegur-Rivera 2009–2020, pers. obs.). In 2018, at least 12 saplings ranging from 0.3–1.0 m (0.9–3.3 ft) were observed. Saplings this size can withstand seasonal drought stress, and individuals are likely to persist in the long term if the habitat remains unaltered. Cross-pollination between subpopulation maximizes the likelihood of fruit production and contributes to recruitment, which underscores the importance of conserving the species through a landscape approach.

Of the 26 subpopulations currently showing evidence of natural recruitment, 9 of the 26 occur in areas that are managed for conservation. The 9 subpopulations constitute 36 percent of subpopulations showing natural recruitment and contain nearly 300 individuals in total. There is no evidence of natural recruitment at this time for the remaining 40 subpopulations although the species' life history implies that recruitment may still occur in these subpopulations when a canopy opening is created and suitable conditions for recruitment are present. Forest cover in Puerto Rico has increased since the widespread deforestation in the 1930s–1950s (Marcano-Vega et al. 2015, p. 67), but the availability of suitable habitat prior to deforestation and habitat fragmentation implies the palo de rosa may have had greater abundance and wider distribution. Although current information on population structure indicates the species requires some open canopy areas to promote recruitment, widespread deforestation fragments habitat and creates edges (habitat transition zones). The possible long-term negative effects of habitat fragmentation and edge effect on subpopulations with recruitment adjacent to habitat disturbance are still unknown. Current observations from the 2018 post-hurricane assessment suggest subpopulations encroached by development or agriculture were negatively affected by weedy vegetation invading the habitat following Hurricane María (*e.g., Cayaponia americana* (bejuco de torero), *Dioscorea alata* (ñame), and *Thunbergia grandiflora* (pompeya). However, the extent of such impact remains uncertain, and further monitoring is needed. Such information highlights the effect of habitat fragmentation on the natural recruitment of the palo de rosa.

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, recovery plans are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered or threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may or may not fully follow all of the guidance provided in a recovery plan.

The following discussion provides an analysis of the recovery criteria and goals as they relate to evaluating the status of the taxon. The recovery plan for this species does not provide downlisting criteria (USFWS 1994, entire) but indicates the species could be considered for delisting when the following criteria are met: (1) Populations known to occur on privately owned land are placed under protective status; (2) an agreement between the Service and the U.S. Army concerning the protection of the species on their land (Fort Buchanan) has been prepared and implemented; and (3) mechanisms for the protection of the palo de rosa have been incorporated into management plans for Maricao, Guánica, Susúa, and Cambalache Commonwealth Forests. The plan also notes that, given the discovery of additional populations, priority should be given to enhancement and protection of existing populations in protected areas and on privately owned land (USFWS 1994, p. 13). At the time the recovery plan was written, only 200 individuals in 16 populations (currently defined as subpopulations) were known. In addition, the lack of recruitment in palo de rosa populations was not known to be a concern; therefore, recovery criteria primarily address protection of palo de rosa habitat. We apply our current understanding of the species' range, biology, and threats to these delisting criteria to support our rationale for why downlisting is appropriate. Details regarding the delisting criteria and the degree to which they have been met are described in the proposed reclassification rule and have not changed.

Delisting criterion 1 has been partially met. At the time the recovery plan was written, 4 of 16 populations (now defined as subpopulations) occurred on private lands. Currently, of the 66 known palo de rosa subpopulations, 45 are located on private lands with 3 of these managed for conservation.

Federal and Territorial conservation efforts have resulted in habitat protections that benefit the Yauco Landfill palo de rosa subpopulation and maintain connectivity between subpopulations (PRDNER 2015b, p. 1). In addition, the PRDNER has increased the protected area in the GCF from the approximately 4,016 ha (9,923 ac) in 1996 to at least 4,400 ha (10,872 ac) (Monsegur 2009, p. 8). While delisting criterion 1 has been only partially met, with the identification of additional individuals, populations, and subpopulations, only 341 (29 percent) of the known 1,144 palo de rosa individuals occur on private lands with no protection. Currently, 407 individuals (representing 36 percent of known individuals or 32 percent of subpopulations) occur in areas managed for conservation.

Together with our partners, we have met delisting criterion 2 through an MOU specifying protection and management of the Fort Buchanan populations (U.S. Army, Fort Buchanan 2015, entire). Lastly, we determine delisting criterion 3 to be obsolete. Although species-specific management plans do not exist for Commonwealth forests, the natural reserves are managed for conservation by PRDNER as recommended by the Master Plan for the Commonwealth Forests of Puerto Rico (DNR 1976, entire). We continue working with PRDNER and other partners to monitor and survey suitable unexplored habitat for the palo de rosa, to develop sound conservation strategies, and to proactively identify priority areas for conservation.

In conclusion, the implementation of recovery actions, in addition to the identification of numerous additional individuals and subpopulations, have reduced the risk of extinction for the palo de rosa. Of the 1,144 adult palo de rosa individuals known, only 341 (29 percent) occur on private lands with no protection. Currently, 407 individuals (representing 36 percent of known individuals or 32 percent of subpopulations) occur in areas managed for conservation. Furthermore, a total of 396 individuals (38 percent of subpopulations) occur in areas subject to little habitat modification due to the steep topography in the norther karst region of Puerto Rico Although many individuals occur on protected lands, we have identified 20 subpopulations throughout Puerto Rico where habitat modification and fragmentation still can occur. Although Puerto Rico's laws and regulations protect the palo de rosa on both public and private lands and other protection mechanisms (*i.e.,* conservation easements) have been implemented, impacts to palo de rosa subpopulations may occur due to lack of enforcement, misidentification of the species, unsustainable agricultural practices, and unregulated activities (see Summary of Biological Status and Threats, below). Based on the biology of the palo de rosa and its dependence on cross-pollination, impacts that reduce connectivity between subpopulations may affect the breeding capacity of the species and, thus, its long-term recruitment and viability. The recovery of the palo de rosa will include collaboration and partnership efforts with PRDNER and private landowners to develop conservation strategies and recommendations when evaluating urban and infrastructure development projects that could affect these

subpopulations. Recovery efforts should be directed toward landscape planning and management strategies that would ensure abundance and distribution of palo de rosa subpopulations to allow cross-pollination and recruitment and contribute to the long-term recovery of the species.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species,'' issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity* v. *Haaland,* No. 4:19-cv-05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical-habitat decisions. Accordingly, in developing the analysis contained in this final rule, we applied the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 17.31, 17.71, 424.02, 424.11(d)–(e), and 424.12(a)(1) and (b)(2)). Because of the ongoing litigation regarding the court's vacatur of the 2019 regulations, and the resulting uncertainty surrounding the legal status of the regulations, we also undertook an analysis of whether the final rule would be different if we were to apply the 2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on *https://www.regulations.gov,* concluded that we would have reached the same decision if we had applied the 2019 regulations. This is because both before and after the 2019 regulations, the standard for whether a species the meets the definition of an endangered species or a threatened species remains the same under the 2019 regulations as under the pre-2019 regulations. Further, we concluded that our determination of the foreseeable future would be the same under the 2019 regulations as under the pre-2019 regulations.

On September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (*In re: Cattlemen's Ass'n,* No. 22–70194). The effect of the stay is that the 2019 regulations are the governing law. Because of our desire to promptly reclassify a species in a timely manner whenever species meets the definition of a threatened species, rather than revise the proposal in response to the Ninth Circuit's decision for submission of a final rule to the **Federal Register**, we hereby adopt the analysis in the separate memo that applied the 2019 regulations as our primary justification for the final rule. However, due to the continued uncertainty resulting from the ongoing litigation, we also retain the analysis in this preamble that applies the pre-2019 regulations and we conclude that, for the reasons stated in our separate memo analyzing the 2019 regulations, this final rule would have been the same if we had applied the 2019 regulations.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range. A ''threatened species'' is defined as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species is an ''endangered species'' or a ''threatened species'' based on one or any combination of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species as well as other actions or conditions that may ameliorate any negative effects or have positive effects. We consider these same five factors in downlisting a species from endangered to threatened.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts) as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Because the decision in *CBD* v. *Haaland* vacated our 2019 regulations regarding the foreseeable future, we refer to a 2009 Department of the Interior Solicitor's opinion entitled ''The Meaning of 'Foreseeable Future' in Section 3(20) of the Endangered Species Act'' (M–37021). That Solicitor's opinion states that the foreseeable future ''must be rooted in the best available data that allow predictions into the future'' and extends as far as those predictions are ''sufficiently reliable to

provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.'' *Id.* at 13.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

We consider 50 years to be the foreseeable future within which we can reasonably determine the threats, the magnitude of those threats, and the species' response to those threats. The foreseeable future for the individual factors and threats vary. However, based on the available information from ongoing monitoring of populations known at the time of listing, it is estimated that under natural conditions palo de rosa individuals may require at least 40 years to reach a reproductive size and that the species' reproductive ecology is consistent with late-successional species. Within 50 years, an individual palo de rosa tree would reach a reproductive size and effectively contribute to the next generation. Therefore, this timeframe accounts for maturation, the probability of flowering, effective cross-pollination, setting viable fruits, seed germination, and early seedling survival and establishment while taking into account environmental stochastic events such as drought periods. Some palo de rosa life stages are more sensitive to a particular threat (*e.g.,* seedling and sapling susceptibility to drought conditions); therefore, the species' response to threats in all life stages and the effects of these responses can be reasonably determined within the foreseeable future (50 years).

We can also reasonably predict development and habitat fragmentation and modification within the next 50 years based on current trends. Furthermore, the established timeframe for the foreseeable future provides for the design and implementation of conservation strategies to protect and enhance currently known populations over the next 50 years.

In terms of climate, we recognize that modelled projections for Puerto Rico are characterized by some divergence and uncertainty later in the century (Khalyani et al. 2016, p. 275). However, we have reasonable confidence in projections within a 50-year timeframe representing the foreseeable future for the palo de rosa because uncertainty is reduced within this timeframe. We assessed the climate changes expected in the year 2070 and determined that downscaled future climate change scenarios indicate that Puerto Rico is predicted to experience changes in climate that will affect the palo de rosa (Khalyani et al. 2016, entire). Thus, using a 50-year timeframe for the foreseeable future allows us to account for the effects of projected changes in temperature, shifting of life zones, and increases in droughts in the habitat.

Analytical Framework

The 5-year review (USFWS 2017, entire) documents the results of our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The following is a summary of the key results and conclusions from the 5-year review and the best available information gathered since that time. The 5-year review can be found at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0059.

Summary of Biological Status and Threats

Below, we review the biological condition of the species and its resources and the threats that influence the species' current and future condition to assess the species' overall viability and the risks to that viability.

Habitat Destruction and Modification

Habitat destruction and modification, including forest management practices, were identified as factors affecting the continued existence of the palo de rosa when it was listed in 1990 (55 FR 13488, April 10, 1990). At present, forest management practices within Commonwealth forests are not considered a threat to the palo de rosa because of existing regulatory mechanisms and lack of evidence of direct impacts to the species due to forest management practices. For example, although there is evidence of palo de rosa individuals with multiple stems due to historical deforestation and harvesting for charcoal production in the GCF, selective harvesting and deforestation is no longer a threat to the GCF population. Similar to the GCF, the palo de rosa SCF population (i.e., Quebrada Peces, Quebrada Grande, and Río Loco subpopulations) is also entirely under conservation, and we have no evidence of adverse impacts to the species due to forest management practices.

However, that is not necessarily the case on private lands; the subpopulations of Montes de Barinas and Guayanilla-CORCO (Commonwealth Oil Refining Company) remain vulnerable to deforestation and habitat modification. In Montes de Barinas, the palo de rosa occurs on private properties subject to urban development resulting in encroachment of native dry forest areas and, thus, in the isolation of the palo de rosa (see 79 FR 53303, September 9, 2014, p. 53307, with reference to threats in the same area). These areas also are threatened by deforestation for cattle grazing and the extraction of timber for fence posts (Román-Guzman 2006, p. 40; see 79 FR 53303, September 9, 2014, p. 53307). In fact, active extraction of timber for fence posts has been reported adjacent to the Montes de Barinas subpopulation and on a neighboring property with other endemic species with palo de rosa individuals in the Montes de Barinas population likely to be cut if harvesting continues (Monsegur-Rivera 2003–2006, pers. obs.; Morales 2011, pers. comm.). In addition, the area of Montes de Barinas showed evidence of bulldozing and subdivision for urban development (Román-Guzman 2006, p. 40).

The habitat at the Guayanilla-CORCO population is impacted on a regular basis by the Puerto Rico Energy and Power Authority (PREPA) for the maintenance of power lines and associated rights-of-way (USFWS 2017, p. 16). Impacts to the species' habitat have been reported in that area as a result of construction of access roads to PREPA towers (Monsegur-Rivera 2014–2020, pers. obs.). Such habitat disturbance and modification affect the integrity of palo de rosa habitat and likely result in direct and indirect impacts to individuals. In fact, some access roads go through drainages that provide good habitat for the palo de rosa and could affect microhabitat conditions necessary for seedling germination and recruitment. In addition, these dirt access roads provide corridors for the establishment of exotic plant species like guinea grass (*Megathyrsus maximus)* and zarcilla (*Leucaena leucocephala*), which outcompete the native vegetation (including the palo de rosa) and promote favorable conditions for human-induced fires (USFWS 2017, p. 16). Moreover, these dirt roads are used to access the forested habitat for harvesting of timber for fence posts (Monsegur-Rivera 2014, pers. obs.). Similarly, the habitat in the municipalities of Peñuelas and Ponce (*i.e.,* Punta Cucharas) near the

Guayanilla-Peñuelas population has been severely fragmented by urban development (*e.g.,* housing development, hotels, a jail, a landfill, rock quarries, and highway PR–2) (see 79 FR 53307, September 9, 2014), and due to maintenance of PREPA power lines (Monsegur-Rivera 2020, pers. obs.).

In Sierra Bermeja and Cerro las Mesas, private forested lands also have been impacted through deforestation mainly for agricultural practices (*i.e.,* grazing by cattle and goats, and associated conversion of forested habitat to grasslands) and urban development (*i.e.,* construction of houses and roads) (Cedeño-Maldonado and Breckon 1996, p. 349; USFWS 1998, p. 6; Envirosurvey, Inc. 2016, p. 6). Most of the Sierra Bermeja mountain range was zoned with specific restrictions on development activities to protect the natural resources of the area (Junta de Planificación Puerto Rico (JPPR) 2009, pp. 151–153). This zoning allows for agricultural activities and construction of residential homes with the implementation of best management practices and some limitations (JPPR 2009, p. 151; JPPR 2015, pp. 118–129). Nonetheless, landowners continue impacting the habitat through activities like cutting new access roads on their properties and conversion of forested land to pasture (Pacheco and Monsegur-Rivera 2017, pers. obs.). The palo de rosa population in Sierra Bermeja is limited to two isolated individuals on protected lands (Laguna Cartegena National Wildlife Refuge (LCNWR) and PLN conservation easement) with no evidence of natural recruitment. Similarly, the other two palo de rosa individuals in Guaniquilla-Buye, also in southwest Puerto Rico, are found within private lands subject to urban and tourist development although these plants are not yet impacted.

Core palo de rosa subpopulations occur in the northern karst belt of Puerto Rico (Lugo et al. 2001, p. 1) where approximately 80 percent of the known palo de rosa sites occur on private lands not managed for conservation. These private lands are encroached upon by development and subject to habitat modification activities (*e.g.,* urban development) detrimental to the palo de rosa. The palo de rosa subpopulation at Guajataca Commonwealth Forest (GuCF) is the westernmost record of the species in northern Puerto Rico that lies within an area managed for conservation. As previously discussed, the GuCF subpopulations extend to private lands along the Guajataca Gorge. Although the steep terrain and low agricultural value of this area has protected the subpopulations from habitat modification, some remain vulnerable to infrastructure development (*e.g.,* possible expansion of Highway PR–22 between the municipalities of Hatillo and Aguadilla). For example, three previously unknown subpopulations (including one showing recruitment) were located during the biological assessments for the proposed expansion of Highway PR–22 (PRHTA 2007, p. 19).

Another subpopulation vulnerable to habitat modification is the Merendero-Guajataca; this area is managed for recreation, and the habitat remains threatened by vegetation management activities (*e.g.,* maintenance of green areas and vegetation clearing along trails). Habitat modification can also have implications beyond the direct impacts to a subpopulation. Although the palo de rosa in the Merendero-Guajataca subpopulation have produced flowers, there are no records of fruit production or seedlings (Monsegur-Rivera 2009–2020, pers. obs.); this is likely due to habitat modification at the site. Nonetheless, this subpopulation may interact through cross-pollination with the nearby El Túnel-Guajataca subpopulation and, thus, contribute to observed recruitment in other Guajataca Gorge subpopulations. A palo de rosa subpopulation was located during a biological assessment for the proposed expansion of an existing quarry adjacent to the Río Camuy (Sustache-Sustache 2010, p. 7). We expect that impacts to this subpopulation from the quarry activities will interfere with the natural recruitment of the species along the Río Camuy.

Habitat encroachment is evident on private lands surrounding the Cambalache Commonwealth Forest (CCF), Hacienda La Esperanza Natural Reserve, and Tortuguero Lagoon Natural Preserve where at least six known subpopulations occur within private lands adjacent to areas subject to development or infrastructure projects. The subpopulations at Hacienda Esperanza extend to private lands on their southern boundary where development projects have been proposed (*e.g.,* Ciudad Médica del Caribe; PRDNER 2013, pp. 24–25). Habitat modification in those areas can result in direct impacts to palo de rosa individuals and interrupt the connectivity between subpopulations (*e.g.,* cross-pollination). In addition, the analysis of aerial images indicates four additional subpopulations occurring on private lands in the proximity of Hacienda Esperanza are encroached upon by urban development, rock quarries, and agricultural areas (Monsegur-Rivera 2018, pers. obs.).

The palo de rosa subpopulations at Hacienda Sabanera in Dorado have been encroached upon by development. We prepared a biological opinion during the consultation process for the construction of Hacienda Sabanera and its associated impacts on the palo de rosa (USFWS 1999, entire). The biological opinion indicates that approximately 83 of the 200 acres (including forested *mogote* habitat) would be impacted, and 6 palo de rosa adults, 12 saplings, and 35 seedlings would be directly affected by the proposed project (USFWS 1999, p. 6). Although we concluded that the project would not jeopardize the continued existence of the palo de rosa (USFWS 1999, p. 7), the project resulted in substantial loss of forested habitat promoting edge habitat favorable for intrusion by weedy species. In addition, a series of *mogotes* along Higuillar Avenue, south of Hacienda Sabanera, are expected to be impacted by proposed road construction (PRDNER 2013, pp. 22–24), and we have no information that plans for the road have been withdrawn.

Encroachment conditions similar to those in Hacienda Sabanera also occur in the areas of La Virgencita (north and south), Mogotes de Nevares, Sabana Seca, Parque de las Ciencias, Parque Monagas, and Fort Buchanan. For example, at La Virgencita, the palo de rosa population is bisected by Highway PR–2 and could be further impacted if the road is widened in the future. Landslides have occurred in this area in the past, and road maintenance in this vulnerable area may trigger slide events (PRDNER 2015a, pp. 13–15). In addition, palo de rosa individuals are found within the PREPA power line rights-of-way (Power Line 41500), and there is evidence the overall decrease or absence of saplings or juveniles in the La Virgencita south population may be the result of habitat modification and resulting edge habitat due to maintenance of the PREPA power line rights-of-way (PRDNER 2015a, pp. 13–15; USFWS 2018, p. 33). In addition, the westernmost palo de rosa subpopulation occurs in the municipality of Aguadilla in an area identified by the Puerto Rico Highway and Transportation Authority (PRHTA) as part of the proposed expansion of highway PR–22 (USFWS 2017, p. 7).

The Mogotes de Nevares, Sabana Seca, Parque de las Ciencias, Parque Monagas, and Fort Buchanan subpopulations are also severely fragmented by urban development and a rock quarry (USFWS 2017, p. 12). Such fragmentation compromises the connectivity between subpopulations.

Some of these areas are vulnerable to landslides due to changes in the contour of the terrain associated with a high density of urban development, encroachment, and quarry operations (*e.g.,* Parque Monagas and Fort Buchanan) (U.S. Army 2014, p. 3). Although Fort Buchanan habitat is set aside for conservation, landslides have occurred within and near the fort, and the subpopulation remains threatened due to potential landslides. Fort Buchanan is evaluating a possible slope stabilization project for the site (U.S. Army 2014, pp. 4, 9–11).

The palo de rosa occurs within several National Parks on Hispaniola (Dominican Republic and Haiti) (*e.g.,* Parque Nacional del Este, Parque Nacional Los Haitises, and Parque Nacional Sierra de Bahoruco). Despite the occurrence of the species within areas managed for conservation (*e.g.,* Parque del Este and Sierra de Bahoruco), these areas continue to be affected by illegal deforestation for agriculture and charcoal production, and enforcement of existing regulations is limited (Jiménez 2019, pers. comm.). The dependence of the human population of Haiti on wood-based cooking fuels (*e.g.,* charcoal and firewood) has resulted in substantial deforestation and forest conversion to marginal habitat in both Haiti and adjacent regions of the Dominican Republic (*e.g.,* Sierra de Bahoruco). The expected increases in the human population in Haiti will result in an increase in the demand for such fuel resources (USFWS 2018, p. 4).

In fact, deforestation and habitat degradation in the Sierra de Bahoruco and the surrounding region has recently been increasing (Grupo Jaragua 2011, entire; Goetz et al. 2011, p. 5; Simons et al. 2013, p. 31). In 2013, an estimated 80 square kilometers (19,768.4 acres) of forest in the area were lost primarily due to illegal clearing of forested habitat for agricultural activities (Gallagher 2015, entire). Vast areas (including suitable habitat for the palo de rosa) along the border between Haiti and Dominican Republic (including within National Parks) are being cleared and converted to avocado plantations (Monsegur-Rivera 2017, pers. obs.). Such deforestation extends to other National Parks, such as Parque Nacional del Este and Isla Saona, where illegal vegetation clearing for agriculture and tourism development continue to occur (Monsegur-Rivera 2011, pers. obs.). For example, analysis of aerial images from Isla Saona (Parque Nacional del Este) show extensive deforestation and conversion of forested habitat to agricultural lands during the last decade (Monsegur-Rivera 2019, pers. obs.). Impacts to palo de rosa populations due to development and habitat destruction and modification in Hispaniola are not described in the final listing rule for the species (55 FR 13488, April 10, 1990), but current information indicates that the palo de rosa and its habitat are being affected by deforestation for agricultural practices and extraction for fuel resources.

To summarize, forest management practices within Commonwealth Forests are no longer considered a threat to the palo de rosa. The palo de rosa populations at the CCF, GCF, GuCF, Río Abajo Commonwealth Forest (RACF), and SCF are protected as these forest reserves are protected by Commonwealth laws and managed for conservation. Nonetheless, populations extending onto private lands in southern Puerto Rico are vulnerable to impacts from urban development, agricultural practices (*e.g.,* harvesting fence posts), and maintenance of power lines and rights-of-way (Monsegur-Rivera 2019, pers. obs.). In addition, the majority of the subpopulations along the northern karst of Puerto Rico occur on private lands where habitat encroachment occurs and creates edge habitat conditions (habitat intrusion by exotics that precludes seedling establishment) and affects connectivity and natural recruitment. For example, despite the abundance of individuals at the palo de rosa subpopulation adjacent to the former CORCO in Guayanilla-Peñuelas, recruitment is limited due to the multiple stressors, including maintenance of power line rights-of-way, fence post harvest, and intrusion of exotic plant species, as well as the changes in microhabitat conditions at these sites, which preclude seedling establishment. Furthermore, habitat fragmentation along the northern coast may affect cross-pollination among subpopulations resulting in the lack of fruit production at isolated subpopulations with a smaller number of individuals (*e.g.,* Merendero-Guajataca).

Conservation Efforts and Regulatory Mechanisms

In the final listing rule (55 FR 13488, April 10, 1990), we identified the inadequacy of existing regulatory mechanisms as one of the factors affecting the continued existence of the palo de rosa. At that time, the species had no legal protection because it had not been included in Puerto Rico's list of protected species. Once the palo de rosa was federally listed, legal protection was extended by virtue of an existing cooperative agreement (under section 6 of the Act) with the Commonwealth of Puerto Rico. Federal listing ensured the addition of the palo de rosa to the Commonwealth's list of protected species, and the Commonwealth designated the palo de rosa as endangered in 2004 (PRDNER 2004, p. 52).

In 1999, the Commonwealth of Puerto Rico approved Law No. 241, also known as the New Wildlife Law of Puerto Rico (*Nueva Ley de Vida Silvestre de Puerto Rico*), which legally protects the palo de rosa. The purpose of this law is to protect, conserve, and enhance both native and migratory wildlife species and declare as property of Puerto Rico all wildlife species within its jurisdiction. The law also regulates permits, hunting activities, and exotic species among other activities. This law also has provisions to protect habitat for all wildlife species, including plants. In 2004, the PRDNER approved Regulation 6766 or Regulation to Govern Vulnerable Species and Species in Danger of Extinction in the Commonwealth of Puerto Rico (*Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico*). Article 2.06 of Regulation 6766 prohibits, among other activities, collecting, cutting, and removing of listed plant individuals within the jurisdiction of Puerto Rico (PRDNER 2004, p. 11). The provisions of Law No. 241–1999 and Regulation 6766 extend to private lands. However, the protection of listed species on private lands is challenging as landowners may be unaware that species are protected and may damage those species (*e.g.,* by cutting, pruning, or mowing) (USFWS 2017, p. 23), which might be the case were a palo de rosa tree cut for fence posts.

Commonwealth of Puerto Rico Law No. 133 (1975, as amended in 2000), also known as Puerto Rico Forests' Law (*Ley de Bosques de Puerto Rico*), protects the areas of the GCF, SCF, GuCF, RACF, and CCF, and, by extension, the palo de rosa individuals on them. Section 8(a) of this law prohibits cutting, killing, destroying, uprooting, extracting, or in any way hurting any tree or vegetation within a Commonwealth forest. The PRDNER also identifies these forests as ''critical wildlife areas.'' This designation constitutes a special recognition with the purpose of providing information to Commonwealth and Federal agencies about the conservation needs of these areas and to assist permitting agencies in precluding adverse impacts as a result of project endorsements or permit approvals (PRDNER 2005, pp. 211–216).

In addition, Commonwealth of Puerto Rico Law No. 292 (1999), also known as Puerto Rico Karst Physiographic Protection and Conservation Law (*Ley para la Protección y Conservación de la Fisiografía Cársica de Puerto Rico*), regulates the extraction of rock and gravel for commercial purposes and prohibits the cutting of native and endemic vegetation in violation of other laws (e.g., Law No. 241–1999 and Regulation 6766). Law No. 292–1999 applies to karst habitat in both southern and northern Puerto Rico.

On the Laguna Cartegena National Wildlife Refuge (LCNWR), habitat is managed in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]), and collection of plants within refuge lands is prohibited by 50 CFR 27.51. The LCNWR has a comprehensive conservation plan that includes measures for the protection and recovery of endangered and threatened plant species (USFWS 2011, p. 35). Furthermore, the Puerto Rico Planning Board (Junta de Planificación de Puerto Rico) classified most of the mountain range of Sierra Bermeja as a District of Conservation of Resources (Distrito de Conservación de Suelos) (JPPR 2009, p. 151). This conservation category identifies lands with particular characteristics that need to be maintained or enhanced (*e.g.,* provide habitat for species of concern) and establishes specific restrictions for development (JPPR 2009, p. 151). Also, in 2015, the Puerto Rico Planning Board approved the Land Use Plan for Puerto Rico and categorized most of the Sierra Bermeja Mountains, including the LCNWR, as Rustic Soil Specially Protected (Suelo Rustico Especialmente Protegido) where no urban development is considered due to location, topography, aesthetic value, archaeological value, or ecological value of land (Puerto Rico Planning Board Interactive Map 2020).

The palo de rosa individuals found at Hacienda La Esperanza Natural Reserve are protected as this reserve also is managed for conservation by PLN, and the management plan considers the palo de rosa in its activities (PLN 2011a, p. 67). The PLN also manages the Río Encantado Natural Protected Area, a mosaic of at least 1,818 ac (736 ha) of forested habitat (including extensive areas of suitable habitat for the palo de rosa) in the municipalities of Florida, Manatí, and Ciales, and PLN plans to continue acquiring habitat at this geographical area (PLN 2011b, p. 5). Also, the palo de rosa is protected and managed under an MOU among the U.S. Army Garrison, Fort Buchanan, the Service, and PRDNER (U.S. Army, Fort Buchanan 2015, entire). This palo de rosa subpopulation is found in a *mogote* designated for conservation (USACE 2014, p. 3).

In addition, the private natural reserves of El Tallonal and Mata de Plátano, which contain subpopulations of the palo de rosa in the municipality of Arecibo, are protected from habitat modification and have approved private forest stewardship management plans that include measures for the protection of listed species within the properties (PRDNER 2005, 47 pp.). We have an extended history of collaboration with these two reserves in providing financial and technical assistance for the implementation of recovery actions to benefit listed species.

In addition to protections provided by the Act, the species is protected from collection and provided management considerations by the Improvement Act within one national wildlife refuge (LCNWR). In addition, the Commonwealth of Puerto Rico legally protects the palo de rosa, including protections to its habitat, through Commonwealth Law No. 241–1999 and Regulation 6766, which prohibit, among other actions, collecting, cutting, and removing listed plants. While we are downlisting this species, we do not expect this species to be removed from legal protection by the Commonwealth. Although these protections extend to both public and private lands, as discussed above, protection of this species on private land is challenging. Habitat that occurs on private land is subject to pressures from agricultural practices (*e.g.,* grazing, harvesting fence posts) and development. Accidental damage or extirpation of individuals has occurred because private landowners or other parties on the property may not be able to identify the species or may not be aware that the palo de rosa is a protected species. Habitat modifications and fragmentation continue to occur on private lands, which can increase the likelihood of habitat intrusion by exotic plants and human-induced fires and reduce connectivity between populations and the availability of suitable habitat for the species' recruitment. In short, this plant is now more abundant and widely distributed, including within conservation land, so the threat due to inadequacy of regulatory mechanisms has been reduced. However, the palo de rosa occurrences on private lands continue to need enforcement of existing prohibitions as well as increased attention and associated outreach to highlight the species' conservation and importance.

Recruitment

Here, we summarize the continuing threat of low recruitment on palo de rosa populations. We describe this influence on palo de rosa viability in greater detail under *Recruitment and Population Structure,* above. Characteristics of the palo de rosa's life history may contribute to the slow or lack of recruitment observed in current subpopulations (Monsegur-Rivera 2018, pers. obs.). Individual palo de rosa trees grow extremely slowly and may require at least 40 years to reach a reproductive size. Dispersal and colonization of gravity-dispersed palo de rosa seeds are limited, and seedlings face competition from the parental tree. As a late-successional species, palo de rosa requires an open canopy to promote seedling growth and is adapted to stable habitat conditions with a regime of natural disturbances such as hurricanes (Breckon and Kolterman 1996). Cross-pollination between or among subpopulations maximizes the likelihood of fruit production and contributes to recruitment, which underscores the importance of conserving the species through a landscape approach to promote effective crosspollination and natural recruitment. Although current information on population structure indicates the species requires some open canopy areas to promote recruitment, widespread deforestation fragments the remnants of suitable habitat and creates edges (habitat transition zones).

There is no evidence of natural recruitment at this time for 40 of the 66 known subpopulations, although the species' life history implies that recruitment may still occur in these populations when a canopy opening is created and suitable conditions for recruitment are present. Forest cover in Puerto Rico has increased since the widespread deforestation in the 1930s (Marcano-Vega et al. 2015, p. 67), but palo de rosa was likely more widespread prior to deforestation and habitat fragmentation. A life history requirement for a closed canopy forest for adult individuals with canopy openings to promote seedling and sapling recruitment was likely more sustainable in populations with greater abundance and distribution than the species currently exhibits. Smaller and more isolated subpopulations are less able to provide closed canopy conditions with small pockets of openings; thus, inherent palo de rosa

life history characteristics have an effect on recruitment, and this effect is expected to continue in the future.

Hurricanes and Related Threats

At the time of listing, we considered palo de rosa individuals vulnerable to flash flood events (see 55 FR 13490, April 10, 1990). Flash floods remain a moderate threat and may compromise the natural recruitment of seedlings, particularly on subpopulations along the southern coast of Puerto Rico where the species occurs at the bottom of drainages (USFWS 2017, p. 17). Below, we describe these threats and other natural and human-caused factors affecting the continued existence of the palo de rosa.

As an endemic species to the Caribbean, the palo de rosa is expected to be well adapted to tropical storms and associated disturbances such as flash floods. Under natural conditions, healthy populations with robust numbers of individuals and recruitment should withstand tropical storms, and these weather and climatic events may be beneficial for the population dynamics of the palo de rosa by creating small openings in the closed canopy to allow seedling and sapling growth. The islands of the Caribbean are frequently affected by hurricanes. Puerto Rico has been directly affected by four major hurricanes since 1989. Successional responses to hurricanes can influence the structure and composition of plant communities in the Caribbean islands (Lugo 2000, p. 245; Van Bloem et al. 2003, p. 137; Van Bloem et al. 2005, p. 572; Van Bloem et al. 2006, p. 517). Examples of the visible effects of hurricanes on the ecosystem includes massive defoliation, snapped and wind-thrown trees, large debris accumulations, landslides, debris flows, and altered stream channels, among others (Lugo 2008, p. 368). Hurricanes can produce sudden and massive tree mortality, which varies among species but averages about 41.5 percent (Lugo 2000, p. 245). Hence, small palo de rosa populations may be severely impacted by hurricanes resulting in loss of individuals or extirpation. The impact of catastrophic hurricanes is exacerbated in small populations.

There is evidence of damage to palo de rosa individuals due to previous hurricane events (*e.g.,* Hurricane Georges in 1998) at the Hacienda Sabanera and Hacienda Esperanza subpopulations (USFWS 2017, p. 17). A post-hurricane assessment of selected palo de rosa populations was conducted to address the impact of Hurricane María (USFWS 2018, entire). Even though Hurricane María did not directly hit the GCF, evidence of damage to palo de rosa trees was recorded at Cañon Las Trichilias (*e.g.,* uprooted trees and main trunk broken) (USFWS 2018, p. 3). Additional evidence of direct impacts (including mortality) due to Hurricane María were recorded in the Hacienda Esperanza, Hacienda Sabanera, Parque Monagas, and La Virgencita subpopulations (USFWS 2018, entire). An analysis of high-resolution aerial images from these sites following Hurricane María shows extensive damage and modification to the forest structure with subpopulations in southern Puerto Rico exposed to less wind damage (Hu and Smith 2018, pp. 1, 17). When comparing affected subpopulation abundance, the evidence of direct impacts to palo de rosa individuals due to Hurricane María appear to be discountable. However, this post-hurricane assessment focused on previously surveyed robust subpopulations (USFWS 2018, entire). Overall, the subpopulations along the northern coast of Puerto Rico suffered severe defoliation with trees showing mortality of the crown apex, but some trees showed regrowth 6 months post-hurricane (USFWS 2018, entire).

Hurricane damage extends beyond the direct impacts to individual palo de rosa trees. As mentioned above, the subpopulations along the northern coast of Puerto Rico are severely fragmented due to prior land-use history. Disturbance and edge effects associated with urban development and infrastructure corridors may promote the establishment and spread of invasive, nonnative plant species, and lianas (woody vines) typical of early or intermediate successional stages, which may result in rare and endemic plant species being outcompeted (Hansen and Clevenger 2005, p. 249; Madeira et al. 2009, p. 291). Hurricanes may not introduce nonnative species to the forest structure, but they can promote favorable conditions for these species and, therefore, increase the relative abundance of nonnatives.

Habitat intrusion by exotics is positively correlated to the distance of the disturbance gap (Hansen and Clevenger 2005, p. 249). Thus, the adverse effects from human-induced habitat disturbance (*e.g.,* deforestation and urban development) can be exacerbated by hurricanes by creating or increasing this disturbance gap. A post-hurricane assessment provided evidence that all palo de rosa subpopulations along the north coast of Puerto Rico showed habitat intrusion by weedy vines (*e.g., Dioscorea alata* (ñame), *Thunbergia grandiflora* (pompeya), *Cissus erosa* (caro de tres hojas), and *Cayaponia americana* (bejuco de torero)) following Hurricane María (USFWS 2018, entire).

In the same assessment, weedy vegetation and vines densely covered an area in the Hacienda Esperanza subpopulation where the palo de rosa occurs at a low-elevation *mogote* and the Hacienda Sabanera where the habitat that harbors the palo de rosa subpopulation was cut to the edge due to urban development (USFWS 2018, pp. 8–18). Examination of aerial images of the habitat shows a flattened forest structure indicative of hurricane damage with standing trees missing main branches and canopy. Competition with nonnative species and weedy vines for necessary resources (space, light, water, nutrients) may reduce natural recruitment by inhibiting germination and outcompeting seedlings of native species (Rojas-Sandoval and Meléndez-Ackerman 2013, p. 11; Thomson 2005, p. 615). The palo de rosa seedlings at Hacienda Esperanza were covered (and outcompeted) by weedy vines following Hurricane María (USFWS 2018, p. 8). At Fort Buchanan, 6 months after Hurricane María, the vegetation at the base of the *mogote* on that property was overgrown and dominated by weedy species. However, weedy vegetation had not reached palo de rosa individuals at the top of the *mogote,* and there was little evidence of adverse impacts to seedlings and saplings due to competition with exotics (USFWS 2018, p. 8).

The GCF palo de rosa subpopulations are surrounded by a large tract of intact native forest providing a buffer zone that precludes habitat invasion by exotics. Despite the overall evidence of canopy opening and some impacts to palo de rosa individuals due to Hurricane María, there was no evidence of habitat intrusion by exotics at Cañon Las Trichilias and Cañon Hoya Honda (USFWS 2018 pp. 3–8), which highlights the importance of maintaining native forested habitat that provides a buffer for palo de rosa subpopulations.

The above discussion indicates that the potential adverse impacts due to hurricanes and the associated habitat intrusion by exotic plant species are variable depending on habitat fragmentation, topography, distance to disturbance, and the size of the subpopulation. It further highlights the importance of having healthy populations with robust numbers of individuals and a stratified population structure (*i.e.,* seedlings, saplings, and adults) to allow for recovery following hurricanes and associated habitat disturbance.

Climate Change

Regarding the effects of climate change, the Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2014, p. 3). Observed effects associated with climate change include widespread changes in precipitation amounts and aspects of extreme weather, including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2014, p. 4). Rather than assessing climate change as a single threat in and of itself, we examined the potential effects to the species and its habitat that arise from changes in environmental conditions associated with various aspects of climate change.

We examined a downscaled model for Puerto Rico based on three IPCC global emissions scenarios from the CMIP3 data set—mid-high (A2), mid-low (A1B), and low (B1)—as the CMIP5 data set was not available for Puerto Rico at that time (Coupled Model Intercomparison Project; Khalyani et al. 2016, pp. 267, 279–280). These scenarios are generally comparable and span the more recent representative concentration pathways (RCP) scenarios from RCP 4.5 (B1) to RCP 8.5 (A2) (IPCC 2014, p. 57). The B1 and A2 scenarios encompass the projections and effects of the A1B scenario; we will describe our analyses for the B1 (RCP 4.5) and A2 (RCP 8.5) scenarios and recognize the A1B (RCP 6.0) projections and effects that fall into this range.

The modelling of climate projections expected in Puerto Rico in our analysis extends to 2100. We acknowledge inherent divergence in climate projections based on the model chosen with uncertainty increasing later in the century (Khalyani et al. 2016, p. 275). However, we assessed the climate changes expected in the year 2070, a 50-year timeframe representing the foreseeable future for the palo de rosa (as described in *Regulatory Framework,* above). Under the RCP 4.5 and 8.5 scenarios, precipitation declines while temperature and total dry days increase resulting in extreme drought conditions that would result in the conversion of subtropical dry forest into dry and very dry forest (Khalyani et al. 2016, p. 280). Downscaled future climate change scenarios indicate that by 2070, Puerto Rico is predicted to experience a decrease in rainfall along with increased drought intensity under RCP 4.5 and 8.5 (Khalyani et al. 2016, p. 265; Bhardwaj et al. 2018, p. 133; U.S. Global Change Research Program 2018, 20:820). The western region of Puerto Rico has already experienced negative trends in annual rainfall (PRCCC 2013, p. 7).

Temperatures are also expected to rise between 2020 and 2070. Under RCP 4.5, a mean temperature increase of 4.6–5.4 degrees Celsius (°C) (40.3–41.7 degrees Fahrenheit (°F)) is projected, and an increase of 7.5–9 °C (45.5–48.2 °F) is projected under RCP 8.5 (Khalyani et al. 2016, p. 275). Precipitation decreases influenced by warming will tend to accelerate the hydrological cycles resulting in wet and dry extremes (Jennings et al. 2014, p. 4; Cashman et al. 2010, p. 1). Downscaled general circulation models predict dramatic shifts in the life zones of Puerto Rico with potential loss of subtropical rain, moist, and wet forests, and the appearance of tropical dry and very dry forests are anticipated under both RCP 4.5 and 8.5 scenarios (Khalyani et al. 2016, p. 275). Nonetheless, such predicted changes in life zones may not severely affect the palo de rosa due to its distribution throughout Puerto Rico, which includes different life zones and habitat types.

Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89; Glick and Stein 2010, p. 19). As described earlier, the palo de rosa is a species with low recruitment and seed dispersal limited to gravity diminishing its potential to reach areas with suitable microhabitat conditions for establishment. Despite the evidence of multiple reproductive events (fruit production) in one subpopulation, low recruitment of saplings and a population structure dominated by adult trees could be the result of mortality and thinning of individuals at the seedling stage due to drought stress. The projected prolonged droughts expected with climate change may affect the phenology of the palo de rosa resulting in the loss of developing flowers and fruits or reduce the viability of the few produced seeds reducing the likelihood of natural recruitment. In addition, hurricanes followed by extended periods of drought caused by climate change may result in microclimate alterations that could allow other plants (native or nonnative) to become established and invasive (Lugo 2000, p. 246), which would preclude the recruitment of palo de rosa seedlings.

Based on the distribution of the palo de rosa and its habitat, we have determined that conditions associated with climate change could impact this species. Climate change is almost certain to affect terrestrial habitats and the palo de rosa; however, the future extent and timing of those effects beyond the foreseeable future is uncertain. Some terrestrial plant populations are able to adapt and respond to changing climatic conditions (Franks et al. 2013, entire), but the palo de rosa's ability to do so is unknown. A sound, long-term monitoring of known palo de rosa populations is needed to understand the effects on the species' viability.

In summary, other natural and manmade factors, such as hurricanes and related threats due to habitat fragmentation, edge habitat, habitat intrusion by exotic plant species, and the low recruitment and limited dispersal of the palo de rosa, are current threats to the species. Hurricanes and post-hurricane habitat encroachment and nonnative plant invasion have affected subpopulations along the northern coast of Puerto Rico (USFWS 2018, entire). Invasive species can preclude the establishment of new palo de rosa individuals through competition for sunlight, nutrients, water, and space to grow. Although climate change is almost certain to affect terrestrial habitats, there is uncertainty about how predicted future changes in temperature, precipitation, and other factors will influence the palo de rosa.

Small Population Size

At the time of listing (55 FR 13488, April 10, 1990), we considered small population size as a threat affecting the continued survival of the palo de rosa based on the species' limited distribution and low number of individuals (*i.e.,* only nine individuals throughout the species' range in Puerto Rico). Based on this information, we considered the risk of extinction of the palo de rosa very high. New distribution and abundance information available since the species was listed reflects that the palo de rosa is more abundant and widely distributed than previously thought (USFWS 2017, entire); thus, we no longer consider limited distribution as an imminent threat to this species. However, at least 37 (56 percent) of the known subpopulations are composed of 10 or fewer individuals. The effect of small population size exacerbates other threats and makes these subpopulations vulnerable to extirpation by stochastic and catastrophic events.

Overall Summary of Factors Affecting the Species

We have carefully assessed the best scientific and commercial information available regarding the threats faced by the palo de rosa in developing this rule. Limited distribution and a low number of individuals were considered a threat

to the palo de rosa when we listed the species (55 FR 13488, April 10, 1990), but recent information indicates the species is more abundant and widely distributed than known at the time of listing. However, other threats are still affecting the palo de rosa. Based on the analysis above, although we no longer consider limited distribution as an imminent threat to this species, we conclude that habitat destruction and modification on privately owned lands (particularly along the northern coast of Puerto Rico) and other natural or manmade factors (*e.g.,* hurricanes, habitat fragmentation resulting in lack of connectivity between individuals, and habitat encroachment by invasive species), while greatly reduced, continue to threaten palo de rosa populations. In addition, low recruitment related to sporadic flowering and fruit production and the slow growth of seedlings under close canopy conditions (*e.g.,* species reproductive biology and ecology) coupled with the threats discussed above are expected to remain threats to the palo de rosa.

It is also expected that the palo de rosa will be affected by climate change within the foreseeable future, particularly by generalized changes in precipitation and drought conditions. Climate change is expected to result in more intense hurricanes and extended periods of drought. Increased hurricanes are expected to cause direct mortality of adult trees downed due to high winds whereas more intense drought conditions are expected to reduce the species' reproductive output (reduced flowering and fruiting events) and preclude seedling and sapling recruitment. However, based on the best available data, we do not consider climate change to represent a current or an imminent threat to this species across its range.

Species viability, or the species' ability to sustain populations over time, is related to the species' ability to withstand catastrophic population- and species-level events (redundancy) to adapt to novel changes in its biological and physical environment (representation) and to withstand environmental and demographic stochasticity and disturbances (resiliency). The viability of a species is also dependent on the likelihood of new stressors or continued threats, now and in the future, that act to reduce a species' redundancy, representation, and resiliency. A highly resilient palo de rosa population should be characterized by sufficient abundance and connectivity between reproductive individuals to allow for reproductive events and cross-pollination, an age class structure representative of recruitment greater than mortality, multiple subpopulations within the population, and the availability of high-quality habitat to allow for recruitment. High representation for the species is characterized by multiple populations occurring within a wide range of environmental conditions (*e.g.,* substrate and precipitation) that allow for sufficient genetic variability. Multiple resilient populations across the range of the species characterize high redundancy for the palo de rosa.

We evaluated the biological status of the palo de rosa both currently and into the future considering the species' viability as characterized by its resiliency, redundancy, and representation. Based on the analysis of available herbarium specimens, we have determined the species' distribution and abundance was once more common and widespread and likely was a dominant late-successional species of coastal to middle elevation (500 m (1,640 ft)) habitats and even extended to coastal valleys and sand dunes (Monsegur-Rivera 2019, pers. obs.).

The current known palo de rosa subpopulations are remnants of the species' historical distribution persisting on areas of low agricultural value (*e.g.,* top of the *mogotes*) that were affected by deforestation for charcoal production as evidenced by individuals with multiple trunks of palo de rosa sprouting from the same base. Based on the available information on the palo de rosa's natural distribution at the time of listing as well as considering that 40 of the known 66 subpopulations currently show no recruitment and that no subpopulations appear to be expanding due to natural dispersal, palo de rosa populations exhibit reduced resiliency. No subpopulations appear to be dispersing, and no populations are highly resilient. None of the currently known palo de rosa subpopulations are considered a recent colonization event or natural expansion of the species within its habitat.

The species persisted through the almost entire deforestation of Puerto Rico with less than 6 percent of remaining forested habitat across the island by the 1930s (Franco et al. 1997, p. 3) when the low-elevation coastal valleys habitat of the palo de rosa was extensively deforested for agricultural practices (*e.g.,* sugar cane and tobacco plantations). There are broad accounts regarding the extensive deforestation and habitat modification that occurred in Puerto Rico until the 1950s (Franco et al. 1997, p. 3), which resulted in changes in forest structure and diversity, pollinators' assemblages, seed dispersers, and the prevailing microhabitat conditions in which the palo de rosa evolved. Despite the return from such deforestation, known subpopulations show a clustered and patchy distribution and are characterized by a population structure dominated by adults. Moreover, the species faces a low recruitment rate and slow growth resulting in few saplings reaching a reproductive size; in addition, the species shows minimal or no dispersal (limited to gravity). Based on our observations, it has taken about 60 years from the peak of deforestation (1930s) for the palo de rosa to show some initial evidence of recruitment.

We consider that the palo de rosa has limited redundancy as it is known from multiple subpopulations (66) throughout its geographical range representing 14 natural populations distributed throughout the southern and northern coasts of Puerto Rico. Nonetheless, about 37 (56 percent) of the known subpopulations are composed of 10 or fewer individuals and show little or no recruitment and, thus, reduced resiliency. As described above, the species faces a low recruitment rate, slow growth and limited dispersal, and patchy and small subpopulations resulting in an increased vulnerability to extirpation of these subpopulations. All of these characteristics are limiting factors and make the species vulnerable to catastrophic and stochastic events, such as hurricanes and droughts, that can cause local extirpations. The best available information indicates that the palo de rosa is not naturally expanding into or colonizing habitats outside the areas where it is known to occur.

In terms of the representation of the palo de rosa, we have no data on its genetic variability. Although the species occurs in a wide range of habitats and environmental conditions, it has a fragmented distribution, scattered (sporadic) flowering events, and a low recruitment rate. Thus, little or no genetic exchange is thought to occur between extant subpopulations likely resulting in outbreeding depression, which may explain the lack of effective reproduction and recruitment (Frankham et al. 2011, p. 466). The low recruitment rate results in little transfer of genetic variability into future generations, limits the expansion of the species outside its current locations, and limits its ability to adapt to changing environmental conditions. For example, the loss or reduction of connectivity between subpopulations in areas like Arecibo-Vega Baja, Dorado, La Virgencita, Mogotes de Nevares, and

San Juan-Fajardo can be detrimental to the long-term viability of the species as it affects cross-pollination and, therefore, gene flow. In fact, the only populations that occur entirely within native forest areas managed for conservation are GCF and SCF. This continued protected habitat provides for an effective cross-pollination (gene flow) that can secure the long-term viability of the species. However, the overall representation of the palo de rosa is reduced as the GCF and SCF populations are restricted to the southern coast, and the genetic representation of the palo de rosa in the northern karst area, a different ecological environment, is vulnerable because that habitat is threatened by destruction or modification.

Determination of Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as a species that is ''likely to become an endangered within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of endangered species or threatened species based on one or more of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we have determined that the palo de rosa's current viability is higher than was known at the time of listing (population current estimate of 1,144 individuals in 66 subpopulations) based on the best available information. The increase in the number of known individuals and new localities reflects increased survey efforts but does not necessarily indicate that previously known populations are naturally expanding their range. The number of palo de rosa individuals has changed from 9 individuals in protected lands at the time of listing to 407 individuals (32 percent of subpopulations) occurring in areas managed for conservation (*e.g.,* Commonwealth Forest and Federal lands). Furthermore, 396 individuals (38 percent of subpopulations) occur in areas subject to little habitat modification due to the steep topography in the northern karst region of Puerto Rico. The remaining 30 percent of the subpopulations (containing approximately 341 individuals) occur within areas severely encroached upon by and vulnerable to urban or infrastructure development. Nonetheless, habitat destruction and modification on privately owned lands (particularly along the northern coast of Puerto Rico) and other natural or manmade factors (such as hurricanes, habitat fragmentation, lack of connectivity between populations, habitat intrusion by invasive species, and the species' reproductive biology) continue to threaten the viability of the palo de rosa.

Although population numbers and abundance of the palo de rosa have increased and some identified threats have decreased, our analysis indicates that threats remain. After assessing the best available information, we conclude that the palo de rosa no longer meets the Act's definition of an endangered species throughout all of its range. We therefore proceed with determining whether the palo de rosa meets the Act's definition of a threatened species (*i.e.,* is likely to become endangered within the foreseeable future) throughout all of its range.

In terms of habitat destruction and modification, we can reasonably determine that 70 percent of subpopulations (71 percent of individuals) are not expected to be substantially affected by habitat destruction and modification in the foreseeable future. This majority occurs within protected lands managed for conservation (36 percent of the known individuals or 32 percent of subpopulations) or on private lands with low probability of modification due to steep topography (35 percent of the known individuals or 38 percent of subpopulations). However, for the 30 percent of subpopulations (30 percent of the known individuals) occurring in areas severely encroached upon by and vulnerable to urban or infrastructure development now and into the future, we are reasonably certain these subpopulations will continue to have a lower resiliency (due to reduced connectivity (cross-pollination) and lack of recruitment) and, in some cases, may experience the loss of individuals or subpopulations adjacent to critical infrastructure such as highways or other development within the foreseeable future (*e.g.,* Hacienda Sabanera, PR–2 and PR–22 maintenance and expansion, Islote Ward extirpation).

We have evidence that some populations are showing signs of reproduction and recruitment. However, due to the slow growth of the species it may take several decades to ensure these recruitment events effectively contribute to a population's resiliency (new individuals reach a reproductive size). Despite no longer considering limited distribution as an imminent threat to this species, we have identified factors associated with habitat modification and other natural or manmade factors that still have some impacts on the palo de rosa and affect the species' viability and effective natural recruitment. The species still faces dispersal problems, and the recruitment is still limited to the proximity of parent trees; we have no evidence of a palo de rosa population that is the result of a recent colonization event or a significant population expansion. This renders the known subpopulations vulnerable to adverse effects related to habitat fragmentation and lack of connectivity, which may preclude future recruitment and the population's resiliency.

In addition, despite the presence of regulations protecting the species both on public and private lands, the protection of palo de rosa trees on private lands remains challenging. Habitat modifications and fragmentation continue to occur on private lands, which can increase the likelihood of habitat intrusion by exotic plants and human-induced fires and reduce connectivity between populations (affecting cross-pollinations) and the availability of suitable habitat for the natural recruitment of the species. Still, none of these is an imminent threat to the species at a magnitude such that the taxon warrants endangered status across its range. Thus, after assessing the best available information, we conclude that the palo de rosa is not currently in danger of extinction but likely to become in danger of extinction in the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*) vacated

the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578, July 1, 2014) that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the palo de rosa, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered. Kinds of threats and levels of threats are more likely to vary across a species' range if the species has a large range rather than a very small natural range, such as the palo de rosa. Species with limited ranges are more likely to experience the same kinds and generally the same levels of threats in all parts of their range.

For the palo de rosa, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale in the context of its small natural range or if the status of the species differs in a portion of the range due to other factors. We examined the following threats: habitat destruction, fragmentation, and modification; invasive species; hurricanes; and the effects of climate change, including cumulative effects. We have identified habitat destruction and modification as threatening known populations in three of the five areas along the southern coast of Puerto Rico and eight of nine populations along the northern coast of Puerto Rico, particularly on privately owned lands throughout the range of the species. In addition, habitat destruction and modification are occurring within the species' range in Hispaniola. Habitat encroachment by invasive plant species and habitat fragmentation caused by harvesting of timber for fence posts and maintaining rights-of-way are also considered to be further stressors to the viability of the palo de rosa across its range. Changes in climatic conditions are expected to result in more intense hurricanes and extended periods of drought under RCPs 4.5 and 8.5, but the effect of these changes on the palo de rosa is unknown. The expected changes in climatic conditions will affect all palo de rosa populations uniformly across the range of the species. Lastly, palo de rosa populations across the range experience low recruitment rates, slow growth, and limited dispersal.

Overall, the threats to palo de rosa viability affect the species similarly across the range of the species. We found no concentration of threats and no other factors in any portion of the palo de rosa's range at a biologically meaningful scale that place the palo de rosa in that geographic area in danger of extinction. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range; however, we determine that the species is likely to become endangered within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the palo de rosa meets the Act's definition of a threatened species. Therefore, we are reclassifying the palo de rosa as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

II. Final Rule Issued Under Section 4(d) of the Act

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9 of the Act.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her]with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

In the early days of the Act, the Service published at 50 CFR 17.71 a general protective regulation that would apply to each threatened plant species, unless we were to promulgate a separate species-specific protective regulation for that species. In the wake of the court's *CBD* v. *Haaland* decision vacating a 2019 regulation that had made 50 CFR

17.71 inapplicable to any species listed as a threatened species after the effective date of the 2019 regulation, the general protective regulation applies to all threatened species, unless we adopt a species-specific protective regulation. As explained below, we are adopting a species-specific rule that sets out all of the protections and prohibitions applicable to palo de rosa.

Provisions of the 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a species-specific rule that is designed to address the palo de rosa's specific threats and conservation needs. As discussed above under Summary of Biological Status and Threats, we have concluded that the palo de rosa is likely to become endangered within the foreseeable future primarily due to habitat destruction and modification, particularly by urban development, right-of-way maintenance, rock quarries, and grazing. Additionally, other natural or manmade factors like hurricanes, invasive species, and landslides still threaten the species. The provisions of this 4(d) rule promote conservation of the palo de rosa by encouraging conservation programs for the species and its habitat and promoting additional research to inform future habitat management and recovery actions for the species. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(2) of the Act prescribes for endangered species. Our current regulations at 50 CFR 17.71 apply many of the prohibitions in section 9(a)(2) of the Act to all threatened plants, as clarified at 50 CFR 17.61. However, if we promulgate species-specific protective regulations for a given species, the species-specific regulations replace 50 CFR 17.71. We find that the protections, prohibitions, and exceptions in this rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the palo de rosa.

The protective regulations we are proposing for palo de rosa incorporate prohibitions from section 9(a)(2) to address the threats to the species. Section 9(a)(2) prohibits the following activities for endangered plants: importing or exporting; certain acts related to removing, damaging, and destroying; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

As discussed above under Summary of Biological Status and Threats, the present or threatened destruction, modification, or curtailment of the species' habitat or range (specifically, urban development, maintenance of power lines and associated rights-of-way, infrastructure development, rock quarries, grazing by cattle, and extraction of fence posts), inadequacy of existing regulatory mechanisms, and other natural or manmade factors affecting the species' continued existence (specifically, hurricanes, invasive plant species, landslides, and habitat fragmentation and lack of connectivity between subpopulations) are affecting the status of the palo de rosa. A range of activities have the potential to impact this plant, including recreational and commercial activities. Regulating these activities will help preserve the species' remaining populations, slow their rate of potential decline, and decrease synergistic, negative effects from other stressors. As a whole, the regulation would help in the efforts to recover the species.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened plants state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species (50 CFR 17.72). Those regulations also state that the permit shall be governed by the provisions of § 17.72 unless a special rule applicable to the plant is provided in §§ 17.73 to 17.78. Therefore, permits for threatened species are governed by the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise. We note that, although our recent revisions to § 17.71 had made the prohibitions in § 17.71(a) inapplicable to any plant listed as a threatened species after September 26, 2019, the general protective regulation at 50 CFR 17.71 now applies because of the court's decision vacating the 2019 regulations. We anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise would likely avoid substantial duplication. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State and Territorial natural resource agency partners in contributing to conservation of listed species. State and Territorial agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State and Territorial agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the palo de rosa that may result in otherwise prohibited activities without additional authorization.

Once the palo de rosa was federally listed, legal protection was extended by virtue of an existing cooperative agreement (under section 6 of the Act) with the Commonwealth of Puerto Rico. Therefore, this provision will work in concert with the cooperative agreement to ensure that conservation actions conducted by employees or agents of the Commonwealth are not prohibited.

We also recognize the beneficial and educational aspects of activities with seeds of cultivated plants, which generally enhance the propagation of the species and, therefore, would satisfy permit requirements under the Act. We intend to monitor the interstate and foreign commerce and import and export of these specimens in a manner that will not inhibit such activities providing the activities do not represent a threat to the survival of the species in the wild. In this regard, seeds of cultivated specimens would not be regulated provided a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container.

Nothing in this 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements

under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the palo de rosa. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined in the National Environmental Policy Act of 1969 (*42 U.S.C. 4321 et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). We also determine that 4(d) rules that accompany regulations adopted pursuant to section 4(a) of the Act are not subject to the National Environmental Policy Act.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands affected by this rule.

References Cited

A complete list of references cited is available on *https://www.regulations.gov* under Docket Number FWS–R4–ES–2020–0059 and upon request form the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are staff members of the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ Amend § 17.12 in paragraph (h) by revising the entry ''Ottoschulzia rhodoxylon'' under Flowering Plants in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	*	*	*
Ottoschulzia rhodoxylon	Palo de rosa	Wherever found	T	55 FR 13488, 4/10/1990; 87 FR [Insert **Federal Register** page where the document begins], 11/4/2022; 50 CFR 17.73(g). [4d]
*	*	*	*	*

■ 3. Amend § 17.73 by adding paragraph (g) to read as follows:

§ 17.73 Special rules—flowering plants.

* * * * *

(g) *Ottoschulzia rhodoxylon* (palo de rosa)—(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to *Ottoschulzia rhodoxylon* (palo de rosa). Except as provided under paragraph (g)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy the species on any such area; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

(iii) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(iv) Sale or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions.* In regard to *Ottoschulzia rhodoxylon* (palo de rosa), you may:

(i) Conduct activities, including activities prohibited under paragraph (f)(1) of this section, if they are authorized by a permit issued in accordance with the provisions set forth at § 17.72.

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.71(b).

(iii) Engage in any act prohibited under paragraph (g)(1) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–23822 Filed 11–3–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket Nos. 090206140–91081–03, 120405260–4258–02, 200706–0181, and 200127–0032; RTID 0648–XC518]

Revised Reporting Requirements Due to Catastrophic Conditions for Federal Seafood Dealers, Individual Fishing Quota Dealers, and Charter Vessels and Headboats in Portions of Florida

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

ACTION: Temporary rule; determination of catastrophic conditions.

SUMMARY: In accordance with the regulations implementing the individual fishing quota (IFQ), Federal dealer reporting, and Federal charter vessel and headboat (for-hire vessel) reporting programs specific to the reef fish fishery in the Gulf of Mexico (Gulf) and the coastal migratory pelagic (CMP) fisheries in the Gulf, the Regional Administrator (RA), Southeast Region, NMFS, has determined that Hurricane Ian has caused catastrophic conditions that still exist in the Florida counties of Charlotte, Collier, and Lee. This temporary rule authorizes any dealer in the affected areas described in this temporary rule who does not have access to electronic reporting to delay reporting of trip tickets to NMFS and authorizes IFQ participants within the affected area to use paper-based forms, if necessary, for basic required administrative functions, *e.g.,* landing transactions. This rule also authorizes any Federal for-hire owner or operator in the affected areas described in this temporary rule who does not have access to electronic reporting to delay reporting of logbook records to NMFS. This temporary rule is intended to facilitate continuation of IFQ, dealer, and Federal for-hire reporting operations during the period of catastrophic conditions.

DATES: The RA is authorizing Federal dealers, IFQ participants, and Federal for-hire operators in the affected areas to use revised reporting methods from November 8, 2022, through December 5, 2022.

FOR FURTHER INFORMATION CONTACT: IFQ Customer Service, telephone: 866–425–7627, email: *nmfs.ser.catchshare@noaa.gov.* For Federal dealer reporting, Fisheries Monitoring Branch, telephone: 305–361–4581. For Federal for-hire reporting, Southeast For-Hire Integrated Electronic Reporting program, telephone: 833–707–1632, email: *ser.electronicreporting@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP), prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). The CMP fishery is managed under the FMP for CMP Resources in the Gulf of Mexico and Atlantic Region, prepared by the Gulf Council and South Atlantic Fishery Management Council (South Atlantic Council). These FMPs are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Amendment 26 to the Reef Fish FMP established an IFQ program for the commercial red snapper component of the Gulf reef fish fishery (71 FR 67447, November 22, 2006). Amendment 29 to the Reef Fish FMP established an IFQ program for the commercial grouper and tilefish components of the Gulf reef fish fishery (74 FR 44732, August 31, 2009). Regulations implementing these IFQ programs (50 CFR 622.21 and 622.22) require that IFQ participants have access to a computer and the internet and that they conduct administrative functions associated with the IFQ program, *e.g.,* landing transactions, online. However, these regulations also specify that during catastrophic conditions, as determined by the RA, the RA may authorize IFQ participants to use paper-based forms to complete administrative functions for the duration of the catastrophic conditions. The RA must determine that catastrophic conditions exist, specify the duration of the catastrophic conditions, and specify which participants or geographic areas are deemed affected.

The Generic Dealer Amendment established Federal dealer reporting requirements for federally permitted dealers in the Gulf and South Atlantic (79 FR 19490, April 9, 2014). The Gulf For-Hire Reporting Amendment implemented reporting requirements for Gulf reef fish and CMP owners and operators of Gulf for-hire vessels (85 FR 44005, July 21, 2020). Regulations implementing these Gulf dealer reporting requirements (50 CFR 622.5) and for-hire vessel reporting requirements (50 CFR 622.26 and 622.374) state that dealers must submit electronic reports and that Gulf reef fish and CMP vessels with the applicable charter vessel/headboat permit must submit electronic fishing reports of all fish harvested and discarded. However, these regulations also specify that during catastrophic conditions, as determined by the RA, the RA may waive or modify the reporting time requirements for dealers and for-hire vessels for the duration of the catastrophic conditions.

Hurricane Ian made landfall in the U.S. near Cayo Costa, Florida, in the Gulf as a Category 4 hurricane on September 28, 2022, then moved across the Florida peninsula into the South Atlantic and made another U.S. landfall as a Category 1 hurricane near Georgetown, South Carolina, on September 30, 2022. Strong winds and flooding from this hurricane impacted communities throughout coastal Florida and coastal South Carolina. This resulted in power outages and damage to homes, businesses, and infrastructure. As a result, the RA has determined that catastrophic conditions continue to exist in the Gulf for the Florida counties of Charlotte, Collier, and Lee.

The RA previously authorized Federal dealers and Federal for-hire operators in these affected areas to delay reporting of trip tickets and for-hire logbooks to NMFS, and IFQ participants in this affected area to use paper-based forms, from October 6, 2022, through November 7, 2022 (87 FR 61540, October 12, 2022). As stated in that temporary rule, NMFS continues to monitor the conditions in these areas.

NMFS has received numerous reports of continued damage to the infrastructure in the Florida counties of Charlotte, Collier, and Lee, on the Gulf coast of Florida, such as power outages and interruption of water service. Therefore, to provide Federal dealers and Federal for-hire operators in the affected area the continued flexibility to delay reporting of trip tickets and for-hire logbooks to NMFS, and allow IFQ participants in the affected area to use paper-based forms, NMFS extends the current catastrophic conditions determination through December 5, 2022. This determination remains in effect for Charlotte, Collier, and Lee counties in Florida.

Through this temporary rule, the RA is authorizing Federal dealers and Federal for-hire operators in these affected areas to delay reporting of trip tickets and for-hire logbooks to NMFS, and authorizing IFQ participants in this affected area to use paper-based forms, from November 8, 2022, through December 5, 2022. NMFS will provide additional notification to affected dealers via NOAA Weather Radio,

Fishery Bulletins, and other appropriate means. NMFS will continue to monitor and re-evaluate the areas and duration of the catastrophic conditions, as necessary.

Dealers may delay electronic reporting of trip tickets to NMFS during catastrophic conditions. Dealers are to report all landings to NMFS as soon as possible. Assistance for Federal dealers in affected area is available from the NMFS Fisheries Monitoring Branch at 1–305–361–4581. NMFS previously provided IFQ dealers with the necessary paper forms and instructions for submission in the event of catastrophic conditions. Paper forms are also available from the RA upon request. The electronic systems for submitting information to NMFS will continue to be available to all dealers, and dealers in the affected area are encouraged to continue using these systems, if accessible.

Federal for-hire operators may delay electronic reporting of logbooks to NMFS during catastrophic conditions. Federal for-hire operators are to report all landings to NMFS as soon as possible. Assistance for Federal for-hire operators in affected area is available from the NMFS Southeast For-Hire Integrated Electronic Reporting Program at 1–833–707–1632, Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern Time. The electronic systems for submitting information to NMFS will continue to be available to all Federal for-hire operators, and for-hire operators are encouraged to continue using the these systems, if accessible.

The administrative program functions available to IFQ participants in the area affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via the NMFS Catch Share Support line, 1–866–425–7627 Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern Time.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is consistent with the regulations in 50 CFR 622.5(c)(1)(iii), 622.21(a)(3)(iii), and 622.22(a)(3)(iii), which were issued pursuant to section 304(b) of the Magnuson-Stevens Act, and are 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 are unnecessary and contrary to the public interest. Such procedures are unnecessary because the final rules implementing the Gulf IFQ programs, the Gulf and South Atlantic Federal dealer reporting requirements, and the Gulf for-hire vessel reporting requirements have already been subject to notice and public comment. These rules authorize the RA to determine when catastrophic conditions exist, and which participants or geographic areas are deemed affected by catastrophic conditions. The final rules also authorize the RA to provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA Weather Radio, Fishery Bulletins, and other appropriate means. All that remains is to notify the public that catastrophic conditions exist, that IFQ participants may use paper forms, and that Federal dealers and Gulf for-hire permit holders may submit delayed reports. Such procedures are also contrary to the public interest because of the need to immediately implement this action because affected dealers continue to receive these species in the affected area and need a means of completing their landing transactions. With the power outages and damages to infrastructure that have occurred in the affected area due to Hurricane Ian, numerous businesses are unable to complete landings transactions, fishing reports, and dealer reports electronically. In order to continue with their businesses, IFQ participants need to be aware they can report using the paper forms, and Federal dealers and Gulf for-permit holders need to be aware that they can delay reporting.

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

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

Dated: November 2, 2022.

Kelly Denit,

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

[FR Doc. 2022–24246 Filed 11–2–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220510–0113]

RTID 0648–XC429

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Actions #46 Through #47

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

ACTION: Inseason modification of 2022 management measures.

SUMMARY: NMFS announces two inseason actions in the 2022 ocean salmon fisheries. These inseason actions modify the recreational and commercial salmon fisheries in the area from the United States (U.S.)/Canada border to Cape Falcon, OR.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna at 562–980–4239, Email: *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The 2022 annual management measures for ocean salmon fisheries (87 FR 29690, May 16, 2022) announced management measures for the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2022, until the effective date of the 2023 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada

border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The actions described in this document affect the NOF commercial and recreational salmon fisheries, as set out under the heading Inseason Actions below.

Consultations with the Council Chairperson on these inseason actions occurred on September 13, 2022. Representatives from NMFS, Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), and Council staff participated in these consultations. The Salmon Advisory Subpanel and Salmon Technical Team (STT) were also on the calls.

These inseason actions were announced on NMFS' telephone hotline and U.S. Coast Guard radio broadcast on the date of the consultations (50 CFR 660.411(a)(2)).

Inseason Actions

Inseason Action #46

Description of the action: Inseason action #46 modifies the NOF recreational salmon fishery. To cover an overage in the Columbia River subarea guideline, 600 Chinook salmon from the U.S./Canada border to Cape Alava, Washington (Neah Bay subarea) guideline is transferred to the Leadbetter Point to Cape Falcon, Oregon (Columbia River subarea), on an impact-neutral basis, which adds 390 Chinook salmon to the Columbia River subarea guideline. The adjusted Chinook salmon subarea guidelines are 5,510 for the Neah Bay subarea, and 8,090 for the Columbia River subarea. The adjusted overall north of Falcon recreational fishery Chinook salmon quota is 26,790.

Effective date: Inseason action #46 took effect on September 14, 2022, at 12:01 a.m. and remains in effect until the end of the commercial salmon season on September 30, 2022, at 11:59 p.m.

Reason and authorization for the action: Provisions for this type of inseason impact-neutral transfer of uncaught quota is specified in the 2022 ocean salmon regulations (87 FR 29690, May 16, 2022). The action was necessary to cover an overage of 253 Chinook salmon in the Columbia River subarea recreational fishery so that impacts of the fishery were consistent with preseason expectations and conservation objectives for salmon stocks managed under the jurisdiction of the Council, and to preserve season length which provides economic benefits to fishery-dependent communities.

The West Coast Regional Administrator (RA) considered the landings of Chinook salmon to date and projected catch, fishery effort occurring to date and projected effort, and quotas set preseason and determined that this inseason action was necessary to meet management goals set preseason and address the overage in the Columbia River subarea Chinook salmon catch. Modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #47

Description of the action: Inseason action #47 modifies the commercial salmon troll fishery NOF landing and possession limits of 15 Chinook salmon and 225 coho salmon per vessel per landing week (Thursday through Wednesday).

Effective date: Inseason action #47 took effect on September 15, 2022, at 12:01 a.m. and remains in effect until superseded.

Reason and authorization for the action: Inseason action #47 was necessary to provide access to the available Chinook and coho salmon quota without exceeding the Chinook salmon guideline. The RA considered the landings of Chinook and coho salmon to date and projected catch, fishery effort occurring to date and projected effort, and quotas set preseason and determined that this inseason action was necessary to provide greater fishing opportunity and provide economic benefit to the fishery-dependent community while remaining consistent with conservation objectives for coho and Chinook salmon stocks managed under the Council jurisdiction. The modification of commercial landing and possession limits is authorized by 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2022 ocean salmon fisheries (87 FR 29690, May 16, 2022), as modified by previous inseason action (87 FR 41260, July 12, 2022; 87 FR 49534, August 11, 2022; 87 FR 52353, August 25, 2022; 87 FR 54171, September 2, 2022; 87 FR 60105, October 4, 2022).

The RA determined that these inseason actions were warranted based on the best available information on Pacific salmon abundance forecasts, landings to date, anticipated fishery effort and projected catch, and the other factors and considerations set forth in 50 CFR 660.409. The states and tribes manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off the coasts of the states of Washington, Oregon, and California consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the actions became effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

NMFS issues these actions pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). These actions are authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and are exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(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. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook and coho salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available and that fishery participants can take advantage of the additional fishing opportunity these changes provide. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (87 FR 29690, May 16, 2022), the Pacific Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would restrict fishing at levels inconsistent with the goals of the FMP and the current management measures.

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

Dated: October 31, 2022.

Kelly Denit,

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

[FR Doc. 2022–23984 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC510]

Fisheries of the Exclusive Economic Zone Off Alaska; Several Groundfish Species in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch (ITAC) of Bering Sea (BS) ''other rockfish,'' BS Pacific ocean perch, BS sablefish, and Bering Sea and Aleutian Islands (BSAI) skates. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI management area.

DATES: Effective November 2, 2022, through 12 a.m., Alaska local time, January 1, 2023. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, November 17, 2022.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0076, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e- Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0076 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Josh Keaton, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

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

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

The 2022 ITAC of BS ''other rockfish'' was established as 638 metric tons (mt), the 2022 ITAC of BS Pacific ocean perch was established as 8,799 mt, the 2022 ITAC of BS sablefish was established as 4,343 mt, and the 2022 ITAC of BSAI skates was established as 25,500 mt by the final 2022 and 2023 harvest specifications for groundfish of the BSAI (87 FR 11626, March 2, 2022). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITACs for BS ''other rockfish,'' BS Pacific ocean perch, BS sablefish, and BSAI skates need to be supplemented from the non-specified reserve to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish to ITACs in the BSAI management area as follows: 281 mt to BS ''other rockfish,'' 1,553 mt to BS Pacific ocean perch, 197 mt to BS sablefish, and 5,600 mt to BSAI skates. These apportionments are consistent with § 679.20(b)(1)(i) and do not result in overfishing of any target species because the revised ITACs and total allowable catches (TACs) are equal to or less than the specifications of the acceptable biological catch in the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

The harvest specification for the 2022 ITACs and TACs included in the harvest specifications for groundfish in the BSAI are revised as follows: 919 mt for BS ''other rockfish,'' 10,352 mt for BS Pacific ocean perch, 4,540 mt for BS sablefish, and 31,100 mt to BSAI skates.

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 apportionment of the non-specified reserves of groundfish to the BS ''other rockfish,'' BS Pacific ocean perch, BS sablefish, and BSAI skates. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 26, 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.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until November 17, 2022.

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

Dated: November 2, 2022.

Kelly Denit,

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

[FR Doc. 2022–24247 Filed 11–2–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC379]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch Western Aleutian District in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the

Western Aleutian district (WAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2022 total allowable catch (TAC) of Pacific ocean perch in the WAI allocated to vessels participating in the BSAI trawl limited access sector fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 2, 2022, through 2400 hrs, A.l.t., December 31, 2022.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 TAC of Pacific ocean perch, in the WAI, allocated to vessels participating in the BSAI trawl limited access sector fishery was established as a directed fishing allowance of 196 metric tons by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

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 WAI by vessels participating in the BSAI trawl limited access section fishery. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of directed fishing of Pacific ocean perch in the WAI of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 2, 2022.

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

Dated: November 2, 2022.

Kelly Denit,

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

[FR Doc. 2022–24245 Filed 11–2–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 213
Friday, November 4, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0144]

RIN 3150–AK87

List of Approved Spent Fuel Storage Casks: NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel regulations by revising the NAC International, Inc. MAGNASTOR® Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 10 to Certificate of Compliance No. 1031. Amendment No. 10 revises the certificate of compliance by adding a new metal storage overpack.

DATES: Submit comments by December 5, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2022–0144, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6577, email: *Bernard.White@nrc.gov* and Tyler Hammock, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1381, email: *Tyler.Hammock@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0144 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0144. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents by appointment at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2022–0144 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on January 18, 2023. However, if the NRC receives any significant adverse comment by December 5, 2022, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule, or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

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

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

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

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

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

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

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

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on November 21, 2008 (73 FR 70587), that approved the NAC International, Inc. MAGNASTOR® Storage System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1031.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons, as indicated.

Document	ADAMS accession No.
NAC International request to amend Certificate of Compliance No. 1031, dated December 9, 2019	ML19345E594
NAC International Supplemented to Request for Additional Information for the amendment of Certificate of Compliance No. 1031, dated May 13, 2020.	ML20143A102
Supplemental Request to amend the NAC International, Certificate of Compliance No. 1031, dated February 25, 2021	ML21067A041
Supplemental Request to amend the NAC International, Certificate of Compliance No. 1031, dated April 20, 2021	ML21118A043
Supplemental Request to amend the NAC International, Certificate of Compliance No. 1031, dated September 2, 2021	ML21251A529
User Need Memorandum Package for Rulemaking for Certificate of Compliance Amendment, Amendment Number 10 to the NAC International Storage Cask, dated June 26, 2022.	ML22026A519
Proposed Technical Specification Appendix A for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A522
Proposed Technical Specifications Appendix B for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A523
Preliminary Safety Evaluation Report for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A524
Proposed Certificate of Compliance No. 1031 for NAC International, Inc. MAGNASTOR® Storage System, Certificate of Compliance No. 1031, Amendment No. 10.	ML22026A521
Memo forwarding CoC, Tech Specs and SER to REFS for MAGNASTOR Amendment 10	ML22026A520

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0144. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2022–0144); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: October 20, 2022.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2022–24009 Filed 11–3–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1170; Project Identifier AD–2022–00023–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 747–400, –400D, and –400F series airplanes. This proposed AD was prompted by the FAA's analysis of the Model 747 airplane fuel system reviews conducted by the manufacturer, and by the determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 19, 2022.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com*. You may view this service information 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 at *regulations.gov* by searching for and locating Docket No. FAA–2022–1170.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1170; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *Samuel.J.Dorsey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1170; Project Identifier AD–2022–00023–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *Samuel.J.Dorsey@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, the FAA issued a final rule titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements that rule included Amendment 21–78, which established Special Federal Aviation Regulation No. 88 (SFAR 88) at 14 CFR part 21. Subsequently, SFAR 88 was amended by Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002), Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change ''21–82'' to ''21–83''), and Amendment 21–101 (83 FR 9162, March 5, 2018).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the final rule published on May 7, 2001, the FAA intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, the FAA has established four criteria intended to define the unsafe conditions associated with fuel tank systems that

require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

This proposed AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. This condition, if not addressed, could result in the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related ADs

The FAA issued AD 2008–10–06 R1, Amendment 39–16160 (75 FR 906, January 7, 2010), which applies to certain Model 747–400, –400D, and –400F series airplanes. AD 2008–10–06 R1 requires revising the existing maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy SFAR 88 requirements. That AD also requires the phasing in of certain repetitive AWL inspections, and repair if necessary. AD 2008–10–06 R1 was prompted by the FAA's analysis of the fuel system reviews of Model 747 airplanes conducted by the manufacturer.

This proposed AD also affects the following ADs, which include requirements to incorporate certain airworthiness limitations into the existing maintenance or inspection program. Revising the existing maintenance or inspection program specified in this proposed AD would terminate certain actions specified in these ADs:

- AD 2008–18–09, Amendment 39–15666 (73 FR 52911, September 12, 2008), which applies to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.
- AD 2010–13–12, Amendment 39–16343 (75 FR 37997, July 1, 2010), which applies to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.
- AD 2010–14–08, Amendment 39–16353 (75 FR 38397, July 2, 2010), which applies to certain Model 747–400, –400D, and –400F series airplanes.
- AD 2011–06–03, Amendment 39–16627 (76 FR 15814, March 22, 2011), which applies to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.
- AD 2014–15–14, Amendment 39–17916 (79 FR 45324, August 5, 2014), which applies to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.
- AD 2016–19–03, Amendment 39–18652 (81 FR 65872, September 26, 2016), which applies to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, dated September 2021. This service information specifies airworthiness limitations for fuel tank systems. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2022–1170.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 119 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–1170; Project Identifier AD–2022–00023–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 19, 2022.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (7) of this AD.

(1) AD 2008–10–06 R1, Amendment 39–16160 (75 FR 906, January 7, 2010) (AD 2008–10–06 R1).

(2) AD 2008–18–09, Amendment 39–15666 (73 FR 52911, September 12, 2008) (AD 2008–18–09).

(3) AD 2010–13–12, Amendment 39–16343 (75 FR 37997, July 1, 2010) (AD 2010–13–12).

(4) AD 2010–14–08, Amendment 39–16353 (75 FR 38397, July 2, 2010) (AD 2010–14–08).

(5) AD 2011–06–03, Amendment 39–16627 (76 FR 15814, March 22, 2011) (AD 2011–06–03).

(6) AD 2014–15–14, Amendment 39–17916 (79 FR 45324, August 5, 2014) (AD 2014–15–14).

(7) AD 2016–19–03, Amendment 39–18652 (81 FR 65872, September 26, 2016) (AD 2016–19–03).

(c) Applicability

This AD applies to all The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by the FAA's analysis of the fuel system reviews on Model 747–400, –400D, and –400F series airplanes conducted by the manufacturer, and by the determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Section B, Airworthiness Limitations—Systems, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, dated September 2021; except as provided by paragraph (h) of this AD. The initial compliance time for doing the airworthiness limitation instruction (ALI) tasks is at the times specified in paragraphs (g)(1) through (13) of this AD.

(1) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': At the applicable time specified in paragraph (g)(1)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–01 in their maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(1)(i) of this AD: Within 144 months since AWL No. 28–AWL–01 was added to the maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, whichever occurs later.

(2) For AWL No. 28–AWL–03, ''Fuel Quantity Indication System (FQIS)—Out of Tank Wiring Lightning Shield to Ground Termination'': At the applicable time specified in paragraph (g)(2)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–03 in their maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(2)(i) of this AD: Within 144 months since AWL No. 28–AWL–03 was added to the maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever occurs later.

(3) For AWL No. 28–AWL–10, ''Main Tank, Center Wing Tank, and Horizontal Stabilizer Tank (if installed) Refuel Valve Installation—Fault Current Bond'': At the applicable time specified in paragraph (g)(3)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–10 in their maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(3)(i) of this AD: Within 144 months since AWL No. 28–AWL–10 was added to the maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–10, whichever occurs later.

(4) For AWL No. 28–AWL–17, ''Over-Current and Arcing Protection Electrical Design Features Operation—Fault Current Detector (FCD) for Center Wing Tank (CWT) Pumps and Inboard Main Tank Override/Jettison (O/J) Pumps and Horizontal Stabilizer Tank (HST) Transfer Fuel Pumps'': At the applicable time specified in paragraph (g)(4)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–17 in their maintenance or inspection program before the effective date of this AD: Within 18 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(4)(i) of this AD: Within 18 months since AWL No. 28–AWL–17 was added to the maintenance or inspection program, or within 18 months after the most recent inspection was performed as specified in AWL No. 28–AWL–17, whichever occurs later.

(5) For AWL No. 28–AWL–24, ''Horizontal Stabilizer Tank (HST) Fuel Pump Automatic Shutoff Circuit (If Installed)'': At the applicable time specified in paragraph (g)(5)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–24 in their maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(5)(i) of this AD: Within 12 months since AWL No. 28–AWL–24 was added to the maintenance or inspection program, or within 12 months after the most

recent inspection was performed as specified in AWL No. 28–AWL–24, whichever occurs later.

(6) For AWL No. 28–AWL–26, ''Main Tank 2 and Main Tank 3 Override/Jettison Fuel Pump Uncommanded on System'': At the applicable time specified in paragraph (g)(6)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–26 in their maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(6)(i) of this AD: Within 12 months since AWL No. 28–AWL–26 was added to the maintenance or inspection program, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–26, whichever occurs later.

(7) For AWL No. 28–AWL–28, ''Over-Current and Arcing Protection Electrical Design Features Operation—Main Tank AC Fuel Pump Ground Fault Interrupter (GFI)'': At the applicable time specified in paragraph (g)(7)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–28 in their maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(7)(i) of this AD: Within 12 months since AWL No. 28–AWL–28 was added to the maintenance or inspection program, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–28, whichever occurs later.

(8) For AWL No. 28–AWL–29, ''Over-Current and Arcing Protection Electrical Design Features Operation—Center Tank Scavenge AC Fuel Pump Ground Fault Interrupter (GFI)'': At the applicable time specified in paragraph (g)(8)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–29 in their maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(8)(i) of this AD: Within 12 months since AWL No. 28–AWL–29 was added to the maintenance or inspection program, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–29, whichever occurs later.

(9) For AWL No. 28–AWL–33, ''Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks,'' at the applicable time specified in paragraph (g)(9)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–33 in their maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(9)(i) of this AD: Within 144 months since AWL No. 28–AWL–33 was added to the maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–33, whichever occurs later.

(10) For AWL No. 28–AWL–40, ''Reserve Tank Refuel Valve Installation—Lightning Protection Electrical Bond,'' at the applicable time specified in paragraph (g)(10)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–40 in their maintenance or inspection program before the effective date of this AD: Within 72 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(10)(i) of this AD: Within 72 months since AWL No. 28–AWL–40 was added to the maintenance or inspection program, or within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–40, whichever occurs later.

(11) For AWL No. 47–AWL–07, ''Nitrogen Generation System—Nitrogen Enriched Air (NEA) Distribution Ducting Inspection,'' at the applicable time specified in paragraph (g)(11)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 47–AWL–07 in their maintenance or inspection program before the effective date of this AD: Within 21,250 total flight hours since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 4 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(11)(i) of this AD: Within 21,250 total flight hours since AWL No. 47–AWL–07 was added to the maintenance or inspection program, or within 21,250 total flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–07, whichever occurs later.

(12) For AWL No. 47–AWL–08, ''Nitrogen Generation System [NGS]—Cross-Vent Check Valve Functional Check,'' at the applicable time specified in paragraph (g)(12)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 47–AWL–08 in their maintenance or inspection program before the effective date of this AD: Within 21,250 total flight hours since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 4 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(12)(i) of this AD: Within 21,250 total flight hours since AWL No. 47–AWL–08 was added to the maintenance or inspection program, or within 21,250 total flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–08, whichever occurs later.

(13) For AWL No. 47–AWL–10, ''NGS—Thermal Switch,'' at the applicable time specified in paragraph (g)(13)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 47–AWL–10 in their maintenance or inspection program before the effective date of this AD: Within 54,000 total flight hours since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 4 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(13)(i) of this AD: Within 54,000 total flight hours since AWL No. 47–AWL–10 was added to the maintenance or inspection program, or within 54,000 total flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–10, whichever occurs later.

(h) Additional Acceptable Wire Types and Sleeving

As an option, during accomplishment of the actions required by paragraph (g) of this AD, the alternative materials specified in paragraphs (h)(1) and (2) of this AD are acceptable.

(1) Where AWL No. 28–AWL–08 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types, as applicable, are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types.

(2) Where AWL No. 28–AWL–08 identifies TFE–2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM, as applicable.

(i) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(j) Terminating Actions

(1) Accomplishing the actions required by paragraph (g) of this AD terminates all requirements of AD 2008–10–06 R1.

(2) Accomplishing the actions required by paragraph (g) of this AD terminates paragraph

(g)(2) of AD 2008–18–09 for Model 747–400, –400D, and –400F airplanes only.

(3) Accomplishing the actions required by paragraph (g) of this AD terminates paragraph (h)(1) of AD 2010–13–12 for Model 747–400, –400D, and –400F airplanes only.

(4) Accomplishing the actions required by this AD terminates paragraph (j) of AD 2010–14–08.

(5) Accomplishing the actions required by paragraph (g) of this AD terminates paragraph (l) of AD 2011–06–03 for Model 747–400, –400D, and –400F airplanes only.

(6) Accomplishing the actions required by paragraph (g) of this AD terminates paragraph (h)(1) of AD 2014–15–14 for Model 747–400, –400D, and –400F airplanes only.

(7) Accomplishing the actions required by paragraph (g) of this AD terminates paragraph (h) of AD 2016–19–03 for Model 747–400, –400D, and –400F airplanes only.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *Samuel.J.Dorsey@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com*. You may view this referenced service information 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.

Issued on September 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–23901 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1403; Project Identifier MCAI–2022–00122–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. This proposed AD was prompted by reports of corrosion on the horizontal stabilizer lower center skin panel, including a finding of corrosion where the skin thickness had been substantially reduced, which affected design margins. This proposed AD would require inspecting the horizontal stabilizer lower center skin panel for corrosion, and reworking, repairing, or replacing the lower center skin panel if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 19, 2022.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1403; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporation by Reference:

- For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone 855–310–1013 or 647–277–5820; email *thd@dehavilland.com*; website *dehavilland.com.*
- You may view this service information 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.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1403; Project Identifier MCAI–2022–00122–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt

from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Yaser Osman, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2022–02, dated January 28, 2022 (TCCA AD CF–2022–02) (also referred to after this as the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited model DHC–8–401 and –402 airplanes. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1403.

This proposed AD was prompted by reports of corrosion on the horizontal stabilizer lower center skin panel, including a finding of corrosion where the skin thickness had been substantially reduced, which affected design margins. The root cause was found to be inconsistent chemical processing of the lower center skin panel, with missing anodizing layer and primer on some areas of the skin panel surface. The FAA is proposing this AD to address possible reduction of skin panel thickness due to the effects of corrosion, which could compromise the structural integrity of the horizontal stabilizer. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84–55–05, Revision C, dated August 19, 2021. This service information describes procedures for inspecting the horizontal stabilizer lower center skin panel for corrosion, and, depending on the level of corrosion, reworking or repairing the horizontal stabilizer lower center skin panel.

De Havilland Aircraft of Canada Limited has also issued Service Bulletin 84–55–11, dated February 16, 2021. This service information describes procedures for replacing the horizontal stabilizer lower center skin panel.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

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

Differences Between This NPRM and the MCAI or Service Information

TCCA AD CF–2022–02 specifies credit for repair, rework, or replacement of corroded horizontal stabilizer lower center skin panel using certain repair drawings. De Havilland Aircraft of Canada Limited has informed the FAA that four additional repair drawings are also acceptable for credit. Therefore, paragraph (h)(2) of this proposed AD would provide credit for those additional repair drawings.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 56 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
108 work-hours × $85 per hour = $9,180	$0	$9,180	$514,080

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
108 work-hours × $85 per hour = $9.180	$21,449	$30,629

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs or rework specified in this proposed AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–1403; Project Identifier MCAI–2022–00122–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 19, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes, certificated in any category, having serial numbers 4001 and 4003 through 4549 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of corrosion on the horizontal stabilizer lower center skin panel, including a finding of corrosion where the skin thickness had been substantially reduced, which affected design margins. The FAA is issuing this AD to address possible substantial reduction of skin panel thickness due to the effects of corrosion, which could compromise the structural integrity of the horizontal stabilizer.

(f) Compliance

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

(g) Inspection and Corrective Actions

(1) Within 8,000 flight hours or 48 months, whichever occurs first, after the effective date of this AD: Inspect the horizontal stabilizer lower center skin panel for corrosion in accordance with Section 3.B. Part A of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–55–05 Revision C, dated August 19, 2021. If any corrosion is found, before further flight, do the applicable actions specified in paragraph (g)(2) or (3) of this AD.

(2) If the corrosion is within the allowable repair limits as specified in Figure 5 Detail C of De Havilland Aircraft of Canada Service Bulletin 84–55–05 Revision C, dated August 19, 2021, perform the corrosion rework in accordance with Section 3.B. Part B of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–55–05 Revision C, dated August 19, 2021.

(3) If the corrosion is beyond the allowable repair limits as specified in Figure 5 Detail C of De Havilland Aircraft of Canada Service Bulletin 84–55–05 Revision C, dated August 19, 2021, accomplish the action specified in paragraph (g)(3)(i) or (ii) of this AD.

(i) Replace the existing horizontal stabilizer lower center skin panel in accordance with the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–55–11 Initial Issue, dated February 16, 2021.

(ii) Obtain and follow repair instructions using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(h) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (g)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using De Havilland Aircraft of Canada Limited Service Bulletin 84–55–05, Initial Issue, dated January 12, 2016; De Havilland Aircraft of Canada Limited Service Bulletin 84–55–05, Revision A, dated June 3, 2016; De Havilland Aircraft of Canada Limited Service Bulletin 84–55–05, Revision B, dated February 26, 2021.

(2) This paragraph provides credit for the actions required by paragraph (g)(2) or (3) of this AD, if those actions were performed before the effective date of this AD using any of the repair drawings (RDs) specified in figure 1 to paragraph (h) of this AD.

Figure 1 to paragraph (h)—*Repair Drawings*

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Figure 1 to paragraph (h) – *Repair Drawings*

RD Number	Issue	Date
8/4-55-1061	3	October 7, 2014
8/4-55-1064	2	October 27, 2014
8/4-55-1107	3	March 11, 2016
8/4-55-1110	2	March 11, 2016
8/4-55-1124	3	April 13, 2021
8/4-55-1138	1	June 3, 2015
8/4-55-1144	2	May 17, 2016
8/4-55-1166	2	June 29, 2016
8/4-55-1178	2	June 29, 2016
8/4-55-1200	2	June 29, 2016
8/4-55-1219	2	June 29, 2016
8/4-55-1363	1	October 28, 2016
8/4-55-1450	1	March 2, 2017
8/4-55-1484	1	April 11, 2017
8/4-55-1705	2	September 20, 2018
8/4-55-1837	1	October 4, 2019
8/4-55-1876	1	January 17, 2020
8/4-55-1967	1	November 15, 2020
8/4-55-1978	1	January 14, 2021
8/4-55-2009	1	June 10, 2021

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to TCCA AD CF–2022–02, dated January 28, 2022, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1403.

(2) For more information about this AD, contact Yaser Osman, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84–55–05, Revision C, dated August 19, 2021.

(ii) De Havilland Aircraft of Canada Limited Service Bulletin 84–55–11, dated February 16, 2021.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone 855–310–1013 or 647–277–5820; email *thd@dehavilland.com;* website *dehavilland.com.*

(4) You may view this service information 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 service information that is incorporated by reference at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on October 25, 2022.

Christina Underwood,

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

[FR Doc. 2022–23594 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1407; Project Identifier MCAI–2022–01043–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by reports of potential foreign object debris (FOD) contamination of the thermal relief valve (TRV). This proposed AD would require replacement of affected auxiliary power unit (APU) low pressure (LP) shut-off valves (SOVs), an inspection to detect fuel leaks of affected engine LP SOVs and APU isolation shut-off valves (ISOVs), and applicable corrective actions, and would prohibit installation of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 19, 2022.

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

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1407; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that will be 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 material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information 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.

FOR FURTHER INFORMATION CONTACT: Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1407; Project Identifier MCAI–2022–01043–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0157, dated August 4, 2022 (EASA AD 2022–0157) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that reports have been received from the manufacturer of the APU, the engine LP SOV, and the APU ISOV of potential FOD contamination of the TRV, which was generated by a quality escape during the manufacturing assembly process. Results of the technical investigation determined that FOD in the TRV may lead to a fuel leakage through the valve. This condition, if not detected and corrected, could, in case of an APU or engine fire, contribute to an uncontrolled fire, possibly resulting in loss of control of the airplane.

The MCAI requires replacement of affected APU LP SOVs, a special detailed inspection (SDI) of affected engine LP SOVs and APU ISOVs to detect fuel leaks through the valve and, depending on findings, replacement with a serviceable engine LP SOV or APU ISOV.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1407.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0157 specifies procedures for replacement of affected APU LP SOVs with serviceable parts, a special detailed inspection of affected engine LP SOVs and APU ISOVs for discrepancies (leaks), and replacement of discrepant engine LP SOVs and APU ISOVs with serviceable parts. EASA AD 2022–0157 also prohibits installation of an affected APU LP SOV, engine LP SOV, or APU ISOV. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0157 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0157 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0157 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same, as the heading of a particular section in EASA AD 2022–0157 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0157. Service information required by EASA AD 2022–0157 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1407 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 69 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 15 work-hours × $85 per hour = $585	$0	$585	$40,365

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 7 work-hours × $85 per hour = $595	Up to $18,000	$18,595

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS Airplanes: Docket No. FAA–2022–1407; Project Identifier MCAI–2022–01043–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 19, 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 28, Fuel System.

(e) Unsafe Condition

This AD was prompted by reports of potential foreign object debris (FOD) contamination of the thermal relief valve (TRV). The FAA is issuing this AD to address potential FOD contamination, which could lead to a fuel leak. The unsafe condition, if not addressed, could result in an auxiliary power unit (APU) or engine fire and contribute to an uncontrolled fire, possibly resulting in loss of 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 2022–0157, dated August 4, 2022 (EASA AD 2022–0157).

(h) Exceptions to EASA AD 2022–0157

(1) Where EASA AD 2022–0157 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (3) of EASA AD 2022–0157 specifies ''any discrepancy'' this AD defines discrepancy as leaks of the APU, the engine low pressure (LP) shut-off valve (SOV), and the APU isolation shut-off valve (ISOV).

(3) The ''Remarks'' section of EASA AD 2022–0157 does not apply to this AD.

(4) Where the service information referenced in EASA AD 2022–0157 specifies to scrap certain parts, send those parts to the manufacturer, or check spares, this AD does not include that requirement.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0157 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, 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 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, 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) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *Hassan.M.Ibrahim@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0157, dated August 4, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0157, 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 service information 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 service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on October 27, 2022.

Christina Underwood,

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

[FR Doc. 2022–23808 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1401; Project Identifier AD–2022–01017–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B model turbofan engines. This proposed AD was prompted by a manufacturer investigation that revealed that certain compressor discharge pressure seals (CDP seals) and forward outer seals were manufactured from powder metal material suspected to contain iron inclusion. This proposed AD would require the replacement of the affected CDP seals and forward outer seals. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 19, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

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

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1401; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1401; Project Identifier AD–2022–01017–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

The FAA was notified by the manufacturer of the detection of iron inclusion in a turbine disk manufactured from the same powder metal material used to manufacture certain CDP seals and forward outer seals for GE CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B model turbofan engines. Further investigation by the manufacturer determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The investigation by the manufacturer also determined that certain CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B CDP seals and forward outer seals made from billets manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and uncontained failure. As a result of its investigation, the manufacturer published service information that specifies procedures for the removal and replacement of certain CDP seals and forward outer seals installed on CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, and CF6–80E1A4/B model turbofan engines. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed GE CF6–80E1 Service Bulletin (SB) 72–0597 R00, dated August 5, 2022. This service information specifies procedures for removing the CDP seal and forward outer seal from service.

Proposed AD Requirements in This NPRM

This proposed AD would require the removal of certain CDP seals and forward outer seals from service and replacement with parts eligible for installation.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 0 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace CDP seal	8 work-hours × $85 per hour = $680.	$154,768 (prorated)	$155,448	$0
Replace forward outer seal	8 work-hours × $85 per hour = $680.	1,289,792 (prorated)	1,290,472	0

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2022–1401; Project Identifier AD–2022–01017–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 19, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company CF6–80E1A2, CF6–80E1A3, CF6–80E1A4, CF6–80E1A4/B model turbofan engines with an installed:

(1) Compressor discharge pressure seal (CDP seal) with part number (P/N) 1669M73P02 and serial number (S/N) TMT1C0E1 or TMT1C0E2; or

(2) Forward outer seal with P/N 1778M70P03 and S/N NCU65340.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain CDP seals and forward outer seals were manufactured from powder metal material suspected to contain iron inclusion. The FAA is issuing this AD to prevent fracture and uncontained failure of certain CDP seals and forward outer seals. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) At the next piece-part exposure after the effective date of this AD or before the affected CDP seal exceeds 6,400 cycles since new (CSN), whichever occurs first, remove the affected CDP seal from service and replace with a part eligible for installation.

(2) At the next piece-part exposure after the effective date of this AD or before the affected forward outer seal exceeds 5,400 CSN, whichever occurs first, remove the affected forward outer seal from service and replace with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is a CDP seal that does not have P/N 1669M73P02 and S/N TMT1C0E1 or S/N TMT1C0E2, and a forward outer seal that does not have P/N 1778M70P03 and S/N NCU65340.

(2) For the purpose of this AD, ''piece-part exposure'' is when the affected part is removed from the engine.

(i) Installation Prohibition

After the effective date of this AD, do not install a CDP seal with P/N 1669M73P02 and S/N TMT1C0E1 or S/N TMT1C0E2, or a forward outer seal with P/N 1778M70P03 and S/N NCU65340, onto any engine.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov*.

(l) Material Incorporated by Reference

None.

Issued on October 24, 2022.

Christina Underwood,

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

[FR Doc. 2022–23460 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1225; Airspace Docket No. 22–AGL–31]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Plymouth and Winamac, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Plymouth and Winamac, IN. The FAA is proposing this action due to an airspace review conducted as part of the decommissioning of the Knox very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The geographic coordinates of Plymouth Municipal Airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1225/Airspace Docket No. 22–AGL–31 at the beginning of your comments. You may also submit comments through the

internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1225/Airspace Docket No. 22–AGL–31.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at 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 the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (increased from a 6.3-mile) radius of Plymouth Municipal Airport, Plymouth, IN; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 7-mile) radius of Arens Field, Winamac, IN; and removing the city associated with the airport in the airspace legal description header to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters.

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

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AGL IN E5 Plymouth, IN [Amended]

Plymouth Municipal Airport, IN
(Lat. 41°21′54″ N, long. 86°18′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Plymouth Municipal Airport.

* * * * *

AGL IN E5 Winamac, IN [Amended]

Arens Field, IN
(Lat. 41°05′32″ N, long. 86°36′46″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Arens Field.

Issued in Fort Worth, Texas, on October 24, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23456 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1224; Airspace Docket No. 22–ACE–18]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Marshalltown, IA. The FAA is proposing this action as the result of an airspace review as part of the decommissioning of the Elmwood very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1224/Airspace Docket No. 22–ACE–18 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1224/Airspace Docket No. 22–ACE–18.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *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 the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (increased from a 6.4-mile) radius of Marshalltown Municipal Airport, Marshalltown, IA; and removing the Elmwood VOR/DME and associated extensions from the airspace legal description.

This action is necessary due to an airspace review as part of the decommissioning of the Elmwood VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ACE IA E5 Marshalltown, IA [Amended]

Marshalltown Municipal Airport, IA
(Lat. 42°06′46″ N, long. 92°55′04″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marshalltown Municipal Airport.

Issued in Fort Worth, Texas, on October 24, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23461 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1317; Airspace Docket No. 22–ACE–19]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Multiple Missouri Towns

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Hannibal, MO; Monroe City, MO; and Monticello, MO. The FAA is proposing this action as the result of airspace reviews conducted as part of the decommissioning of the Quincy very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name of CPT Ben Smith Airfield-Monroe City Airport, Monroe City, MO, would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1317/Airspace Docket No. 22–ACE–19 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence

Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Hannibal Regional Airport, Hannibal, MO; CPT Ben Smith Airfield-Monroe City Airport, Monroe City, MO; and Lewis County Regional Airport, Monticello, MO, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1317/Airspace Docket No. 22–ACE–19.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *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 the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 6.5-mile) radius of Hannibal Regional Airport, Hannibal, MO;

Amending the Class E airspace extending upward from 700 feet above the surface at CPT Ben Smith Airfield-Monroe City Airport, Monroe City, MO, by removing the Quincy VORTAC and associated extension from the airspace legal description; and updating the name of the airport (previously Monroe City Regional Airport) to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface at Lewis County Regional Airport, Monticello, MO, by removing the Quincy VORTAC from the airspace legal description.

This action is due to airspace reviews conducted as part of the decommissioning of the QUINCY VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ACE MO E5 Hannibal, MO [Amended]

Hannibal Regional Airport, MO
(Lat. 39°43′31″ N, long. 91°26′38″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hannibal Regional Airport.

* * * * *

ACE MO E5 Monroe City, MO [Amended]

CPT Ben Smith Airfield-Monroe City Airport, MO
(Lat. 39°38′04″ N, long. 91°43′37″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of CPT Ben Smith Airfield-Monroe City Airport.

ACE MO E5 Monticello, MO [Amended]

Lewis County Regional Airport, MO
(Lat. 40°07′45″ N, long. 91°40′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Lewis County Regional Airport.

Issued in Fort Worth, Texas, on October 25, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23531 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1318; Airspace Docket No. 22–AGL–33]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Mount Sterling and Pittsfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Mount Sterling and Pittsfield, IL. The FAA is proposing this action due to airspace reviews conducted as part of the decommissioning of the Quincy very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The geographic coordinates of Pittsfield Penstone Municipal Airport, Pittsfield, IL, would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1318/Airspace Docket No. 22–AGL–33 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1318/Airspace Docket No. 22–AGL–33.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *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 the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal

Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface to within a 7.3-mile (increased from a 6.6-mile) radius of Mount Sterling Municipal Airport, Mount Sterling, IL;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 7-mile) radius of Pittsfield Penstone Municipal Airport, Pittsfield, IL; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

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

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AGL IL E5 Mount Sterling, IL [Amended]

Mount Sterling Municipal Airport, IL
(Lat. 39°59′07″ N, long. 90°48′15″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Mount Sterling Municipal Airport.

* * * * *

AGL IL E5 Pittsfield, IL [Amended]

Pittsfield Penstone Municipal Airport, IL
(Lat. 39°38′20″ N, long. 90°46′43″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Pittsfield Penstone Airport.

Issued in Fort Worth, Texas, on October 25, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23532 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0858; Airspace Docket No. 19–AAL–53]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–384; Eagle, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing the NPRM published in the **Federal Register** on October 25, 2021, proposing to establish RNAV route T–384 in the vicinity of Eagle, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Subsequent to the NPRM, the FAA determined during a flight check inspection that reliable and continuous two-way VHF communications are not possible on the proposed route and withdrawal of the NPRM is warranted.

DATES: As of November 4, 2022, the proposed rule published October 25, 2021 (86 FR 58822), is withdrawn.

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:

History

The FAA published a NPRM in the **Federal Register** for Docket No. FAA–2021–0858 (86 FR 58822; October 25, 2021). The NPRM proposed to establish RNAV route T–384 in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed T-route would transition the Alaskan enroute navigation structure from dependency on Non-Directional Beacons (NDBs), move to develop and improve the RNAV route structure, and offer routing in an

area where published routes do not exist. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

However, when the FAA conducted the associated flight inspection activities necessary to establish the proposed T–384, the flight inspection revealed that reliable and continuous two-way VHF communications are not possible on the route

FAA Conclusions

The FAA has reviewed the project to establish T–384 and determined that additional communications facilities are necessary to ensure reliable and continuous two-way VHF communications on the route; therefore, the NPRM proposing to establish T–384 is withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

■ Accordingly, pursuant to the authority delegated to me, the NPRM published in the **Federal Register** on October 25, 2021 (86 FR 58822), FR Doc. 2021–22985, is hereby withdrawn.

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.

Issued in Washington, DC, on October 26, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–23615 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1316; Airspace Docket No. 22–AGL–32]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Multiple North Dakota Towns

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Carrington, ND; Cooperstown, ND; Harvey, ND; Rolla, ND; and Walhalla, ND. The FAA is proposing this action due to airspace reviews conducted as part of the decommissioning of the Devils Lake very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name of Rolla Municipal Airport/Leonard Krech Field, Rolla, ND, would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–1316/Airspace Docket No. 22–AGL–32 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Carrington Municipal Airport, Carrington, ND; Cooperstown Municipal Airport, Cooperstown, ND; Harvey Municipal Airport, Harvey, ND; Rolla Municipal Airport/Leonard Krech Field, Rolla, ND; and Walhalla Municipal Airport, Walhalla, ND, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1316/Airspace Docket No. 22–AGL–32.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at 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 the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101

Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface at Carrington Municipal Airport, Carrington, ND, by removing the Devils Lake VOR/DME and the airspace extending upward from 1,200 feet above the surface from the airspace legal description as it is redundant with the airspace extending upward from 1,200 feet above the surface over the State of North Dakota;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.3-mile (decreased from a 6.4-mile) radius of Cooperstown Municipal Airport, Cooperstown, ND; and removing the Devils Lake VOR/DME, Hector International Airport, Grand Forks AFB, Jamestown VOR/DME, Barnes City Municipal Airport, and the airspace extending upward from 1,200 feet above the surface from the airspace legal description as it is redundant with the airspace extending upward from 1,200 feet above the surface over the State of North Dakota;

Amending the Class E airspace extending upward from 700 feet above the surface at Harvey Municipal Airport, Harvey, ND, by removing Minot AFB, Bismarck VOR/DME, Devils Lake VOR/DME, and the airspace extending upward from 1,200 feet above the surface from the airspace legal description as it is redundant with the airspace extending upward from 1,200 feet above the surface over the State of North Dakota;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 7.3-mile) radius of Rolla Municipal Airport/Leonard Krech Field, Rolla, ND; removing the exclusion north of lat. 49°00′00″ N as it is no longer required; removing the Devils Lake VOR/DME and the airspace extending upward from 1,200 feet above the surface from the airspace legal description as it is redundant with the airspace extending upward from 1,200 feet above the surface over the State of North Dakota; and updating the name of the airport (previously Rolla Municipal Airport) to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface at Walhalla Municipal Airport, Walhalla, ND, by removing the Devils Lake VOR/DME and the airspace extending upward from 1,200 feet above the surface from the airspace legal description as it is redundant with the airspace extending upward from 1,200 feet above the surface over the State of North Dakota.

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

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AGL ND E5 Carrington, ND [Amended]

Carrington Municipal Airport, ND
(Lat. 47°27′04″ N, long. 99°09′05″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Carrington Municipal Airport.

* * * * *

AGL ND E5 Cooperstown, ND [Amended]

Cooperstown Municipal Airport, ND
(Lat. 47°25′22″ N, long. 98°06′21″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Cooperstown Municipal Airport.

* * * * *

AGL ND E5 Harvey, ND [Amended]

Harvey Municipal Airport, ND
(Lat. 47°47′28″ N, long 99°55′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Harvey Municipal Airport.

* * * * *

AGL ND E5 Rolla, ND [Amended]

Rolla Municipal Airport/Leonard Krech Field, ND
(Lat. 48°53′04″ N, long. 99°37′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile

radius of Rolla Municipal Airport/Leonard Krech Field.

* * * * *

AGL ND E5 Walhalla, ND [Amended]

Walhalla Municipal Airport, ND
(Lat. 48°56′26″ N, long. 97°54′10″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Walhalla Municipal Airport, excluding that airspace north of lat. 49°00′00″ N.

Issued in Fort Worth, Texas, on October 25, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23533 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1161; Airspace Docket No. 22–ASO–18]

RIN 2120–AA66

Proposed Amendment of Class D and Class E Airspace; Greenville, Spartanburg, and Greer, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface in the Greenville, Spartanburg, and Greer, SC areas due to the decommissioning of the Fairmont non-directional beacon (NDB) and cancellation of associated approaches into Spartanburg Downtown Memorial Airport/Simpson Field, as well as updating the airport's name and geographic coordinates. Additionally, Greenville Spartanburg International Airport, Greenville Downtown Airport, and Donaldson Field Airport each require the name and geographic coordinate updates, as well as airspace updates. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before December 19, 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 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify Docket No. FAA–2022–1161; Airspace Docket No. 22–ASO–18 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on 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 (Docket No. FAA–2021–1161 and Airspace Docket No. 22–ASO–18) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Persons 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–2021–1161; Airspace Docket No. 22–ASO–18.'' The postcard will be dated/time-stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket 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 *https://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 the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350,1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface in the Greenville, Spartanburg, and Greer, SC area due to the decommissioning of the Fairmont NDB and cancellation of associated approaches into Spartanburg Downtown Memorial Airport/Simpson Field (formerly Spartanburg Downtown Memorial Airport. The Class D airspace for Greenville Spartanburg International Airport would be increased to 4.5 miles (previously 4.4 miles), and the geographic coordinates would be updated to coincide with the FAA's database. Also, the southwest extension of the Class E surface airspace for Spartanburg Downtown Memorial Airport/Simpson Field would be removed due to the cancellation of the NDB approaches. This action would also update the airport's name and geographic coordinates to coincide with the FAA's database and remove the city name from the airspace header per order FAA 7400.2. Also, this action would update the airport names of the following airports: Greenville Spartanburg International Airport (formerly Greenville-Spartanburg Airport) and Donaldson Field Airport (formerly Donaldson Center Airport), as well as updating the geographic coordinates of both airports. In addition, this action would replace the outdated terms Airport/Facility Directory with the term Chart Supplement and Notice to Airmen with the term Notice to Air Missions in the airspace descriptions.

Class E airspace designations are published in Paragraphs 5000, 6002, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this 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 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.

Lists 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 Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Greenville, SC [Amended]

Greenville Downtown Airport, SC
(Lat. 34°50′53″ N, long. 82°21′00″ W)
Greenville-Spartanburg International Airport
(Lat. 34°53′44″ N, long. 82°13′08″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.5-mile radius of Greenville Downtown Airport, excluding that airspace within the Greenville-Spartanburg International Airport, Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Air Missions. The effective days and times will thereafter be continuously published in the Chart Supplement.

ASO SC D Greenville Donaldson Field Airport, SC [Amended]

Greenville, Donaldson Field Airport, SC
(Lat. 34°45′30″ N, long. 82°22′35″ W)
Greenville Downtown Airport
(Lat. 34°50′53″ N, long. 82°21′00″ W)
Greenville-Spartanburg International Airport
(Lat. 34°53′44″ N, long. 82°13′08″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of Donaldson Field Airport, excluding that airspace within the Greenville Downtown Airport Class D airspace area and excluding that airspace within the Greenville-Spartanburg International Airport Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO SC E2 Greer, Greenville-Spartanburg International Airport, SC [Amended]

Greenville-Spartanburg International Airport, SC
(Lat. 34°53′44″ N, long. 82°13′08″ W)

That airspace extending upwards from the surface within a 5-mile radius of the Greenville-Spartanburg International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

ASO SC E2 Spartanburg, SC [Amended]

Spartanburg Downtown Memorial Airport/ Simpson Field, SC
(Lat. 34°54′59″ N, long. 81°57′21″ W)
Spartanburg VORTAC
(Lat. 35°02′01″ N, long. 81°55′37″ W)

That airspace extending upwards from the surface within a 4.3-mile radius of Spartanburg Downtown Memorial Airport/ Simpson Field and within 1.8 miles each side of Spartanburg VORTAC 192° radial, extending from the 4.3-mile radius to the VORTAC, excluding the portion within the Greer Greenville-Spartanburg Airport, SC, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO SC E5 Greenville, SC [Amended]

Greenville Downtown Airport, SC
(Lat.34°50′53″ N, long. 82°21′00″ W)
Greenville-Spartanburg International Airport
(Lat. 34°53′44″ N, long. 82°13′08″ W)
Donaldson Field Airport
(Lat. 34°45′30″ N, long. 82°22′35″ W)
DYANA NDB
(Lat. 34°41′28″ N, long. 82°26′37″ W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Greenville Downtown Airport, and within a 10-mile radius of Greenville-Spartanburg International Airport, and within a 6.7-mile radius of Donaldson Field Airport and within 4 miles northwest and 8 miles southeast of the 224° bearing from the DYANA NDB extending from the 6.7-mile radius to 16 miles southwest of Donaldson Field Airport.

ASO SC E5 Spartanburg, SC

Spartanburg Downtown Memorial Airport/ Simpson Field, SC
(Lat. 34°54′59″ N, long. 81°57′21″ W)
Spartanburg VORTAC
(Lat. 35°02′01″ N, long. 81°55′37″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Spartanburg Downtown Memorial Airport/ Simpson Field and within 3.1 miles on each side of Spartanburg VORTAC 012° radial, extending from the 7-mile radius to 7 miles north of the VORTAC and within 2 miles each side of Spartanburg localizer southwest course, extending from the 7-mile radius to 15.1 miles south of the VORTAC.

Issued in College Park, Georgia, on October 28, 2022.

Andreese C. Davis,

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

[FR Doc. 2022–23877 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[Docket No. FRA–2021–0032, Notice No. 4]

RIN 2130–AC88

Train Crew Size Safety Requirements; Correction

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed rulemaking; correction to announcement of public hearing and extension of comment period.

SUMMARY: The Federal Railroad Administration published a document in the **Federal Register** of October 27, 2022, announcing a public hearing and extending the comment period for a notice of proposed rulemaking proposing minimum safety requirements for the size of train crews. The document contained a mis-formatted web address to a public website where further information regarding the announced public hearing could be obtained.

DATES: November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Kevin Lewis, Operating Crew Certification Specialist, Federal Railroad Administration, telephone: 918–557–0651, email: *kevin.lewis@dot.gov;* or Alan Nagler, Senior Attorney, Federal Railroad Administration, telephone: 202–493–6038, email: *alan.nagler@dot.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 27, 2022, in FR Doc. 2022–23418 on page 65021, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: *Public Hearing:* The public hearing will allow for participation in-person or virtually. For those participants that prefer to appear in person, the public hearing will be held at the National Association of Home Builders, located at 1201 15th Street NW, Washington, DC 20005. For those participants wishing to make a statement at the public hearing, either in-person or virtually, please contact FRA as described under the Public Participation Procedures heading in the **SUPPLEMENTARY INFORMATION** section of this document. Any person who wants to participate or observe the public hearing virtually can visit *https://railroads.dot.gov/train-crew-staffing-nprm* for the web address and hyperlink.

Comments: Comments related to Docket No. FRA–2021–0032 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket number (FRA–2021–0032), and Regulatory Identification Number (RIN) for this rulemaking (2130–AC88). All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials. Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–24117 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 87, No. 213
Friday, November 4, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2022–0013]

Urban Agriculture and Innovative Production Advisory Committee Meeting

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a public meeting of the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). UAIPAC will convene to discuss interim recommendations for the Secretary of Agriculture on the development of policies and outreach relating to urban, indoor, and other emerging agriculture production practices. UAIPAC is authorized under the Agriculture Improvement Act of 2018 (2018 Farm Bill) and operates in compliance with the Federal Advisory Committee Act, as amended.

DATES:

Meeting: UAIPAC will meet on Tuesday, November 29, 2022, from 3 p.m. to 5 p.m. Eastern Time (ET).

Comments: Written comments will be accepted in advance until 11:59 p.m. ET on Tuesday, November 22, 2022. Thereafter, written comments can be submitted for consideraton during a future public meeting until 11:59 p.m. EST on December 13, 2022. General comments to UAIPAC are also accepted at any time via email: *UrbanAgriculture FederalAdvisoryCommittee@usda.gov.*

ADDRESSES:

Meeting Locations: The meeting will be hybrid; committee members will meet in person at USDA, 1400 Independence Avenue SW, Washington, DC; members of the public may participate virtually via Zoom meeting link.

Pre-Registration: Pre-registration is required to attend the UAIPAC meeting and access informaton to the meeting link will be provided to registered individuals via email. Registration details can be found at: *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

Comments: The public may submit comments through the: *Federal eRulemaking Portal:* go to *https://www.regulations.gov* docket ID NRCS–2022–0013 and follow the instructions for submitting comments.

Comments received will be posted without change and will be available for viewing online at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Guse; Designated Federal Officer; telephone: (202) 205–9723; email: *UrbanAgricultureFederal AdvisoryCommittee@usda.gov*.

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

UAIPAC Purpose

The Federal Advisory Committee for Urban Agriculture and Innovative Production is one of several ways that USDA is extending support and building frameworks to support urban agriculture, including issues of equity and food and nutrition access. Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115–334) directed the Secretary to establish an ''Urban Agriculture and Innovative Production Advisory Committee'' to advise the Secretary of Agriculture on any aspect of section 222, including the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for USDA Secretary. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services.

Meeting Registration and Meeting Locations

The meeting will be hybrid; committee members will meet in person at USDA, 1400 Independence Avenue SW, Washington, DC; members of the public may participate virtually via Zoom meeting link.

Pre-Registration: Pre-registration is required to attend the UAIPAC meeting and access informaton to the meeting link will be provided to registered individuals via email. Registration details can be found at: *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

Meeting Agenda

The agenda items may include, but are not limited to, welcome and introductions; administrative matters; updates; presentations from the UAIPAC or USDA staff; and deliberations for proposed recommendations and plans. The USDA UAIPAC website (*https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag*) will be updated with the agenda 24 to 48 hours prior to the meeting.

Written Comments

Comments should address specific topics pertaining to urban agriculture, innovative production, and USDA programs and services. Written comments will be accepted in advance until 11:59 p.m. ET on Tuesday, November 22, 2022. Thereafter, written comments can be submitted for consideraton during a future public meeting until 11:59 p.m. EST on December 13, 2022. General comments to UAIPAC are also accepted at any time via email: *UrbanAgriculture FederalAdvisoryCommittee@usda.gov.*

Meeting Materials

All written public comments received by December 13, 2022, will be compiled for UAIPAC review and will be included in the meeting minutes. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag* to view the agenda and minutes from the meeting.

Meeting Accomodations

If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation, to the person listed under the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodation will be made on a case-by-case basis.

USDA Non-Discrimination Policy

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

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the FACA Committee: UAIPAC. To ensure that the recommendations of UAIPAC have taken in account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent minorities, women and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

Dated: October 31, 2022.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2022–24020 Filed 11–3–22; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2022–0008]

Determination of the Primary Purpose of Florida's Save Our Indian River Lagoon (SOIRL) Program

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: USDA is providing public notice that the Secretary of Agriculture has determined that cost share payments made by the Florida's SOIRL Program are primarily for the purpose of conserving soil and water resources or protecting and restoring the environment. NRCS was assigned technical and administrative responsibility for reviewing Florida's SOIRL Program and for making appropriate recommendations for the Secretary's determination of primary purpose. The Secretary's determination permits recipients of cost share payments to exclude such payments from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Ronnie Mauer; telephone: (202) 720–9733; or email: *Ronnie.Mauer@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under Section 126(a)(8) of the Internal Revenue Code, gross income does not include the ''excludable portion'' of payments received under any program of a State, or a political subdivision of a State, under which payments are made to individuals primarily for the purpose of protecting or restoring the environment. In general, a cost share payment for selected conservation practices is exempt from Federal taxation if it meets three tests:

(1) It was for a capital expense;

(2) It does not substantially increase the operator's annual income from the property for which it is made; and

(3) The Secretary of Agriculture certified that the payment was made primarily for conserving soil and water resources, protecting, or restoring the environment, improving forests, or providing habitat for wildlife.

The Secretary of Agriculture evaluates a conservation program on the basis of criteria specified in 7 CFR part 14 and makes a ''primary purpose'' determination for the payments made under the conservation program. The objective of the determination made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs. Final determinations are made on the basis of program, category of practices, or individual practices.

NRCS was assigned technical and administrative responsibility for reviewing Florida's SOIRL Program and for making appropriate recommendations for the Secretary's determination of primary purpose.

Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury determines if the payments made under the conservation program substantially increases the annual income derived from the property benefited by the payments.

Environmental Review

From this Federal action, approving tax deferral will not result in impacts to the environment, therefore, no further National Environmental Policy Act (NEPA) documentation will be prepared.

Determination

As provided for by section 126 of the Internal Revenue Code, the Secretary examined the authorizing legislation, regulations, and operating procedures regarding the Brevard County, Florida SOIRL Program. In accordance with the criteria specified in 7 CFR part 14, the Secretary has determined the primary purpose of cost share payments made under the Florida SOIRL Program is conserving soil and water resources or protecting and restoring the environment. The Indian River Lagoon is considered a public recreational facility pursuant to the Florida statues, sections 163.3164(38), 163.3221(13), and 189.012(5).

In accordance with section 212.055(2), Florida statutes, pertaining to discretionary sales surtaxes for improvements to public facilities, the SOIRL Program Project Plan and the half cent sales surtax was adopted by the Brevard County Board of County Commissioners in Ordinance 2016–15, as amended by Ordinance 2016–24, and enacted by voter referendum on November 8, 2016, to restore water resources and estuarine wildlife habitats of the Indian River Lagoon. The sales surtax is collected and distributed pursuant to section 212.055, interlocal agreements with municipalities, and applicable State laws. All projects authorized by the SOIRL Program Project Plan are permitted, constructed, and implemented in accordance with State and Federal requirements, where applicable.

A ''Record of Decision'' for the Brevard County, Florida SOIRL Program to review claims regarding reimbursement to abandon septic and connect to sewer lines, upgrade existing septic systems to advanced septic systems, repair leaking sewer laterals, connect package plants to central sewer or upgrade the treatment level at private package plants has been prepared and is available upon request from the Acting Director, Financial Assistance Programs Division, Natural Resources Conservation, 1400 Independence Avenue SW, Room 4529 South Building, Washington, DC 20250.

The Secretary's determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), and permits recipients of cost share payments to exclude those payments from gross income to the extent allowed by the Internal Revenue Service.

Louis Aspey,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 2022–24017 Filed 11–3–22; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Commonwealth of the Northern Mariana Islands 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 Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series of virtual business meetings via Zoom at 8:30 a.m. ChST on the second Friday of the month (5:30 p.m. ET on the second Thursday of the month) to discuss civil rights concerns in the territory.

DATES: The meetings will take place on:

- Friday, January 13, 2023, from 8:30 a.m.–10:00am ChST (Thursday, January 12, 2023, from 5:30 p.m.–7:00 p.m. ET)
- Friday, February 10, 2023, from 8:30 a.m.–10:00am ChST (Thursday, February 9, 2023, from 5:30 p.m.–7:00 p.m. ET)
- Friday, March 10, 2023, from 8:30 a.m.–10:00am ChST (Thursday, March 9, 2023, from 5:30 p.m.–7:00 p.m. ET)
- Friday, April 14, 2023, from 8:30 a.m.–10:00am ChST (Thursday, April 13, 2023, from 5:30 p.m.–7:00 p.m. ET)
- Friday, May 12, 2023, from 8:30 a.m.–10:00am ChST (Thursday, May 11, 2023, from 5:30 p.m.–7:00 p.m. ET)
- Friday, June 9, 2023, from 8:30 a.m.–10:00am ChST (Thursday, June 8, 2023, from 5:30 p.m.–7:00 p.m. ET)

Registration Link (Audio/Visual): https://tinyurl.com/5n7tzcy5.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Access Code: 160 707 9890

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the Zoom 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 *kfajota@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 in the regional office 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 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, Commonwealth of the Northern Mariana Islands 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. Approval of Prior Meeting Minutes
III. Discussion: Civil Rights Concerns
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: November 1, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24056 Filed 11–3–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Commonwealth of the Northern Mariana Islands 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 Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 3:00 p.m. ChST on Tuesday, December 6, 2022, (12:00 a.m. ET on Tuesday, December 6, 2022) to discuss civil rights concerns in the territory.

DATES: The meeting will take place on Tuesday, December 6, 2022, from 3:00 p.m.–4:30 p.m. ChST (Tuesday, December 6, 2022, from 12:00 a.m.–1:30 a.m. ET).

Registration Link (Audio/Visual): https://tinyurl.com/fy6tunah.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Access Code: 161 978 1672.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the Zoom 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 *kfajota@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 in the regional office 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 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, Commonwealth of the Northern Mariana Islands 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. Approval of October 14, 2022, Meeting Minutes
III. Discussion: Potential Topics for Investigation
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: November 1, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24055 Filed 11–3–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of web briefing.

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 New York Advisory Committee (Committee) will hold a public meeting via Zoom on Friday, November 18, 2022, at 1 p.m. ET to conduct Committee business and hear testimony regarding the child welfare system in New York.

DATES: The meeting will take place on Friday, November 18, 2022, from 1 p.m.–3 p.m. ET.

Registration Link: https://tinyurl.com/y7csh24.

Telephone (Audio Only): Dial 1–833–568–8864 USA Toll Free; Meeting ID: 160 234 3571.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

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 Sarah Villanueva *svillanueva@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 *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 202–809–9618.

Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York 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 Remarks and Committee Business
II. Panelist Presentations and Committee Q&A
III. Public Comment
IV. Closing Remarks
V. Adjournment

Dated: November 1, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24054 Filed 11–3–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida 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 Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 2 p.m. ET on Friday, November 4, 2022. The purpose of the meeting is to debrief the web briefing on September 14, 2022.

DATES: The meeting will take place on Friday, November 4, 2022, from 2 p.m.–3 p.m. ET.

ADDRESSES:

Link to Join (Audio/Visual): https://tinyurl.com/3b8yse2t.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 184 1711.

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 (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 seven (7) business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

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, Florida 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. Discussion: Panel Debrief

III. Public Comment

IV. Next Steps

V. Adjournment

Dated: November 1, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24051 Filed 11–3–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number 221014–0215]

RIN 0607–XC065

Annual Integrated Economic Survey

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of consideration and request for comments.

SUMMARY: Notice is hereby given that the Bureau of the Census (Census Bureau) is considering a proposal to conduct the Annual Integrated Economic Survey (AIES). The AIES is a new survey designed to integrate and replace seven existing annual business surveys into one survey and will provide the only comprehensive national and subnational data on business revenues, expenses, and assets on an annual basis. The AIES is designed to combine Census Bureau collections to reduce respondent burden, increase data quality, and allow the Census Bureau to operate more efficiently to reduce costs. These data are not publicly available from nongovernment or other governmental sources. Based on information and recommendations received by the Census Bureau, the data have significant application to the needs of other government agencies and the public.

DATES: Written comments on this notice must be submitted on or before December 5, 2022.

ADDRESSES: Written comments may be addressed to Blynda Metcalf, U.S. Census Bureau, Associate Directorate for Economic Programs (ADEP), Washington, DC 20233–6600, (301) 763–4781, *Blynda.K.Metcalf@census.gov.* You may also submit comments, identified by Docket Number USBC–2022–0015 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 copies of the information collection instrument(s) and instructions should be directed to Blynda Metcalf, U.S. Census Bureau, ADEP, Washington, DC 20233–6600, (301) 763–4781, *Blynda.K.Metcalf@census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau plans to conduct the AIES on an annual basis, beginning in survey year 2023. The Census Bureau will conduct the AIES under the authority of Title 13, United States Code, sections, 131 and 182. The AIES is a new survey designed to integrate and replace seven existing annual business surveys into one survey. The AIES will provide the only comprehensive national and subnational data on business revenues, expenses, and assets on an annual basis. The AIES is designed to combine Census Bureau collections to reduce respondent burden, increase data quality, and allow the Census Bureau to operate more efficiently to reduce costs. The existing collections integrated into the AIES are the Annual Retail Trade Survey (ARTS), Annual Wholesale Trade Survey (AWTS), Service Annual Survey (SAS), Annual Survey of Manufactures (ASM), Annual Capital Expenditures Survey (ACES), Manufacturer's Unfilled Orders Survey (M3UFO), and the Report of Organization. The ARTS has been conducted annually since 1951 to collect sales, expenses, and other items for the retail sector of the economy. The AWTS has been conducted annually since 1978 to collect data on sales, inventories, operational expenses, and purchases for wholesale trade. The SAS has been conducted annually since 1982 to collect revenues and other measures for most traditional service industries. The ASM has been conducted annually since 1948 to collect revenues, expenses, capital expenditures, fuels and electric energy used, and inventories in the manufacturing sector. The ACES has been conducted annually since 1996 to collect capital spending for new and used structures and equipment in agriculture, construction, mining, manufacturing, retail, wholesale, and service sectors. The M3UFO began collecting manufacturing revenue and unfilled orders data in 2010. The Report of Organization has been collecting information on organization and structure of firms to maintain the Business Register on an annual basis since 1973.

Estimates currently published in ARTS, AWTS, SAS, ASM, and ACES will be produced as part of the AIES and expanded to include subnational data across the economy. Previously, the

ASM (manufacturing) was the only annual survey being integrated into AIES that produced subnational data. AIES will produce subnational data for manufacturing, retail, wholesale, and service sectors if quality standards are met. The AIES information previously collected on the Report of Organization will continue to be used to update the Business Register, and the AIES data previously collected on the M3UFO will continue to be used for the M3 benchmarking purposes. Data users will be able to access the AIES estimates through *data.census.gov.* Private businesses, organizations, industry analysts, educators and students, and economic researchers have used the data and estimates provided by these seven existing collections for analyzing and conducting impact evaluations on past and current economic performance, short-term economic forecasts, productivity, long-term economic growth, market analysis, tax policy, capacity utilization, business fixed capital stocks and capital formation, domestic and international competitiveness trade policy, product development, market research, and financial analysis. Trade and professional organizations have used the estimates to analyze industry trends and benchmark their own statistical programs, develop forecasts, and evaluate regulatory requirements. Government program officials and agencies have used the data for research, economic policy making, and forecasting. Based on the use of the data of the existing collections, estimates produced from the AIES will serve as a benchmark for Census Bureau indicator programs, such as the Advance Monthly Sales for Retail and Food Services (MARTS), the Monthly Retail Trade Survey (MRTS), Manufacturers' Shipments Inventories & Orders (M3), Monthly Wholesale Trade Survey (MWTS), and the Quarterly Services Survey (QSS). Like the previous collections, the AIES will provide updates to the Longitudinal Research Database (LRD), and Census Bureau staff and academic researchers with sworn agent status will continue to use the LRD for micro data analysis. The Census Bureau will also continue to use information collected in the AIES to update and maintain the centralized, multipurpose Business Register that provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses. The Bureau of Economic Analysis (BEA) will continue to use the estimates to derive industry output for the input-output accounts and for the gross domestic product (GDP). We expect that the Bureau of Labor Statistics (BLS) will continue to use the data as input to its Producer Price Index (PPI) and in developing productivity measurements; the Federal Reserve Board (FRB) will continue to use the data to prepare the Index of Industrial Production, to improve estimates of investment indicators for monetary policy, and in monitoring retail credit lending; the Centers for Medicare and Medicaid Services (CMS) will continue to use the data to estimate expenditures for the National Health Accounts and for monitoring and evaluating healthcare industries; and the Department of the Treasury will continue use the data to analyze depreciation and to research economic trends.

The AIES covers domestic, nonfarm employer businesses with operations during the survey year. Nonemployer businesses are not within the scope of this new AIES. The Census Bureau will submit a separate request for approval to collect data from nonemployer businesses, if it is determined that a collection is needed to produce those estimates.

All proposed content for the AIES is currently being collected on the surveys it will replace. The AIES will collect the following information from employer businesses in the AIES sample:

—Business characteristics, including employment, operating status, organizational change, ownership information, and co-op status
—Business classification, including business activity, type of operation, and tax status
—Revenue, including sales, shipments, and receipts, revenue by class of customer, taxes, contributions, gifts, and grants, products, and e-commerce activity
—Operating expenses, including purchased services, payroll, benefits, rental payments, utilities, interest, resales, equipment, materials and supplies, research and development, and other detailed operating expenses
—Assets, including capital expenditures, inventories, and depreciable assets
—Robotic equipment

Additional topics of collections in the AIES include sources of revenue for providers (*e.g.,* hospitals and other businesses in the health industry) of select services such as inpatient days, outpatient visits to hospitals, patient visits for other selected health industries, revenue from telemedicine services, and expenses for electronic health records. Product data will be collected from businesses operating in manufacturing and services industries. Merchandise lines data will be collected from businesses operating in select retail industries will collect merchandise lines data. Detailed inventories will be collected for trucks, truck tractors, and trailers.

Starting with the 2024 survey, the AIES may include new questions each year based on relevant business topics. Potential topics for such new questions could include technological advances, management and business practices, exporting practices, and globalization.

In survey years 2019 and 2020, research was conducted on the potential impacts of a coordinated collection of SAS, ARTS, and AWTS. This coordinated collection research was designed to investigate the impact of implementing the existing contact strategy that encompassed multiple survey requests. Following the 2019 and 2020 coordinated collection research effort, approximately 19 interviews were conducted with nonrespondents, and 35 interviews were conducted with respondents. In 2021, AIES data accessibility and recordkeeping studies were conducted with about 60 companies. In survey year 2021, a pilot AIES survey was administered to 78 companies, including 2,863 establishments, to test the respondent experience; the 2021 pilot AIES survey focused on the layout and design of the collection instrument and harmonized content. From the pilot survey, 10 interviews were conducted with respondents, and 15 Response Analysis Surveys (RAS) were completed by respondents. Cognitive testing encompassing survey structure, instrument design, and respondent reporting process was conducted with about 40 companies in 2022. Usability testing on the electronic collection instrument will be conducted with up to 30 companies at the end of 2022 and will continue into 2023.

The 2023 AIES sample will be comprised of approximately 380,000 employer businesses to produce statistics that measure economic activity. Businesses which reported business activity on Internal Revenue Service tax forms 941, ''Employer's Quarterly Federal Tax Return''; 944, ''Employer's Annual Federal Tax Return''; 1065 ''U.S. Return of Partnership Income''; or any one of the 1120 corporate tax forms will be eligible for selection.

The AIES will be collected using only electronic instruments. Respondents will receive an email and/or letter notifying them of their requirement to respond and how to access the survey.

Responses will be due approximately 30 days from receipt. Select businesses will receive a due date reminder via a letter or email prior to the due date. Additionally, email follow-ups and up to three mail follow-ups to nonrespondents will be conducted at approximately one-month intervals. Selected nonrespondents will receive a priority class mailing for the third follow-up if needed. Selected nonrespondents will also receive follow-up telephone calls.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This action will integrate into the AIES the following existing collections (listed with their corresponding OMB control numbers): the Annual Retail Trade Survey (ARTS) (0607–0013), the Annual Wholesale Trade Survey (AWTS) (0607–0195), Service Annual Survey (SAS) (0607–0422), the Annual Survey of Manufactures (ASM) (0607–0449), the Annual Capital Expenditures Survey (ACES) (0607–0782), the Manufacturer's Unfilled Orders Survey (M3UFO) (0607–0561), and the Report of Organization (0607–0444). In accordance with the PRA, 44 U.S.C., chapter 45, the Census Bureau will submit a request for approval to the OMB for approval of the AIES.

Robert L. Santos, Director, Census Bureau, approved the publication of this notification in the **Federal Register**.

Dated: October 28, 2022.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2022–24035 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

Public Combined Board and Board Committees Meeting

AGENCY: First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Announcement of meeting.

SUMMARY: The FirstNet Authority Board will convene an open public meeting of the Board and Board Committees.

DATES: November 16, 2022; 9:00 a.m. to 11:00 a.m. Eastern Standard Time (EST); Tysons, Virginia.

ADDRESSES: The meeting will be held at the Hyatt Regency Tysons Corner Center hotel located at 7901 Tysons One Pl., Tysons, VA 22102. Due to restrictions on the number of people who can be present, members of the public will not be able to attend in-person but may listen to the meeting and view the presentation by visiting the URL: *https://stream2.sparkstreetdigital.com/20221116-firstnet.html.* If you experience technical difficulty, contact *support@sparkstreetdigital.com.* WebEx information can also be found on the FirstNet Authority website (*FirstNet.gov*).

FOR FURTHER INFORMATION CONTACT:

General information: Janell Smith, (202) 257–5929, *Janell.Smith@FirstNet.gov.*

Media inquiries: Ryan Oremland, (571) 665–6186, *Ryan.Oremland@FirstNet.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Middle-Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the operations of the FirstNet Authority.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board and Board Committees Meeting on *FirstNet.gov* prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Board Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board may, by majority vote, close the meeting only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Other Information: The public Combined Board and Board Committees Meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Janell Smith at (202) 257–5929 or email: *Janell.Smith@FirstNet.gov* at least five (5) business days (November 9) before the meeting.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Combined Board and Board Committees Meeting will be available on *FirstNet.gov.*

Dated: October 31, 2022.

Janell Smith,

Board Secretary, First Responder Network Authority.

[FR Doc. 2022–24015 Filed 11–3–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–35–2022]

Withdrawal of Production Notification; Foreign-Trade Zone (FTZ) 30—Salt Lake City, Utah; Albion Laboratories, Inc. (Mineral Amino Acid Chelates); Ogden, Utah

On August 15, 2022, Albion Laboratories, Inc. (Albion) submitted a notification of proposed production activity to the FTZ Board (the Board) for its facilities within Subzone 30E in Ogden, Utah. The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 51054, August 19, 2022). On October 31, 2022, Albion requested to withdraw the notification and the case has been closed without prejudice.

Dated: October 31, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–24026 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–877]

Stainless Steel Flanges From India: Preliminary Results of Antidumping Duty Administrative Review, Preliminary No Shipment Determination, and Partial Rescission; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain producers/exporters of stainless steel flanges (flanges) from

India made sales of subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) October 1, 2020, through September 30, 2021. We preliminarily find that Emerson Process Management (Emerson) and Echjay Forgings Private Limited (Echjay) had no shipments during the POR. Finally, we are rescinding this review with respect to 14 companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros or Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4725 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2021, Commerce initiated an administrative review of the antidumping duty order on flanges from India, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[1] This administrative review covers 26 companies,[2] including the mandatory respondents Chandan Steel Limited (Chandan) and Good Luck Engineering Co., a unit of Goodluck India Limited (Goodluck). On June 24, 2022, we extended the deadline for the preliminary results of this administrative review until October 28, 2022.[3]

For details regarding the events that occurred subsequent to the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is 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 Order[5]

The merchandise covered by the *Order* is stainless steel flanges from India. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation. Commerce received timely withdrawal requests with respect to 18 companies. For 14 of these companies, there are no longer any pending review requests and, accordingly, we are rescinding this review with respect to these 14 companies in accordance with 19 CFR 351.213(d)(1). For a complete list of the companies for which we are rescinding this review, *see* Appendix II.

Preliminary Determination of No Shipments

On December 22, 2022, we received a letter from Emerson notifying Commerce that it had no exports, sales, or entries of subject merchandise during the POR.[6] Commerce issued a no shipment inquiry to U.S. Customs and Border Protection (CBP), and CBP found no evidence of shipments from this company during the POR.[7] Additionally, Echjay confirmed that it had no exports, sales, or entries of subject merchandise to the United States during the POR.[8] Therefore, based on record evidence, we preliminarily determine that Emerson and Echjay had no shipments during the POR. Consistent with Commerce's practice, we find that it is not appropriate to rescind the review with respect to Emerson and Echjay, but rather to complete the review and issue appropriate instructions to CBP based on the final results of this review.

Rate for Non-Selected Companies

The Act and Commerce's regulations do not address the 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 less-than-fair value (LTFV) 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. We preliminarily calculated a 0.63 percent dumping margin for Chandan and a 49.30 percent dumping margin for Goodluck, the mandatory respondents in this review, and we have assigned to the non-selected companies a rate of 12.85 percent, which is the weighted average of Chandan's and Goodluck's margins based on publicly ranged data.[9] For additional information, *see* the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685, 67686 (November 29, 2021) (*Initiation Notice*).

[2] *Id.* Commerce listed 42 company names in the *Initiation Notice.* Based on information provided to Commerce, we are treating ''Good Luck Engineering Co.'' and ''Goodluck India Ltd.,'' as the same entity. We also previously found ''BFN Forgings Private Limited'' to be the successor-in-interest to ''Bebitz Flanges Works Private Limited.'' *See Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Successor-in-Interest Determination, and Partial Rescission; 2019–2020,* 86 FR 60792 (November 4, 2021), unchanged in *Stainless Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 27568 (May 9, 2022). As noted below, we are rescinding this review with respect to 14 of the 39 companies for which we initiated a review.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2021 Antidumping Duty Administrative Review,'' dated June 24, 2022.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Stainless Steel Flanges from India; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Stainless Steel Flanges from India: Antidumping Duty Order,* 83 FR 50639 (October 9, 2018) (*Order*).

[6] *See* Emerson's Letter, ''Emerson Process Management No Shipments Letter,'' dated December 22, 2021.

[7] *See* Memorandum, ''No Shipments Inquiry for Stainless Steel Flanges from India Produced and/or Exported by Emerson Process Management (A–533–877),'' dated September 23, 2022.

[8] *See* Echjay's Letter, ''Echjay Supplemental Response of Anti-Dumping Duty Administrative Review for Period October 01, 2020 to September 30, 2021,'' dated June 16, 2022, at 1–2.

[9] *See* Memorandum, ''Calculation of Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice; *see also, e.g., Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Partial Rescission; 2018–2019,* 85 FR 75686, 74687 (November 23, 2020), unchanged in *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 16189 (March 26, 2021); *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Preliminary Results of the Administrative Review of the Antidumping Duty Order; 2018–2019,* 85 FR 39534 (July 1, 2020), unchanged in *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Results of the Administrative Review of the Antidumping Duty Order; 2018–2019,* 85 FR 67512 (October 23, 2020); *Albemarle Corp.* v. *United States,* 821 F. 3d 1345 (Fed. Cir. 2016).

Preliminary Decision Memorandum at ''Rates for Non-Selected Companies.''

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1) and (2) of the Act. We calculated export price and constructed export price in accordance with section 772 of the Act. We calculated NV in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margins exist for the period October 1, 2020, through September 30, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Chandan Steel Limited	0.63
Good Luck Engineering Co., a unit of Goodluck India Limited	49.30
Companies Not Individually Examined [10]	12.85

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), because the individually-examined respondents reported the entered value for their U.S. sales, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those same sales. If either respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent where the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original LTFV investigation (*i.e.,* 7.00 percent) [11] if there is no rate for the intermediate company(ies) involved in the transaction.[12]

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the review-specific average rate, calculated as noted in the ''Preliminary Results of Review'' section, above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[13]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the 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 the companies under review will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is *de minimis* (*i.e.,* less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered by this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were examined; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV 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 7.00 percent,[14] the all-others rate established in the *Amended Final.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days of public announcement of the preliminary results or, if there is no public announcement, within five days of the date of publication of this notice.[15] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. 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.[16] 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.[17] Case and rebuttal briefs should be filed using ACCESS.[18] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[19]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.[20] Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[21] Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be

[10] *See* Appendix III for a full list of companies not individually examined in this review.

[11] *See Stainless Steel Flanges from India: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Investigation; Notice of Amended Final Determination,* 86 FR 50325 (September 8, 2021) (*Amended Final*).

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See* section 751(a)(2)(C) of the Act.

[14] *See Amended Final,* 86 FR at 50326.

[15] *See* 19 CFR 351.224(b).

[16] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[17] *See* 19 CFR 351.309(c)(2) and (d)(2).

[18] *See generally* 19 CFR 351.303.

[19] *See Temporary Rule.*

[20] *See* 19 CFR 351.310(c).

[21] *See* 19 CFR 351.310.

determined.[22] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, 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, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a 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.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: October 28, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Rescission of Review
V. Preliminary Determination of No Shipments
VI. Rate for Non-Selected Companies
VII. Discussion of the Methodology
VIII. Recommendation

Appendix II—Companies for Which the Review Request Was Withdrawn and for Which Commerce Is Rescinding This Review

1. Armstrong International Pvt. Ltd.
2. Avini Metal Limited
3. CD Industries (Prop. Kisaan Engineering Works Pvt. Ltd.)
4. Fivebros Forgings Pvt. Ltd.
5. Fluid Controls Pvt. Ltd.
6. Pashupati Ispat Pvt. Ltd.
7. Pashupati Tradex Pvt., Ltd.
8. Rolex Fittings India Pvt. Ltd.
9. Rollwell Forge Pvt. Ltd.
10. Safewater Lines (I) Pvt. Ltd.
11. Saini Flange Pvt. Ltd.
12. Saini Flanges Private
13. Jay Jagdamba Forgings Private Limited
14. Jay Jagdamba Profile Private Limited

[22] *See* 19 CFR 351.310(d).

Appendix III—List of Companies Not Selected for Individual Examination

1. Ae Engineers & Exporters
2. Balkrishna Steel Forge Pvt. LTD
3. BFN Forgings Private Limited (formerly Bebitz Flanges Works Private Limited)
4. Broadway Overseas Ltd.
5. CHW Forge Private
6. Dart Global Logistics Pvt.
7. Dongguan Good Luck Furniture Industrial Co., Ltd.
8. Dongguan Good Luck Industrial Co., Ltd.
9. Expeditors International
10. G I Auto Private
11. G.I. Auto Pvt. Ltd.
12. Hilton Metal Forging Limited
13. Jai Auto Pvt. Limited
14. Jay Jagdamba Limited
15. Katariya Steel Distributors
16. Kisaan Die Tech Pvt Ltd
17. Pradeep Metals Limited
18. Rajan Techno Cast
19. Rajan Techno Cast Pvt. Ltd.
20. Shree Jay Jagdamba Flanges Private Limited
21. Transworld Enterprises
22. Viraj Profiles Ltd.

[FR Doc. 2022–24022 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–884]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review, 2020

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) received *de minimis* countervailable subsidies during the period of review (POR) January 1, 2020, through December 31, 2020. Additionally, Commerce is rescinding this review with respect to 13 companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Nathan James or Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305 or (202) 482–2517, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2021, Commerce published a notice of initiation of an administrative review of the countervailing duty (CVD) order on hot-rolled steel from Korea.[1] On December 13, 2021, Commerce selected Hyundai Steel Company (Hyundai Steel) and POSCO as mandatory respondents in this administrative review.[2] On June 24, 2022, Commerce extended the deadline for the preliminary results of this review to no later than October 28, 2022.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is hot-rolled steel from Korea. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, In Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 29, 2021); *see also Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders,* 81 FR 67960 (October 3, 2016) (*Order*).

[2] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Respondent Selection,'' dated December 13, 2021.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated June 24, 2022.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2020: Certain Hot-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

a timely-filed withdrawal request from the petitioners.[5] Because the withdrawal request was timely filed, and no other party requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review with respect to the following companies: DCE Inc; Dong Chuel America Inc.; Dong Chuel Industrial Co., Ltd.; Dongbu Incheon Steel Co., Ltd.; Dongbu Steel Co., Ltd.; Dongkuk Industries Co., Ltd.; Dongkuk Steel Mill Co., Ltd.; Hyewon Sni Corporation (H.S.I.); JFE Shoji Trade Korea Ltd.; POSCO Coated & Color Steel Co., Ltd.; POSCO Daewoo Corporation; Soon Hong Trading Co., Ltd.; and Sung-A Steel Co., Ltd.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our conclusions, *see* the accompanying Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the net countervailable subsidy rates to be:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Hyundai Steel Company[8].	0.32 (*de minimis).*
POSCO[9]	0.33 *(de minimis).*

Verification

Commerce received a timely request from Nucor to verify the information submitted in this administrative review.[10] As provided in section 782(i)(3) of the Act, Commerce intends to verify the information submitted by Hyundai Steel in advance of the final results of this review.

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

A timeline for the submission of case and rebuttal briefs will be provided to interested parties at a later date.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this 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. All briefs must be filed electronically using Enforcement and Compliance's ACCESS system.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; 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 the date and time of the hearing two days before the scheduled date.

Unless the deadline is extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review. If the assessment rate calculated in the final results is zero or *de minimis,* we will instruct CBP to liquidate all appropriate entries without regard to countervailing duties.

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

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

[5] The petitioners are: Cleveland-Cliffs Inc.; Nucor Corporation (Nucor); SSAB Enterprises, LLC; Steel Dynamics; Inc.; and United States Steel Corporation.

[6] *See* Petitioners' Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated February 28, 2022.

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] Hyundai Steel Company is also known as ''Hyundai Steel Co., Ltd.'' As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Hyundai Steel: Hyundai Green Power Co. Ltd.

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical; POSCO M-Tech; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; POSCO Steel Processing and Service; and POSCO Terminal. The POSCO subsidy rate applies to all cross-owned companies. We note that POSCO has an affiliated trading company through which it exported certain subject merchandise, *i.e.,* POSCO International Corporation (POSCO International). POSCO International was not selected as a mandatory respondent, but was examined in the context of POSCO. Therefore, there is not an individually-established rate for POSCO International; POSCO International's subsidies are accounted for in terms of POSCO's total subsidy rate. Entries of subject merchandise exported by POSCO International will receive the rate of the producer listed on the entry form with U.S. Customs and Border Protection (CBP). Thus, the subsidy rate applied to POSCO (and POSCO's cross-owned affiliates) is also applied to POSCO International for entries of subject merchandise produced by POSCO.

[10] *See* Nucor's Letter, ''Request for Verification,'' dated March 4, 2021; *see also* 19 CFR 351.307(b)(1)(v).

[11] *See* 19 CFR 351.309(c) and (d).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: October 28, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–24024 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–843]

Prestressed Concrete Steel Wire Strand From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Celik Halat ve Tel Sanayi A.S. (Celik Halat), a producer/exporter of prestressed concrete steel wire strand (PC strand) from the Republic of Turkey (Turkey) and sole respondent for this administrative review, received countervailable subsidies during the period of review (POR), September 9, 2020, through December 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Jacob Garten or Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3342 or (202) 482–6334, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2021, Commerce published the countervailing duty order on PC strand from Turkey.[1] On April 12, 2022, Commerce published the notice of initiation of this administrative review.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is provided as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Scope of the Order

The product covered by the *Order* is PC strand from Turkey. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). In reaching these preliminary results, Commerce relied on facts otherwise available, with the application of adverse inferences.[4] For further information, *see* ''Use of Facts Otherwise Available and Application of Adverse Inferences'' in the accompanying Preliminary Decision Memorandum. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

Commerce preliminarily determines the following net countervailable subsidy rates for the POR:

Company	Subsidy rate (percent *ad valorem*)
Celik Halat ve Tel Sanayi A.S[5]	96.33

Commerce has not calculated an estimated weighted-average subsidy rate for all other non-selected producer(s)/exporter(s) because Celik Halat was the only company subject to this administrative review.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[6] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for filing case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs must be filed using ACCESS.[8] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[10] Parties should confirm by telephone the date, time, and

[1] *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Countervailing Duty Order,* 86 FR 7990 (February 3, 2021) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619 (April 12, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020–2021 Countervailing Duty Administrative Review of Prestressed Concrete Steel Wire Strand from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* section 776 of the Act.

[5] As discussed in the Preliminary Decision Memorandum from the Investigation, Commerce has found the following companies to be cross-owned with Celik Halat: Dogan Sirketler Grubu Holding A.S. and Adilbey Holding A.S.

[6] *See* 19 CFR 351.309(c).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.303.

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* 19 CFR 310(d).

location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue 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

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–24074 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042, C–570–043]

Stainless Steel Sheet and Strip From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) have determined that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on stainless steel sheet and strip (SSSS) from the People's Republic of China (China) would be likely to lead to the continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States. Therefore, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2017, Commerce published the AD and CVD orders on SSSS from China.[1] On March 1, 2022, Commerce published the notice of initiation of the first sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its reviews, Commerce determined that revocation of the AD order would likely lead to the continuation or recurrence of dumping and that revocation of the CVD order would likely lead to the continuation or recurrence of countervailable subsidies.[3] Therefore, Commerce notified the ITC of the magnitude of the dumping margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked, pursuant to sections 752(b) and (c) of the Act. On October 24, 2022, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

The merchandise covered by these *Orders* is stainless steel sheet and strip, whether in coils or straight lengths. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product with a width that is greater than 9.5 mm and with a thickness of 0.3048 mm and greater but less than 4.75 mm, and that is annealed or otherwise heat treated, and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, annealed, tempered, polished, aluminized, coated, painted, varnished, trimmed, cut, punched, or slit, *etc.*) provided that it maintains the specific dimensions of sheet and strip set forth above following such processing. The products described include products regardless of shape, and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above: (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and (2) where the width and thickness vary for a specific product (*e.g.,* the thickness of

[1] *See Stainless Steel Sheet and Strip from the People's Republic of China: Antidumping Duty Order,* 82 FR 16160 (April 3, 2017); and *Stainless Steel Sheet and Strip from the People's Republic of China: Countervailing Duty Order,* 82 FR 16166 (April 3, 2017) (collectively, *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 11416 (March 1, 2022).

[3] *See Stainless Steel Sheet and Strip from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 40183 (July 6, 2022), and accompanying Issues and Decision Memorandum (IDM); *see also Stainless Steel Sheet and Strip from the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order,* 87 FR 40506 (July 7, 2022), and accompanying IDM.

[4] *See Stainless Steel Sheet and Strip from China; Investigation Nos. 701–TA–557 and 731–TA–1312 (Review),* 87 FR 64248 (October 24, 2022).

certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these *Orders* unless specifically excluded.

Subject merchandise includes stainless steel sheet and strip that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the stainless steel sheet and strip.

Excluded from the scope of these *Orders* are the following: (1) sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (2) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (3) flat wire (*i.e.,* cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm).

The products covered by the *Orders* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an 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

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: October 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–24023 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–830]

Strontium Chromate From France: 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 Société Nouvelle des Couleurs Zinciques (SNCZ) made sales of subject merchandise at less than normal value during the period of review (POR) November 1, 2020, through October 31, 2021.

DATES: Applicable November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Jonathan Schueler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905 or (202) 482–9175, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act), Commerce is conducting an administrative review of the antidumping duty order on strontium chromate from France.[1] On December 28, 2021, in accordance with 19 CFR 251.221(c)(1)(i), we initiated the administrative review of the *Order* on SNCZ.[2] For a complete description of the events between the initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The product covered by the *Order* is strontium chromate from France. The merchandise subject to review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2841.50.9100. Subject merchandise may

[1] *See Strontium Chromate from Austria and France: Antidumping Duty Orders,* 84 FR 65349 (November 27, 2019) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021).

[3] *See* Memorandum, ''Strontium Chromate from France: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

also enter under HTSUS subheading 3212.90.0050. For a full description of the scope of this *Order, see* the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. The export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *https://access.trade/gov/public/FRNoticesListLayout.aspx*.

Preliminary Results of Review

Producer and/or exporter	Weighted-average dumping margin (percent)
Société Nouvelle des Couleurs Zinciques	2.04

Assessment Rates

Upon completion of this administrative review, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If SNCZ's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce clarified its ''automatic assessment'' regulation on May 6, 2003.[5] This clarification applies to entries of subject merchandise during the POR produced by SNCZ for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for SNCZ will be equal to the weighted-average dumping margin established in the final results of this review (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously reviewed or investigated companies not listed in the final results of this review, including those for which Commerce may determine had no shipments during the POR, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then 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) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 32.16 percent that was established in the less-than-fair-value investigation.[6] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within seven days from the deadline date for the submission of case briefs.[8] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed electronically via ACCESS. Note that Commerce has temporarily 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 must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] Hearing 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 issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[12]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, no later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[13]

[4] *Id.* at ''Scope of the *Order*.''

[5] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[6] *See Order,* 84 FR at 65350.

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d)(1) and (2).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See* 19 CFR 351.310(c).

[12] *Id.*

[13] *See* section 751(a)(3)(A) of the Act; *see also* 19 CFR 351.213(h).

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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: October 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–24078 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–826]

Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Preliminary Results and Partial Rescission 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 determines that the sole mandatory respondent, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas), a producer and exporter of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey), did not make sales of subject merchandise in the United States at prices below normal value during the period of review (POR) October 1, 2020, through September 30, 2021. We are also rescinding the review with respect to 13 companies because all requests for review for these companies have been withdrawn. We invite all interested parties to comment on these preliminary results.

DATES: Applicable November 4, 2022.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on hot-rolled steel from Turkey,[1] in accordance with section 751(a)(1)(B) of Tariff Act of 1930, as amended (the Act). On November 29, 2021, in accordance with 19 CFR 351.221(c)(1)(i), as requested by the domestic producers and Habas,[2] we initiated this administrative review of the *Order* covering 14 producers or exporters of the subject merchandise.[3] On January 27, 2022, Commerce selected Habas as the sole mandatory respondent.[4] On February 10, 2022, the domestic producers withdraw their request for review.[5]

On June 9, 2022, we extended the time limit for issuing these preliminary results until October 28, 2022.[6] For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7]

Scope of the Order

The merchandise covered by the *Order* is certain hot-rolled steel flat products. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[8]

Partial Rescission of Administrative Review

Commerce initiated this review for 14 companies. Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the *Initiation Notice.* Because all requests for the administrative review of the 13 companies listed in Appendix II were timely withdrawn, Commerce is rescinding this review, in part, with respect to these companies, in accordance with 19 CFR 351.213(d)(1).

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export prices are calculated in accordance with section 772 of the Act and normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached at Appendix I to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margins for the period October 1, 2020, through September 30, 2021:

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*); *see also Certain Hot-Rolled Steel Flat Products from Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order, Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of the 2017–18 and 2018–19 Antidumping Duty Administrative Reviews, in Part,* 85 FR 29399 (May 15, 2020) (*Timken Notice*).

[2] The domestic producers are Cleveland-Cliffs Inc., Steel Dynamics Inc., SSAB Enterprises, LLC, Nucor Corporation, and United States Steel Corporation (collectively, the domestic producers). *See* Domestic Producers' Letter, ''Request for Administrative Review,'' dated November 1, 2021; s*ee also* Habas' Letter, ''Request for administrative review,'' dated October 29, 2021.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 29, 2021).

[4] *See* Memorandum, ''Respondent Selection Memorandum,'' dated January 27, 2022.

[5] *See* Domestic Producers' Letter, ''Withdrawal of Request for Administrative Review,'' dated February 10, 2022.

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results,'' dated June 9, 2022.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results and Partial Recission of the Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *Id.; see also Order.*

Producer/exporter	Weighted-average dumping margin (percent)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S	0.00

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[9] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[10] 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).

Pursuant to 19 CFR 351.212(b)(1), if Habas' weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of dumping calculated for the U.S. sales for a given importer to the total entered value of those sales. If, in the final results, either Habas' weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Habas for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate such unreviewed entries pursuant to the reseller policy,[11] *i.e.,* the assessment rate for such entries will be equal to the all-others rate established in the investigation (*i.e.,* 2.73 percent),[12] if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies for which we have rescinded this review, Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

The following deposit requirements will be effective 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 Habas will be equal to its weighted-average dumping margin established in the final results of this review (except if the *ad valorem* rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero); (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the completed segment for the most recent POR for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 2.73 percent, the all-others rate established in the underlying investigation.[13]

These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[14] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the time limit for filing case briefs.[15] 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.[16] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Hearing 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 issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[18] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[19] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[20]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in all written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register** pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1), unless otherwise extended.[21]

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 and/or countervailing duties prior to liquidation of the relevant entries during this review

[9] *See* 19 CFR 351.212(b).

[10] *See* section 751(a)(2)(C) of the Act.

[11] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[12] *See Timken Notice.*

[13] *See Timken Notice.*

[14] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

[15] *See* 19 CFR 351.309(d)(1).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See* 19 CFR 351.303.

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310(c); *see also* 19 CFR 351.303(b)(1).

[20] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[21] *See* section 751(a)(3)(A) of the Act.

period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 28, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Recission of the Review
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

Appendix II

Companies Rescinded From Review

1. Agir Haddecilik A.S.
2. Cag Celik Demir ve Celik.
3. Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji, A.S.
4. Eregli Demir ve Celik Fabrikalari T.A.S.
5. Gazi Metal Mamulleri Sanayi Ve Ticaret A.S.
6. Habas Industrial and Medical Gases Production Industries Inc.
7. Iskenderun Iron & Steel Works Co. (a/k/a/ Iskenderun Demir ve Celik A.S.)
8. Kayseri Metal Center San. ve Tic. A.S.
9. Kibar Group (Kibar Dis Ticaret A.S.)
10. MMK Atakas Metalurji
11. Ozkan Iron and Steel Ind.
12. Seametal Sanayi ve Dis Ticaret Limited Sirketi
13. Tosyali Holding (Toscelik Profile and Sheet Ind. Co., Toscelik Profil ve Sac A.S.)

[FR Doc. 2022–24025 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC481]

New England Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of correction to a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public joint meeting of its Habitat Advisory Panel and Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate. See **SUPPLEMENTARY INFORMATION**.

DATES: This meeting will be held on Friday, November 18, 2022, at 9 a.m.

ADDRESSES:

Webinar registration URL information: *https://attendee.gotowebinar.com/register/7839935047339593995.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The original meeting notice published in the **Federal Register** on October 31, 2022 (87 FR 65576). This notice corrects the date of the meeting and adds an additional agenda item. The original notice announced the meeting to be held on November 12, 2022. The meeting will be held on November 18, 2022.

Agenda

The Advisory Panel and Committee will discuss progress on the Atlantic Salmon Aquaculture Framework, including goals, objectives, and draft management alternatives. They will also discuss potential 2023 work priorities in advance of the December Council meeting, focusing on possible new actions: (1) revisions to Habitat Management Areas on the northern edge of Georges Bank, including consideration of recent research, and (2) essential fish habitat 5-year review and updates to designations. The group will develop a recommendation about whether to retain or remove the Georges Bank Dedicated Habitat Research Area. Discuss other business, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: November 1, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24049 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC507]

Endangered Species; File No. 26973

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Field Museum (Kevin Feldheim, Ph.D., Responsible Party), 1400 S Lake Shore Drive, Chicago, Illinois 60605, has applied in due form for a permit to import and export angelshark parts for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before December 5, 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. 26973 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. 26973 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: Jennifer Skidmore and Erin Markin, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of 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 through 226).

The applicant proposes to import and export parts from three species of angelshark for research into the population genetics and basic breeding biology. Unlimited samples from the following species will be imported and potentially exported annually: 800 individuals of the common angelshark (*Squatina squatina*) and 40 individuals each of the other species (sawback [*Squatina aculeata*] and smoothback [*Squatina occulta*] angelsharks). These parts would be from live capture research activities primarily in the Northeastern Atlantic, but opportunistic world-wide import and export is also requested. The requested duration of the permit is 5 years.

Dated: October 31, 2022.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–23992 Filed 11–3–22; 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; Chesapeake Bay Watershed Environmental Literacy Indicator Tool

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 January 3, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0753 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 Shannon Sprague, Environmental Literacy and Partnerships Manager, NOAA Chesapeake Bay Office, 200 Harry S Truman Parkway, Suite 460, Annapolis, MD 21401, 240–653–9023, *shannon.sprague@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. The Chesapeake Bay Watershed Agreement of 2014 required monitoring of progress toward the environmental literacy goal: ''Enable students in the region to graduate with the knowledge and skills needed to act responsibly to protect and restore their local watersheds.'' NOAA, on behalf of the Chesapeake Bay Program, will ask the state education agencies for Maryland, Pennsylvania, Delaware, Virginia, West Virginia, and the District of Columbia to survey their local education agencies (LEAs) to determine: (1) LEA capacity to implement a comprehensive and systemic approach to environmental literacy education, (2) student participation in Meaningful Watershed Educational Experience during the school year, (3) sustainability practices at schools, and (4) LEA needs for improving environmental literacy education programming. LEAs (generally school districts, in some cases charter school administration) are asked to complete the survey on the status of their LEA on a set of key indicators for the four areas listed above. One individual from each LEA is asked to complete their survey once every two years. The results of the biennial ELIT survey will be analyzed and reported to the internal stakeholders of the Chesapeake Bay Watershed Agreement. Participating states will receive a summarized report of findings for the full watershed, a summary of findings for their state, and comparisons of results between states. These aggregated results will be used by the state agencies to understand progress of their school districts over time, and to inform decision-making about strategies and priorities for future work with school districts. Additionally, NOAA will use this information to inform priorities within their B–WET funding opportunities and technical assistance. The biennial reporting will also be used by the Chesapeake Bay Program to understand progress of school districts in the watershed, understand differences between jurisdictions, and guide strategy for providing targeted support in each state.

II. Method of Collection

Data will be collected electronically via Qualtrics or through a platform with similar functionality.

III. Data

OMB Control Number: 0648–0753.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: State, Local or Tribal government (local education agencies); Not-for-profit organizations (charter schools).

Estimated Number of Respondents: The survey will be distributed to approximately 685 local education agencies.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 229.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: US Code: 42 U.S.C. 4321 *et seq.* Name of Law: National Environmental Policy Act.

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. 2022–24104 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Teacher at Sea 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 January 3, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0283 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 Jennifer Hammond, Director, NOAA Teacher at Sea Program, 200 Harry S Truman Hwy, Annapolis, MD 21401 240–628–5210, *jennifer.hammond@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

NOAA provides educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an ongoing research project with NOAA scientists. The application solicits information from interested educators including: basic personal information, teaching experience, and ideas for applying program experience in their classrooms, plus two recommendation and a NOAA Health Services Questionnaire required of anyone selected to participate in the program.

Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going out to sea by themselves. This collection supports NOAA's mission by providing educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program.

NOAA does not collect information from this universe of respondents for any other purpose than to determine which educators will participate in the NOAA Teacher at Sea Program.

II. Method of Collection

Internet via Teacher at Sea website form.

III. Data

OMB Control Number: 0648–0283.

Form Number(s): NOAA Form 57–10–01.

Type of Review: Regular submission.

Affected Public: Individuals.

Estimated Number of Respondents: 375.

Estimated Time per Response: Application: 1 hr. 15 min; Recommendations: 15 minutes; NOAA Health Services Questionnaire and Tuberculosis Screening Document: 45 minutes; Follow-up Report: 2 hours.

Estimated Total Annual Burden Hours: 781.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: National Marine Sanctuaries Act.

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. 2022–24092 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC355]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight and Central Atlantic

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

ACTION: Notice; proposed incidental harassment authorization; request for

comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from TerraSond Limited (TerraSond) for authorization to take marine mammals incidental to marine site characterization surveys in the New York Bight (off of New York and New Jersey) and in the Central Atlantic (from Delaware to North Carolina). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1 year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 5, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Laws@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. These changes would become effective immediately upon the effective date of any final vessel speed rule and would not require any further action on NMFS' part.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Shutdown B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical Shutdown. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On May 19, 2022, NMFS received a request from TerraSond for an IHA to take marine mammals incidental to site characterization surveys in the New York Bight. Following NMFS' review of the application, TerraSond submitted a revised version on July 11, 2022, adding additional planned survey activity in the Central Atlantic. This revised application was deemed adequate and complete. TerraSond's request is for take of 21 species of marine mammals, by Level B harassment only. Neither TerraSond nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

TerraSond proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, off the coasts of New Jersey and New York (New York Bight)

and from Delaware to North Carolina (Central Atlantic). The former portion of survey effort would be conducted on Bureau of Ocean Energy Management (BOEM) Lease Areas OCS–A 0539, 0541, and 0542, while the latter portion of survey effort would be conducted in continental shelf waters of BOEM's Central Atlantic Call Area. The planned survey effort would be conducted in support of wind energy development.

The planned marine site characterization survey effort is designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys is to acquire data on bathymetry, seafloor morphology, subsurface geology, environmental/biological sites, seafloor obstructions, soil conditions, and locations of any man-made, historical or archaeological resources within the respective survey areas. Underwater sound resulting from TerraSond's proposed site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of Level B behavioral harassment.

Dates and Duration

The estimated duration of Central Atlantic HRG survey activity is expected to include a maximum of 1,052 survey days (minimum 661 survey days, depending on final survey plan) over the course of the 1 year period of effectiveness for the proposed IHA, with a ''survey day'' defined as a 24-hour (hr) activity period in which active acoustic sound sources are used. The estimated duration of New York Bight survey activity is expected to include 385 survey days. Therefore, the total survey days would range from 1,046 to a maximum of 1,437. For both components of the activity, survey activities are anticipated to occur over a minimum of 6–8 months using multiple vessels concurrently, and likely throughout most of a year. TerraSond proposes to start survey activity as soon as possible upon issuance of an IHA, if appropriate. The IHA would be effective for one year from the date of issuance.

Specific Geographic Region

The proposed survey activities will occur within the aforementioned BOEM Central Atlantic Call Area and within BOEM's Lease Areas OCS–A 0539, 0541, and 0542 in the New York Bight. Please see Figures 1 and 2 below or, for color versions, see the same figures in TerraSond's application. The Central Atlantic survey area comprises approximately 11,500 square kilometers (km^2), covering water depths from 20–60 meters (m), and the New York Bight survey area comprises approximately 1,171 km^2, covering water depths from 30–65 m.

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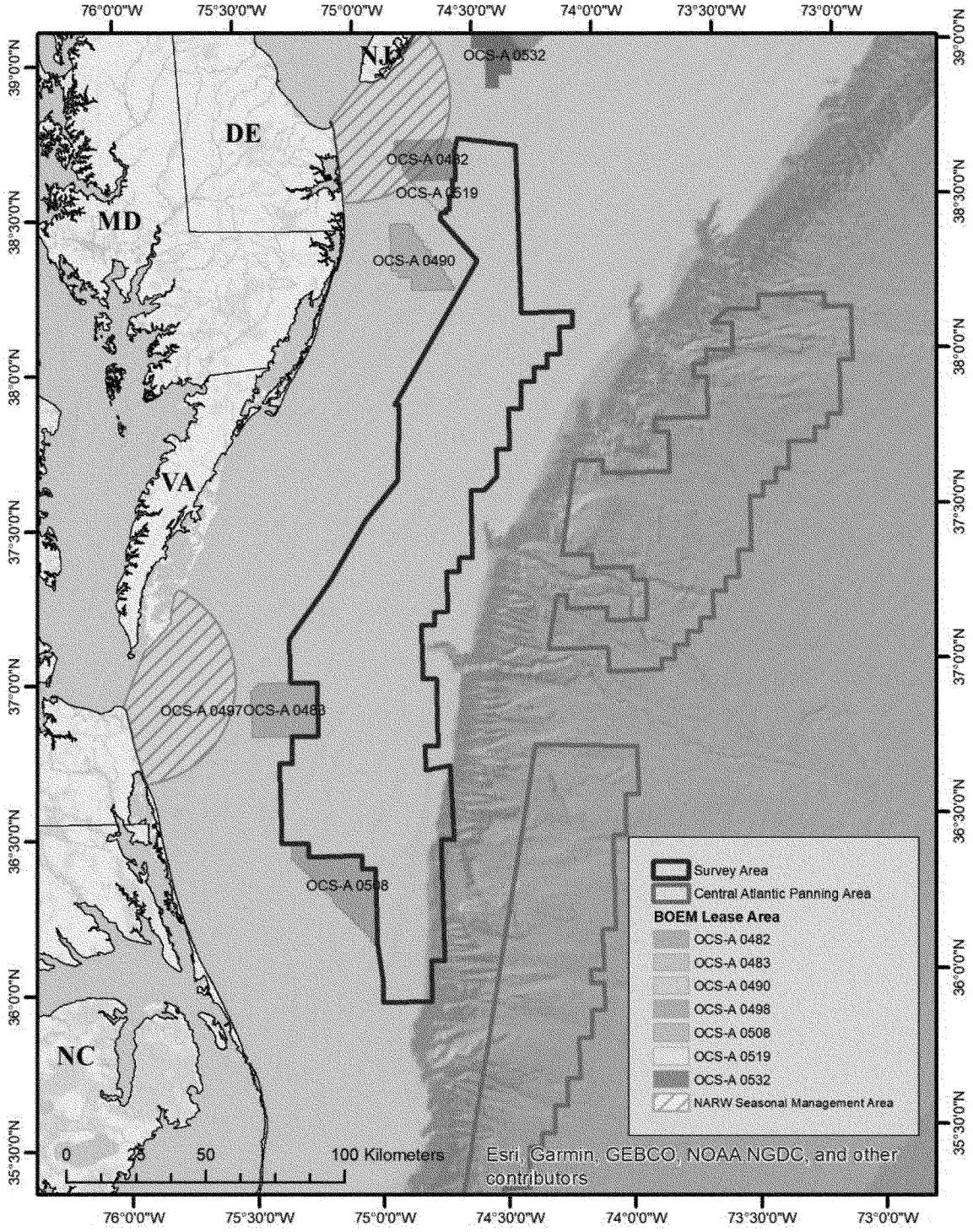

Figure 1—Central Atlantic Site Characterization Survey Location

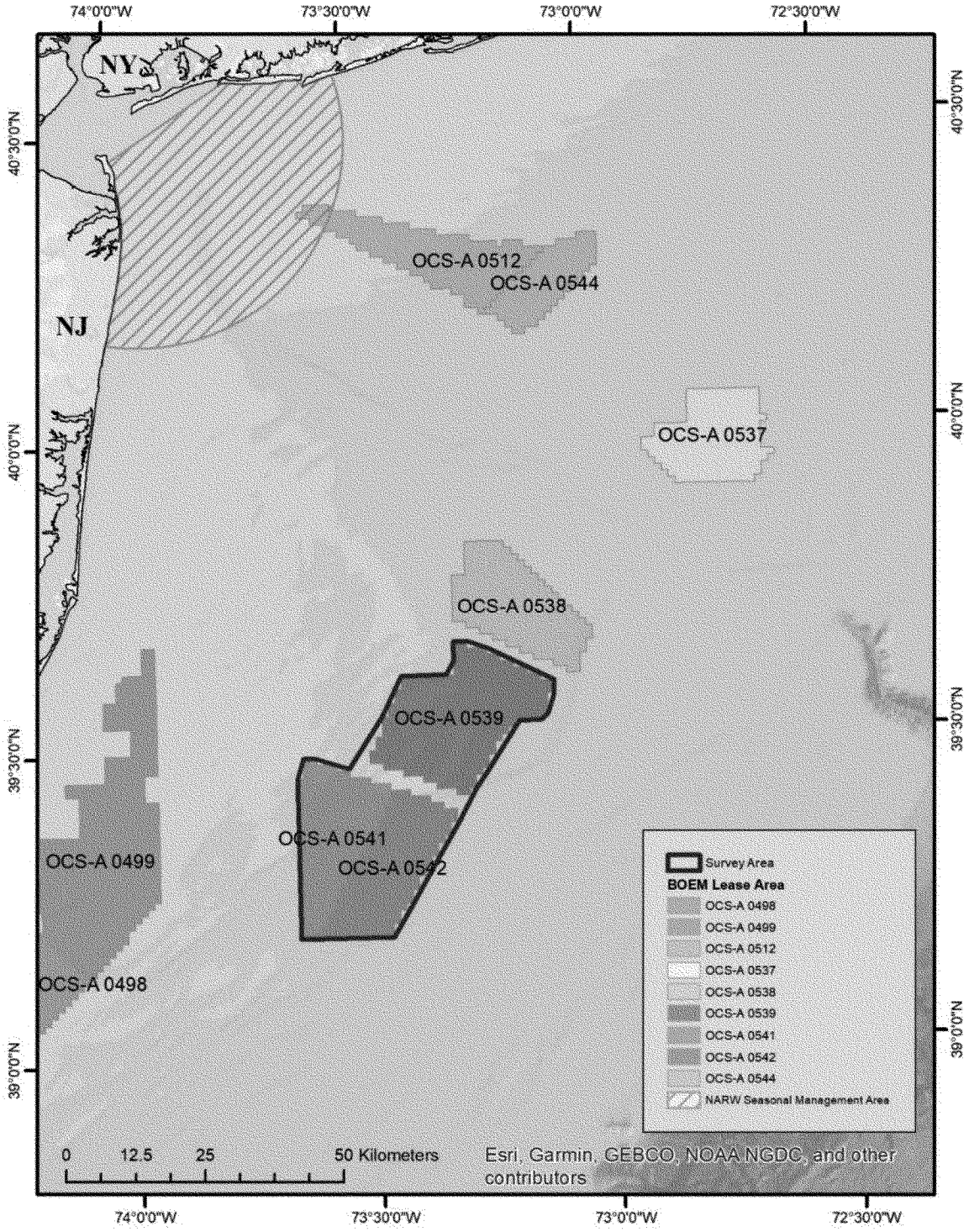

Figure 2—New York Bight Site Characterization Survey Location

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Detailed Description of Specific Activity

TerraSond proposes to conduct HRG survey operations, including multibeam depth sounding, seafloor imaging, and shallow and medium penetration sub-bottom profiling. The HRG surveys may be conducted using any or all of the following equipment types: side scan sonar, multibeam echosounder, gradiometers, parametric sub-bottom profiler, or sparkers. TerraSond assumes that HRG survey operations would be conducted 24 hours per day, with an assumed daily survey distance of 100 km. This average distance per day was calculated by TerraSond from the maximum achievable survey distance assuming 24-hour survey operations and an average vessel speed of 3.5 knots (6.5 km/hour) and then reducing from there based on prior experience to account for expected downtime related to weather,

equipment malfunction, and other factors.

Both activity components (Central Atlantic and New York Bight) would also include geotechnical sampling activities, in addition to HRG survey activities. Geotechnical sampling activities, including use of vibracores and seabed core penetration tests, would occur during the same period as the HRG survey activities, and may entail use of additional survey vessels and/or take place from the same vessels used for HRG survey activities. NMFS does not expect geotechnical sampling activities to present reasonably anticipated risk of causing incidental take of marine mammals, and these activities are not discussed further in this notice.

The only acoustic source planned for use during HRG survey activities proposed by TerraSond with expected potential to cause incidental take of marine mammals is the sparker. Sparkers are medium penetration, impulsive sources used to map deeper subsurface stratigraphy, and which may be operated with different numbers of electrode tips to allow tuning of the acoustic waveform for specific applications. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz, and are typically towed behind the vessel. The sparker system planned for use is the Applied Acoustics Dura-Spark UHRS 400 + 400 (electrode tips), which is essentially two of the same Applied Acoustics Dura-Spark sources stacked on top of each other creating two ''decks'' to the sparker. However, the decks will not be discharged simultaneously, but will be used in an alternating ''flip-flop'' pattern (as discussed below). Thus, for all source configurations below, the maximum power expected when discharging the sparker source (single deck) will be 800 Joules (J). Crocker and Fratantonio (2016) measured the Applied Acoustics Dura-Spark, but did not provide data for an energy setting near 800 J (for a 400-tip configuration, Crocker and Fratantonio (2016) provide measurements at 500 and 2,000 J). Therefore, TerraSond proposes to use a similar alternative system, which was measured with an input voltage of 750 J, as a surrogate. NMFS concurs with this selection, which is described in Table 1.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

Equipment	Operating frequency (kHz)	SL_{rms} (dB re 1 µPa m)	$SL_{0\text{-}pk}$ (dB re 1 µPa m)	Pulse duration (width) (millisecond)	Repetition rate (second)	Beamwidth (degrees)
SIG ELC 820 sparker (750 J) [1]	0.3–1.2	203	213	1.1	0.25	Omni.

µPa = micropascal; dB = decibel; Omni = omnidirectional source; re = referenced to; PK = zero-to-peak sound pressure level; SL = source level; SPL = root-mean-square sound pressure level.
[1] Proxy for Applied Acoustics Dura-Spark UHRS (800 J).

Operation of the following additional survey equipment types is not expected to present reasonable risk of marine mammal take, and will not be discussed further beyond the brief summaries provided below.

- Non-impulsive, parametric SBPs are used for providing high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–115 kHz). The narrow beamwidth significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater (and cannot be heard by mysticetes). These sources are typically deployed on a pole rather than towed behind the vessel.
- Ultra-short baseline (USBL) positioning systems are used to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and a transponder (or beacon) necessary to produce the acoustic profile. It is a two-component system with a pole-mounted transceiver and one or several transponders mounted on other survey equipment. USBLs are expected to produce extremely small acoustic propagation distances in their typical operating configuration.
- Multibeam echosounders (MBESs) are used to determine water depths and general bottom topography. The proposed MBESs all have operating frequencies greater than 180 kHz and are therefore outside the general hearing range of marine mammals.
- Side scan sonars (SSS) are used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The proposed SSSs all have operating frequencies greater than 180 kHz and are therefore outside the general hearing range of marine mammals.

Central Atlantic—The Central Atlantic activity component includes two different survey phases that may occur involving different survey line spacing and potential survey equipment tow configurations. There are two possible survey methods that may be used during Phase 1, which the applicant refers to as Alternative 1 and Alternative 2. Alternative 1 would involve the use of a single source vessel towing one sparker source composed of two ''decks'' of 400 electrode tips each stacked on top of each other. The two decks would be discharged in alternating fashion such that only one deck is discharged at a time. Alternative 2 would involve the use of a single source vessel towing 3 of the same sparker sources with a horizontal separation between the sources of 150 m. Alternative 1 would require acquisition along 58,607 km of trackline, while Alternative 2 would require acquisition along 19,536 km of trackline. Only one of these two methods would be used for survey acquisition. Phase 2 would involve a single vessel towing two of the same sparker sources with a horizontal separation between the sources of 30 m, and would require acquisition along 46,573 km of trackline. At an assumed 100 km per day, Phase 1 would require approximately 586 or 195 days, depending on which Alternative is ultimately used, and Phase 2 would require approximately 466 days. Therefore, the Central Atlantic portion of survey effort is expected to require either 661 or 1,052 survey days. Up to a total of four source vessels may be active concurrently to accomplish this.

New York Bight—The New York Bight activity component includes three different survey phases that may occur involving different survey line spacing and potential survey equipment tow configurations. Phase 1 involves the use of a single source vessel towing one sparker source composed of two ''decks'' of 400 electrode tips each stacked on top of each other. As discussed above, the two decks will

typically be discharged in alternating fashion such that only one deck is discharged at a time. Phases 2 and 3 would involve a single vessel towing two of the same sparker sources with a horizontal separation between the sources of 30 m. These Phases involve acquisition along 14,833, 200, and 23,311 km of trackline, respectively, requiring a total of approximately 385 days. Up to a total of three source vessels may be active concurrently to accomplish this.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication (2021 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale.	*Eubalaena glacialis*	Western North Atlantic (WNA).	E/D; Y	368 (0; 364; 2019) [5]	0.7	7.7
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,393 (0; 1,380; 2016)	22	12.15
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Fin whale	*Balaenoptera physalus*	WNA	E/D; Y	6,802 (0.24; 5,573; 2016)	11	1.8
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Ziphiidae (beaked whales):						
Cuvier's beaked whale	*Ziphius cavirostris*	WNA	-; N	5,744 (0.36; 4,282; 2016)	43	0.2
Mesoplodont beaked whales [6].	*Mesoplodon* spp.	WNA	-; N	10,107 (0.27; 8,085; 2016)	81	0.4
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D; Y	4,349 (0.28; 3,451; 2016)	3.9	0
Family Delphinidae:						
Rough-toothed dolphin	*Steno bredanensis*	WNA	-; N	136 (1.0; 67; 2016)	0.7	0
Bottlenose dolphin	*Tursiops truncatus*	WNA Offshore	-/-; N	62,851 (0.23; 51,914; 2016)	519	28
WNA Northern Migratory Coastal.		-/D;Y	6,639 (0.41, 4,759, 2016)	48	12.2–21.5.	
Atlantic spotted dolphin	*Stenella frontalis*	WNA	-/-; N	39,921 (0.27; 32,032; 2016)	320	0
Common dolphin	*Delphinus delphis*	WNA	-/-; N	172,974 (0.21; 145,216; 2016).	1,452	390
Atlantic white-sided dolphin.	*Lagenorhynchus acutus*	WNA	-/-; N	93,233 (0.71; 54,443; 2016)	544	27
Risso's dolphin	*Grampus griseus*	WNA	-/-; N	35,215 (0.19; 30,051; 2016)	301	34
Short finned pilot whale	*Globicephala macrorhynchus.*	WNA	-/-; N	28,924 (0.24; 23,637; 2016)	236	136
Long-finned pilot whale	*G. melas*	WNA	-/-; N	39,215 (0.30; 30,627; 2016)	306	9
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016)	851	164

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [4]	*Halichoerus grypus*	WNA	-/-; N	27,300 (0.22; 22,785, 2016)	1,458	4,452
Harbor seal	*Phoca vitulina*	WNA	-/-; N	61,336 (0.08; 57,637, 2018)	1,729	339

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. The annual M/SI value given is for the total stock.

[5] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

[6] Mesoplodont beaked whales in the U.S. Atlantic include the Gervais beaked whale (*M. europaeus*), Blainville's beaked whale (*M. densirostris*), Sowerby's beaked whale (*M. bidens*), and True's beaked whale (*M. mirus*). These species are difficult to identify to the species level at sea; therefore, much of the available characterization for beaked whales is to genus level only and the species are managed together as a stock.

As indicated above, all 22 species (with 20 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Although other species have been documented in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur and they are not analyzed further. In addition to what is included in Sections 3 and 4 of the application, the SARs, and NMFS' website, further detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) is provided below.

North Atlantic Right Whale

Since 2010, the North Atlantic right whale population has been in decline (Pace *et al.,* 2017), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Calf numbers have increased since 2018, with twenty right whale calves documented in 2021 and fifteen in 2022. As described in Table 2, the current SAR population estimate for North Atlantic right whales is 368; however, NMFS has updated its species web page to recognize the population estimate for NARWs is below 350 animals (*www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 31 of the mortalities or serious injuries thus far. As of October 20, 2022, a total of 91 confirmed cases of mortality, serious injury, or morbidity (sublethal injury or illness) have been documented. The preliminary cause of most of these cases is from rope entanglements or vessel strikes. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-north-atlantic-right-whale-unusual-mortality-event.*

The proposed survey area is part of a migratory corridor Biologically Important Area (BIA) for North Atlantic right whales (effective March-April and November-December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). The migratory corridor covers the survey area, extending from the coast to beyond the shelf break. This important migratory area is approximately 269,488 km^2 in size (compared with the approximately 12,671 km^2 of total planned survey area) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. NMFS does not expect that the potential acoustic effects of the planned survey activity are likely to meaningfully impact North Atlantic right whale migratory behavior through this corridor.

Humpback Whale

NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62260, September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015). Whales occurring in the survey area are considered to be from the West Indies DPS, but are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 161 known cases to date. Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could

provide additional insight into how these vessel interactions occurred. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2022-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Minke Whale

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 123 strandings to date. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Seals

Since June 2022, elevated numbers of harbor seal and gray seal mortalities have occurred across the southern and central coast of Maine. This event has been declared a UME. Preliminary testing of samples has found some harbor and gray seals positive for highly pathogenic avian influenza.

The above event was preceded by a different UME occurring between 2018–2020 (closure of the 2018–2020 UME is pending). Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire and Massachusetts. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (of all species) had occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME, which is pending closure. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018–2020-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring in the mid-Atlantic region, including the New York Bight and Central Atlantic areas (*e.g.,* 85 FR 36537, June 17, 2020; 85 FR 37848, June 24, 2020; 85 FR 48179, August 10, 2020; 87 FR 38067, June 27, 2022). No significant new information is available, and we refer the reader to these documents rather than repeating the details here. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or

survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Summary on Specific Potential Effects of Acoustic Sound Sources

Underwater sound from active acoustic sources can include one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

Animals in the vicinity of TerraSond's proposed HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include relatively low source levels and generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and that the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area relatively quickly, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are generally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of TerraSond's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment);

or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound produced by the sparker. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor proposed to be authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* Shutdown zones and shutdown measures), discussed in detail below in the Proposed Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 160 dB (referenced to 1 micropascal (re 1 μPa)) for impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

TerraSond's proposed activity includes the use of impulsive (sparker) sources, and therefore the RMS SPL thresholds of 160 dB re 1 μPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TerraSond's proposed activity includes the use of impulsive (*i.e.,* sparkers) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see TerraSond's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. TerraSond did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality (when relevant) to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth is used, and the lowest frequency of the source is used when calculating the frequency-dependent absorption coefficient (Table 1). The sparkers proposed for use by TerraSond are omnidirectional and, therefore, beamwidth does not factor into the calculations.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 provides relevant source parameters used in the calculations. Results of modeling using the methodology described above

produced an estimated Level B harassment isopleth 141 m.

Central Atlantic—Phase 1, Alternative 1 would involve a single towed source, and daily ensonified area was calculated as follows: (100 km × 2 × 0.141 km) + (π × (0.141² km). Distributing the 58,607 km of Phase 1, Alternative 1 survey activity across the 12-month period of anticipated activity results in approximately 48.8 survey days per month, which was multiplied by the daily ensonified area to give a monthly ensonified area of 1,380 km. Phase 1, Alternative 2 would involve three towed sources with 150 m horizontal separation between them. Daily ensonified area was calculated as follows: (100 km × 2 × (0.141 km + 0.15 km) + (π × (0.291² km). Distributing the 19,536 km of Phase 1, Alternative 2 survey activity across the 12-month period of anticipated activity results in approximately 16.3 survey days per month, which was multiplied by the daily ensonified area to give a monthly ensonified area of 952 km². Because only one of the alternatives would ultimately be selected, the monthly ensonified area associated with Alternative 1 was used to estimate potential marine mammal take for Phase 1.

Phase 2 would involve two towed sources with 30 m horizontal separation between them. Daily ensonified area was calculated as follows: (100 km × 2 × (0.141 km + 0.015 km) + (π × (0.156² km). Distributing the 46,573 km of Phase 2 survey activity across the 12-month period of anticipated activity results in approximately 38.8 survey days per month, which was multiplied by the daily ensonified area to give a monthly ensonified area of 1,214 km².

New York Bight—Phase 1 would involve a single towed source, and ensonified area was calculated in the same manner as described above for Central Atlantic Phase 1, Alternative 1. Distributing the 14,833 km of Phase 1 survey activity across the 12-month period of anticipated activity results in approximately 12.4 survey days per month, which was multiplied by the daily ensonified area to give a monthly ensonified area of 349 km². Phases 2 and 3 would each use a dual source configuration with a horizontal separation distance of 30 m between the sources, and ensonified area was calculated in the same manner as described above for Central Atlantic Phase 2. For Phase 2, TerraSond assumes that there would be two days of survey activity, giving a total ensonified area of 62.6 km². Distributing the combined 23,311 km of Phase 3 survey activity across the 12-month period of anticipated activity results in approximately 19.4 survey days per month, which was multiplied by the daily ensonified area to give a monthly ensonified area of 608 km².

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts and Halpin, 2022) represent the best available information regarding marine mammal densities in the survey area. These density data incorporate aerial and shipboard line-transect survey data from NMFS and other organizations and incorporate data from numerous physiographic and dynamic oceanographic and biological covariates, and control for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, the models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km²) were obtained using the most recent model results for all taxa.

In order to select a representative sample of grid cells in and near each survey area, TerraSond created a 10-km wide perimeter around each area (Figures 1 and 2) in GIS. The perimeter was then used to select grid cells in and around each area containing the monthly or annual estimates for each species. The average monthly abundance for each species in the each area was calculated as the mean value of the selected grid cells in each month. See Tables 10 and 11 in TerraSond's application for density values used in the analysis.

Density information is presented for seals generically. In order to generate species-specific density values, TerraSond multiplied seal density values by the proportion of total SAR-estimated seal abundance attributed to each species. Roberts and Halpin (2022) similarly provide generic density information for pilot whales and bottlenose dolphin. In the Central Atlantic survey area, where both species of pilot whales could be encountered, TerraSond requested that the density-based take estimate be divided equally across the two species. In the New York Bight survey area, only the long-finned pilot whale is expected to be present, and all estimated takes are attributed to that species. For bottlenose dolphin, although the northern coastal migratory stock could be present in the region, all survey effort is in sufficiently deep water (20–65 m) that we assume all potential bottlenose dolphin takes are appropriately assigned to the offshore stock.

Densities from each of the selected density blocks were averaged for each month available to provide monthly density estimates for each species (when available based on the temporal resolution of the model products), along with the average annual density. Please see Tables 7 and 8 of TerraSond's application for density values used in the exposure estimation process for the Lease Area and the potential ECRs, respectively. Note that no density estimates are available for the portion of the ECR area in Delaware Bay, so the marine mammal densities from the density models of Roberts *et al.* were assumed to apply to this area. Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Estimates of the potential number of takes by Level B harassment were calculated by multiplying the monthly density for each species in the respective survey areas (Central Atlantic and New York Bight) by the respective monthly ensonified area for each Phase and then summing across the 12 months. TerraSond evaluated monitoring reports from the vicinity of the survey areas, finding that the common dolphin estimated take number for the New York Bight survey area may be underestimated. Based on these observational data, TerraSond assumes that 16 common dolphins may be encountered within the harassment zone on each survey data. Based on the planned 385 survey days in the New York Bight survey area, this produces an estimate of 6,160 takes. This larger value is substituted for the density-based take estimate for common dolphins. Table 4 provides information about the take estimates and take proposed for authorization.

TABLE 4—ESTIMATED TAKE NUMBERS AND TOTAL TAKE PROPOSED FOR AUTHORIZATION

Species	Estimated take—Central Atlantic	Estimated take—New York Bight	Proposed take authorization	Percent abundance			
				Phase 1	Phase 2	Phase 1	Phase 2
North Atlantic right whale	5.1	4.5	1.9	0.0	3.3	15	4.1
Humpback whale	21.6	19.0	4.0	0.1	7.0	52	3.7
Minke whale	30.7	27.0	14.7	0.2	25.5	98	0.4
Sei whale	4.9	4.3	1.2	0.0	2.2	13	0.2
Fin whale	44.1	38.8	8.0	0.1	14.0	105	1.5
Cuvier's beaked whale	29.1	25.6	0	0	0	55	1.0
Mesoplodont beaked whales	5.7	5.0	0	0	0	11	0.1
Sperm whale	16.0	14.1	0.6	0	1.1	32	0.7
Rough-toothed dolphin[1]	2.0	1.6	0	0	0	10	7.4
Bottlenose dolphin	1,427.7	1,255.6	116.6	1.8	202.8	3,005	4.8
Atlantic spotted dolphin	605.6	532.6	20.9	0.3	36.3	1,196	3.0
Common dolphin[2]	5,097.1	4,482.4	597.5	8.9	1,039.1	11,225	6.5
Atlantic white-sided dolphin	117.6	103.4	45.1	0.7	78.4	345	0.4
Risso's dolphin	171.9	151.2	5.7	0.1	9.9	339	1.0
Short-finned pilot whale	238.8	210.1	0	0	0	449	1.6
Long-finned pilot whale	238.9	210.0	11.1	0.2	19.3	480	1.2
Harbor porpoise	124.0	109.1	102.1	1.5	177.6	514	0.5
Gray seal	439.7	386.7	60.6	0.9	105.4	993	0.2
Harbor seal	237.5	208.9	136.2	2.0	236.9	822	1.3

[1] For rough-toothed dolphin, we propose to authorize take in the form of one encounter with a group of average size, as assumed average group size (10) is larger than the total estimated take number (4). Mean group sizes were calculated from regional sightings data (Whitt *et al.,* 2015; Kraus *et al.,* 2016; Palka *et al.,* 2017).

[2] For common dolphin, estimated take numbers for the New York Bight survey area were calculated based on an assumption (based on monitoring data from the area) that 16 dolphins per day could be encountered within the harassment zone. These values were larger than and used instead of the results of density-based calculations.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

NMFS proposes that the following mitigation measures be implemented during TerraSond's planned marine site characterization surveys. Pursuant to section 7 of the ESA, TerraSond would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Visual Monitoring and Shutdown Zones

During survey operations (*e.g.,* any day on which use of the sparker source is planned to occur, and whenever the sparker source is in the water, whether activated or not), a minimum of one visual marine mammal observer (PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 minutes prior to ramp-up (described below) and must continue until one hour after use of the sparker source ceases.

Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor applicable shutdown zones (see below). These zones shall be based upon the radial distance from the sparker source (rather than being based around the vessel itself).

Two shutdown zones are defined, depending on the species and context. Here, an extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 meters from the sparker source (0–500 meters) is defined for North Atlantic right whales. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 meters (0–100 meters). Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Pre-Start Clearance and Ramp-Up

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker source when technically feasible. Operators should ramp up sparkers to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period must occur prior to the start of ramp-up. The intent of pre-start clearance observation (30 minutes) is to ensure no marine mammals are within the shutdown zones prior to the beginning of ramp-up. The intent of ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the shutdown zones for 30 minutes prior to the initiation of ramp-up (pre-start clearance). During this 30 minute pre-start clearance period the entire shutdown zone must be visible, except as indicated below.
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated.
- A visual PSO conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.
- The pre-start clearance requirement is waived for small delphinids and pinnipeds. Detection of a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped within the shutdown zone does not preclude beginning of ramp-up, unless the PSO confirms the individual to be of a genus other than those listed, in which case normal pre-clearance requirements apply.
- If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which the pre-clearance requirement is waived), PSOs may use best professional judgment in making the decision to call for a shutdown.
- Ramp-up may not be initiated if any marine mammal to which the pre-start clearance requirement applies is within the shutdown zone. If a marine mammal is observed within the shutdown zone during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species).
- PSOs must monitor the shutdown zones 30 minutes before and during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable shutdown zone.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Sparker activation may only occur at night where operational planning cannot reasonably avoid such circumstances.
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable shutdown zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Shutdown

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker source if a marine mammal is detected within the applicable shutdown zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker source is active and a marine mammal appears within or enters the applicable shutdown zone, the source must be shut down. When shutdown is instructed by a PSO, the source must be immediately deactivated and any dispute resolved only following deactivation.
- The shutdown requirement is waived for small delphinids and pinnipeds. If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped is visually detected within the shutdown zone, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.
- If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger shutdown zone), PSOs may use best professional judgment in making the decision to call for a shutdown.
- Upon implementation of shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species) with no further detection of the marine mammal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone, shutdown would occur.

Vessel Strike Avoidance

Crew and supply vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures

should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals.

- All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes. These include all Seasonal Management Areas (SMA) (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from right whales. If a right whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the PSO team will consult NMFS' North Atlantic right whale reporting system and Whale Alert, daily and as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is TerraSond's responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

TerraSond must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be

designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

TerraSond must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7×50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but TerraSond is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including shutdown zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established shutdown zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to shutdown zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology must be available for use. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs should also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

TerraSond shall submit a draft summary report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *nmfs.gar.incidental-take@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel name (source vessel), vessel size and type, maximum speed capability of vessel;

2. Dates of departures and returns to port with port name;
3. PSO names and affiliations;
4. Date and participants of PSO briefings;
5. Visual monitoring equipment used;
6. PSO location on vessel and height of observation location above water surface;
7. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
11. Water depth (if obtainable from data collection software);
12. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
13. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
14. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).
15. Upon visual observation of any marine mammal, the following information must be recorded:
a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
b. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
c. PSO who sighted the animal;
d. Time of sighting;
e. Initial detection method;
f. Sightings cue;
g. Vessel location at time of sighting (decimal degrees);
h. Direction of vessel's travel (compass direction);
i. Speed of the vessel(s) from which the observation was made;
j. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;
k. Species reliability (an indicator of confidence in identification);
l. Estimated distance to the animal and method of estimating distance;
m. Estimated number of animals (high/low/best);
n. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
o. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
p. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);
q. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;
r. Equipment operating during sighting;
s. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and
t. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, TerraSond must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866–755–6622) within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities, TerraSond must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;
3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
12. To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact

finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 2, given that the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as a separate sub-sections. Specifically, we provide additional discussion related to North Atlantic right whale and to other species currently experiencing UMEs.

NMFS does not anticipate that serious injury or mortality would occur as a result of HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment, *e.g.,* temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, Ellison *et al.,* 2012). As described above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required shutdown zones for certain activities.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area and there are no feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the proposed survey area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. The proposed survey area overlaps a migratory corridor BIA for North Atlantic right whales that extends from Massachusetts to Florida and from the coast to beyond the shelf break. Due to the fact that the proposed survey activities are temporary and the spatial extent of sound produced by the survey would be small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the proposed survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during TerraSond's proposed activities. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been requested and is being proposed for authorization by NMFS as HRG survey operations are required to maintain and implement a 500 m shutdown zone. The 500 m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the acoustic source (*i.e.,* sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small estimated zones in conjunction with the aforementioned shutdown requirements. NMFS does not anticipate North Atlantic right whales takes that would result from TerraSond's proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of TerraSond's proposed survey areas. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed between 2018–2020 and, as part of a separate UME, again in 2022. These have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main

pathogen found in the seals is phocine distemper virus (2018–2020) and avian influenza (2022), although additional testing to identify other factors that may be involved in the UMEs is underway. The UMEs do not provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 60,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2021). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021).

The required mitigation measures are expected to reduce the number and/or severity of proposed takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Required mitigation measures, such as shutdown zones and ramp up, would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed for authorization;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the ensonified areas during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- While the survey area is within areas noted as a migratory BIA for North Atlantic right whales, avoidance of the survey area due to the activities is not anticipated and would not likely affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment isopleth of 141 m) to minimize the effects of any Level B harassment take of the species; and
- The proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to other marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all species (total take is less than 7.5 percent of the abundance of the affected stocks for all species, see Table 4). The figures presented in Table 4 are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to TerraSond for conducting site characterization survey activity in the described Central Atlantic and New York Bight survey areas, provided the previously mentioned mitigation, monitoring, and reporting requirements

are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: October 31, 2022.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Middle Mile Grant Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, following the Paperwork Reduction Act of 1995 (PRA), invites the public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. This Notice of Information Collection is for the Middle Mile Grant Program Bi-Annual Performance Reporting and Final Report. The purpose of this notice is to allow for 60 days of public comment preceding the submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 3, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Arica Cox, Telecommunications Policy Analyst, Grants Management, Administration, and Compliance, Office of internet Connectivity and Growth, National Telecommunication and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4626, Washington, DC 20230, or by email to *broadbandusa@ntia.gov.* Please reference Middle Mile Grant Program Data Collection 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 Arica Cox, Telecommunications Policy Analyst, Grants Management, Administration, and Compliance, Office of internet Connectivity and Growth, National Telecommunication and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4626, Washington, DC 20230, or email at *acox@ntia.gov; broadbandusa@ntia.gov;* or via telephone at (202) 209–3011.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Enabling Middle Mile Grant Program, authorized by Section 60401 of the Infrastructure Investment and Jobs Act of 2021, Public Law 117–58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act), provides funding for the construction, improvement, or acquisition of middle mile infrastructure. The Middle Mile Grant Program will make up to $980,000,000 available for federal assistance to the following eligible entities: a State, political subdivision of a State, Tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning council, Native entity, economic development authority, or any partnership of two (2) or more of these entities. The purpose of the grant program is to expand and extend middle mile infrastructure to reduce the cost of connecting areas that are unserved or underserved to the internet backbone.

On May 13, 2022, NTIA published the program's Notice of Funding Opportunity (NOFO) on *internetforAll.gov* to describe the requirements under which it will award grants for the Middle Mile Grant Program.[1] The NOFO requires award recipients to submit bi-annual performance reports, financial reports, and a final report as a part of the grant close-out process. Award recipients must follow the reporting requirements described in Section A.01, Reporting Requirement, of the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020). Additionally, in accordance with 2 CFR part 170, all

[1] *See* Enabling Middle Mile Broadband Infrastructure Program Notice of Funding Opportunity (NOFO) (May 13, 2022), *https://www.internetforall.gov/program/enabling-middle-mile-broadband-infrastructure-program.*

recipients of a federal award made on or after October 1, 2010, must comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282).

NTIA will use the information collected from each award recipient to effectively administer and monitor the grant program to ensure the achievement of the Middle Mile Grant Program purposes and account for the expenditure of federal funds to deter waste, fraud, and abuse.

II. Method of Collection

Middle Mile Grant Program

Award recipients will submit financial and performance reports on a bi-annual basis for the periods ending March 31st and September 30th of each year, and an annual report no later than one year after receiving grant funds and yearly thereafter until they have expended all funds. NTIA will collect data through electronic submission.

Reports will be due within 30 days after the end of the reporting period until the funds have been expended and are submitted to the Assistant Secretary. NTIA may consider collecting data through electronic submission. The report shall discuss the six-month period immediately preceding the report date, in a manner that:

(1) Describes how the eligible entity expended the funds and includes an SF–425 form and all required financial reporting information.

(2) Certifies that the eligible entity complied with the requirements of the Infrastructure Act and the Middle Mile Grant Program, including:

a. A description of each service provided with the grant funds; and

b. Information regarding the middle mile infrastructure constructed, improved, or acquired, including material describing specific routes deployed, splice points and interconnection points along such routes, interconnection points, any interconnection or wholesale agreements in place with third parties, and connections to last-mile infrastructure.

(3) Describes whether the project prioritizes local hires.

(4) Describes whether the project proposes use of a Community Benefit Agreement, with a description of any such agreement.

(5) Identifies each subrecipient that received a subaward or subcontract from the eligible entity and provides a description of the specific project for which grant funds were provided.

(6) Includes technical progress reporting information as prescribed in 2 CFR 200.329 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D#200.328*) and Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01.

For projects over $5,000,000 (based on expected total cost):

(1) A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act''), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as ''baby Davis-Bacon Acts''). If such certification is not provided, an awardee must provide a project employment and local impact report detailing:

a. The number of contractors and sub-contractors working on the Project;

b. The number of workers on the Project hired directly and hired through a third party;

c. The wages and benefits of workers on the Project by classification; and

d. Whether those wages are at rates less than those prevailing.[2]

(2) If a recipient has not provided a certification that a project either will use a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)), then the recipient must provide a project workforce continuity plan, detailing:

a. Steps taken and to be taken to ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the project (as required in Section III.B), including a description of any required professional certifications and/or in-house training, registered apprenticeships or labor-management partnership training programs, and partnerships with entities like unions, community colleges, or community based groups;

b. Steps taken and to be taken to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;

c. Steps taken and to be taken to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (*e.g.,* OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;

d. The name of any subcontracted entity performing work on the project and the total number of workers employed by each such entity, disaggregated by job title; and

e. Steps taken and to be taken to ensure that workers on the project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market.

Recipients must maintain sufficient records to substantiate all information above upon request.

III. Data

OMB Control Number: 0660–XXXX.

Form Number(s): TBD.

Type of Review: New information collection.

Affected Public: Recipients of funding under the Middle Mile Grant Program. Recipients might include States, political subdivisions of a State, Tribal governments, technology companies, electric utilities, utility cooperatives, public utility districts, telecommunications companies, telecommunication cooperatives, nonprofit foundations, nonprofit corporations, nonprofit institutions, nonprofit associations, regional planning councils, Native entities, economic development authorities, or partnerships of two (2) or more of these entities.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 33.22.

Estimated Total Annual Burden Hours: 7,474.5.

Estimated Total Annual Cost to Public: $356,757.89.

Respondent's Obligation: Mandatory.

[2] As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act''), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

Legal Authority: Section 60401of the Infrastructure Investment and Jobs Act of 2021, Public Law 117–58, 135 Stat. 429 (November 15, 2021)

IV. Request for Comments

We are soliciting public comments to permit the Department to:

(1) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility.

(2) 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.

(3) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected.

(4) 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. 2022–24085 Filed 11–3–22; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for November 17, 2022, at 9:00 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: 1 November 2022 in Washington, DC.

Susan M. Raposa,

Technical Information Specialist.

[FR Doc. 2022–24067 Filed 11–3–22; 8:45 am]

BILLING CODE 6330–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2022–0028]

Department of Defense Catalog Data Standard

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for information.

SUMMARY: DoD is exploring the use of a standard electronic format to capture commercial item catalog information on products or services offered by potential suppliers. DoD requests input on the notional approach, the data format, and the impacts of the approach.

DATES: *Submission of Comments:* Interested parties should submit written comments to the address shown in **ADDRESSES** on or before January 3, 2023 to be considered in the implementation planning.

Public meeting: A virtual public meeting will be held on December 6, 2022, from 10:30 a.m. to 2:30 p.m. Eastern time. The public meeting will end at the stated time or when the discussion ends, whichever comes first.

Registration: Registration to participate in this meeting must be received no later than close of business on November 22, 2022. Information on how to register for the public meeting may be found in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: *Public Meeting:* A virtual public meeting will be held using Zoom video conferencing software.

Submission of Comments: Submit comments to the questions provided below, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''Docket Number DARS–2022–0028.'' Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''Docket Number DARS–2022–0028'' on any attached document(s).

○ *Email: osd.dfars@mail.mil.* Include ''DoD Catalog Data Standard'' in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Propert, telephone 703–697–4384.

SUPPLEMENTARY INFORMATION:

A. Notional DoD Catalog Data Standard

DoD has developed a high level of visibility into its contracting practices through the use of automation and data standards. For example, the Procurement Data Standard has enabled DoD to capture contract awards in discrete data elements, allowing unprecedented insights into DoD's purchases. Data capture has also enabled implementation of tools, notably the Supplier Performance Module (SPM) in the Procurement Integrated Enterprise Environment, to improve the quality of information available when making small dollar purchases. SPM enables DoD to apply information on past performance with specific suppliers and items through reuse of data captured as a normal part of the business process. Another area in which DoD has been able to improve the buying process through automation is the FedMall, which enables purchase card holders to order items through existing Government ordering instruments through the use of a shopping cart analogous to that found on commercial sales platforms.

Efforts in both of these areas for product or service identification have been constrained by existing business practices within the Government. For example, some Government-wide ordering instruments do not have a price listed for their goods; users are directed to the company website for commercially available pricing. Different companies often describe the same commercial product or service in different ways, hampering market research. Further, legislation specific to the Department of Defense requires collection of additional information relevant to products. Providing current and accurate product data descriptions, pricing, and commercial catalog standards is essential to understanding the market.

Commercial companies' offerings are provided to the Government in the form of catalogs, both hard copy and online, in the form of PDFs or hand-entered data. Electronic data formats, such as the EDI 832 standard, have been used in the past by larger companies to try to automate the uploading and maintenance of catalog data. However, newer data formats, such as eXtensible Markup Language, or XML, provide greater flexibility and ease of programming that can make electronic commercial catalogs possible for more companies.

Using XML, DoD has developed a draft Catalog Data Standard (CDS) which could be used by companies to provide their catalogs to the Government, as well as to update and maintain prices once the catalog has been provided. The notional CDS was developed based on review of the existing American National Standards Institute X12 832 Price/Sales Catalog, as well as review of existing catalog data formats in use across various reseller websites and reviews of actual product catalogs for a wide range of items.

The objectives of the notional CDS are as follows:

1. Capture commercial catalog descriptions and prices for existing and future ordering instruments to eliminate manual efforts to capture catalog prices from websites and printed documents.

2. Ensure uniformity in the data used to describe parts and services that are identical but have varying descriptions in the marketplace.

3. Enable use of existing price lists to competitively place purchase orders based on the prices currently available, thus eliminating the need for multiple requests for quotes.

4. Improve traceability of prices over time through uniform item descriptions.

5. Precisely identify products offered and their origins in order to identify and eliminate counterfeits and trace sources of supply to ensure security.

6. Enable comparison of proposed item prices with similar purchases both by the Government and by other contractors.

The Government has historically been able to identify like items through the cataloging process run by the Federal Logistics Information Service (FLIS), which assigns National Stock Numbers (NSNs) to commonly ordered supplies. However, there are many commercial products that are not assigned NSNs (approximately 95% of DoD-purchased items currently do not have an NSN). The focus of the notional CDS is commercial, non-NSN items. In the event an item is identified as a candidate for an NSN it would be fed into the existing FLIS process. The intent of the notional CDS is to capture cataloging data for those products and services that would not have an NSN assigned, including software, and certain categories of common commercial products and services which may have other consensus standard identifiers applied. Therefore, the intent behind the notional CDS is to leverage commercial cataloging and identification processes to enable standard identification of items beyond those covered by the NSN process.

DoD is posting the following draft documents for comment at *https://dodprocurementtoolbox.com/site-pages/ebusiness-data-standards-schemas:*

1. The Catalog Data Standard (Discussion Draft), an XML Schema Definition (.XSD) file that defines the format of the data that would be captured and the relationships between the data elements. This file is best viewed using a dedicated XML reader.

2. An Enumerations and Annotations document (Discussion Draft), a Microsoft Excel (.XLS) file that lists allowable values for certain elements within the XSD.

3. A Concept of Operations (Discussion Draft) Microsoft Word document, which explains how DoD would receive, store, maintain, and use the catalogs.

DoD requests comments on the following areas:

1. The Notional CDS Schema Structure and Formats. Defense Pricing and Contracting will host a virtual public meeting to describe the notional schema and how it might be used with ordering instruments, simplified acquisitions, and submission of cost and pricing data.

2. Enumerations. DoD requests inputs in particular on:

a. Existing industry standards that can be used to identify products across suppliers within a given industry, such as pharmaceuticals.

b. Standard descriptive information that can also be used to identify characteristics of items within a particular industry or set of industries.

c. Standards for defining commercial services that are used within a specific industry such as automotive vehicle maintenance or medical procedures.

3. Authoritative Sources. For any sources of enumerations identified, DoD requests input on whether authoritative sources exist that can validate either the information or the formats for the information.

4. Concept of Operations (Discussion Draft). DoD requests comments on the notional Concept of Operations document.

5. Use of catalog submissions as standing price quotations. DoD requests comments on the potential use of the notional CDS in the context of Federal Acquisition Regulation section 13.103.

6. Use of catalogs as baseline documents in developing blanket purchase agreements or other ordering instruments.

7. Ability to map existing catalog data to the XML format in the notional CDS.

8. Cost to develop and deliver the catalogs using the notional CDS, and the extent to which those costs would be offset by:

a. Eliminating the need to maintain Government-specific information on contractor websites.

b. Reducing the volume of requests for quotations by use of the catalog.

9. Use of the notional CDS for submitting bills of materials as either prime contractors to the Government or as suppliers/subcontractors to prime contractors or higher tier subcontractors.

10. Any other general comments on the notional CDS and potential uses.

B. Public Meeting Information

DoD plans to hold a public meeting to obtain input from the private sector and interested parties in Government regarding the notional CDS, data format, and potential impact on the public.

Registration: Individuals wishing to participate in the virtual meeting must register by November 22, 2022, to facilitate entry to the meeting. Interested parties may register for the meeting by sending the following information via email to *osd.dfars@mail.mil.* Include ''Public Meeting, DoD Catalog Data Standard'' in the subject line of the message.

- Full name.
- Valid email address, which will be used for admittance to the meeting.
- Valid telephone number, which will serve as a secondary connection method. Registrants must provide the telephone number they plan on using to connect to the virtual meeting.
- Company or organization name.

Correspondence, Comments, and Presentations: Please cite ''Public Meeting, DoD Catalog Data Standard'' in all correspondence related to the public meeting. There will be no transcription at the meeting.

Authority: DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–24057 Filed 11–3–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0122]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 3, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Military Community Advocacy Directorate, Family Advocacy Program, 4800 Mark Center Drive, Suite 03G15, Alexandria, VA 22350, Dr. Najah A. Barton, (571) 236–3429.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Domestic Abuse Victim Reporting Option Statement; DD Form 2967; OMB Control Number 0704–DARS.

Needs and Uses: This collection of information is necessary for documenting decisions on whether to file a restricted or unrestricted report for a victim of domestic abuse. This document is filed in accordance with the appropriate OSD and Military Department Family Advocacy Program System of Records Notice (SORN).

The information collected will be used for purposes of filing an official report. When a restricted report is filed, the victim is able to receive advocacy and counseling services without a report being made to command or law enforcement. In cases of an unrestricted report, command and law enforcement will be notified, and the victim is eligible to receive advocacy and counseling services from the Family Advocacy Program. The information collected for the form in unrestricted report cases may be used to initiate an investigation, and subsequently make an incident status determination following the Incident Determination Committee procedures and processes outlined in DoD Manual 6400.01, Volume 3. If an incident meets the definitions outlined in DoDM 6400.01, Volume 3, the incident is subject to entry into the Central Registry (DoDM 6400.01, Volume 2).

Affected Public: Individuals or households.

Annual Burden Hours: 5,000 hours.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: November 1, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–24079 Filed 11–3–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Mississippi River Hatchie/Loosahatchie, MS River Mile 775–736, Tennessee and Arkansas, Ecosystem Restoration Feasibility Study

AGENCY: U.S. Army Corps of Engineers, Defense Department (DoD).

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Memphis District (CEMVM) intends to prepare a Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR–EIS) for the Hatchie-Loosahatchie Mississippi River Ecosystem Restoration Study. The study seeks to examine restoring ecological structure and function to the mosaic of habitats along the lower Mississippi River (LMR) and its floodplain between River Miles 775 and 736 including secondary channels and other floodplain aquatic habitats; floodplain forests; and several scarce vegetative communities such as, wetlands, rivercane, riverfront forests, and bottomland hardwood forests.

DATES: Written comments submitted for consideration are due by 5 December 2022.

ADDRESSES: Written scoping comments should be submitted by mail to: U.S. Army Corps of Engineers, Memphis District, Attn: CEMVN–PDC–UDC, 167 North Main St., Room B–202, Memphis, Tennessee 38103, or by email to: *LMRRA-Hatchie-Loosahatchie@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions or requests to be added to the project mailing list should be directed to Mr. Mike Thron by mail at U.S. Army Corps of Engineers, Memphis District, Attn: CEMVN–PDC–UDC, 167 North Main St., Room B–202, Memphis, Tennessee 38103; by phone at 901–544–0708; or by email at *LMRRA-Hatchie-Loosahatchie@usace.army.mil.* For additional information about the project, please visit the project website at: *https://www.mvm.usace.army.mil/Missions/Environmental-Stewardship/Hatchie-Loosahatchie-Mississippi-River-Ecosystem-Restoration-Study/.*

SUPPLEMENTARY INFORMATION:

1. Background and Authorization

The U.S. Army Corps of Engineers, as the lead agency, in partnership with the

Lower Mississippi River Conservation Committee (LMRCC), as the non-federal sponsor, are undertaking this study. The Hatchie-Loosahatchie Mississippi River Ecosystem Restoration Study will examine restoring ecological structure and function along an approximate 39-mile reach of the Mississippi River bordering Arkansas and Tennessee between River Mile 775, above its confluence with the Hatchie River, and River Mile 736, below its confluence with the Loosahatchie River, including secondary channels and other floodplain aquatic habitats; floodplain forests; and several scarce vegetative communities such as, wetlands, rivercane, riverfront forests, and bottomland hardwood forests.

The LMRCC, formed in 1994, is a nonprofit coalition of the six states along the LMR—Arkansas, Kentucky, Louisiana, Missouri, Mississippi, and Tennessee. The LMRCC's mission is to promote the restoration of the LMR through cooperative efforts, encompassing natural resources management, information sharing, public education, advocacy, and research.

This study to determine the feasibility of habitat restoration between River Miles 775 and 736 is authorized by Section 1202(a) of the Water Resources Development Act (WRDA) of 2018, Public Law 115–270, and is the first of eight reaches of the LMR identified as priorities in the report prepared by the Secretary pursuant to section 402 of the WRDA of 2000, titled ''Lower Mississippi River Resource Assessment; Final Assessment In Response to Section 402 of WRDA 2000,'' Public Law 106–541, and dated July 2015.

The Lower Mississippi River Resource Assessment (LMRRA) examined information needed for river-related management; the needs of natural habitats and the species they support; and the need for more river-related recreation and public access. Historically, the navigation and flood risk management systems have received most of the attention on the LMR. Habitat and recreation have not been managed as systems on the LMR, but planning for these uses is starting to receive focus from many entities. The Final LMRRA Assessment, presented as a report to Congress in 2016, included a strategy to meet those information, habitat, and recreation needs. The recommended strategy included the creation of three programs to address the needs on the river: (1) a Data, Information, Science, and Communication (DISC) Program, (2) a Habitat Restoration and Management Program (HRMP), and (3) a Recreation Program (RP). Each of these programs includes multiple studies and projects. The recommendations leverage existing programs and encourage both public and private investment in the river. All recommendations are compatible with navigation and flood risk management. The recommended HRMP primarily relies on the USACE, U.S. Fish and Wildlife Service (USFWS), and the LMRCC with their cooperating agencies, partners, and states—Kentucky, Missouri, Tennessee, Arkansas, Mississippi, and Louisiana. The program would benefit a variety of habitats and the species that rely on them, recreational users, local economies, and other river resources.

The HRMP included eight priority LMR conservation reach habitat restoration studies, which collectively represent 290 of the 954 river miles in the floodplain of the LMR. Study emphasis includes project planning, engineering and design within the main channel, secondary channels, floodplain lakes, and other backwater areas within the LMR floodplain, building from the work defined in LMRCC's Restoring America's Greatest River Initiative and the LMRRA. These feasibility studies will examine the Mississippi River and its floodplain to determine if there is Federal interest sufficient to justify construction of ecosystem restoration features.

The LMR is a dynamic freshwater ecosystem changing with the river's annual hydrologic regime with interactions among the terrestrial and aquatic systems, main channel and side channel areas, mudflats, backwaters, tributaries, and islands. The Mississippi River Levee system has disconnected much of the floodplain from the river. Flood risk management and navigation projects have altered bends and diverted flow from secondary channels. Extensive structural changes on the river's main-stem have disrupted the once dynamic ecosystem. There is less available habitat for federally listed threatened and endangered species including pallid sturgeon and fat pocketbook mussels, and several other species of conservation concern. Modification and changes in the LMR have resulted in a number of extensive habitat changes including reductions in both vegetative diversity and forested habitat; extensive loss of connection between the river, its associated floodplain, and critical floodplain habitat; loss and disconnection of side channels, backwaters, and oxbows; decreased main channel and main channel border habitat diversity; loss of gravel bars, sandbars and islands; and a substantial increase in presence of invasive species.

There is a critical need to restore habitat and ecosystem function in the LMR in association with the continued operation of significant levee and navigation infrastructure. Restoration opportunities include restoring vegetative diversity and forest habitats in the active floodplain; improving floodplain connectivity with the river; reconnection of side channels, backwaters, and floodplain lakes; restoration of sandbars and gravel bars; development and enhancement of islands; and increasing habitat diversity in the main channel and along the shoreline.

2. Purpose and Need for the Proposed Action

The purpose and need for the proposed action is to restore habitat and ecosystem function along an approximate 39-mile reach of the LMR and its floodplain in harmony with the existing USACE mission areas of ensuring navigation and flood risk reduction.

3. Preliminary Proposed Action and Alternatives Considered

The DIFR–EIS will analyze alternatives for ecosystem improvements within this reach of the LMR and its floodplain. Alternatives may include, but are not limited to, removing obstructions to increase connectivity within large river and floodplain aquatic habitats, restoring depths and improving aquatic habitat complexity, increasing quantity and/or quality of the diverse mosaic of vegetated habitats, such as, submersed aquatic vegetation, rivercane, cypress/tupelo swamps, bottomland hardwood and riverfront forests, and improving recreational, educational, and/or other opportunities for public access that are compatible with ecosystem restoration purposes. The study will identify and evaluate a full range of reasonable alternatives, including the No Action Alternative.

4. Brief Summary of Expected Impacts

Expected impacts include short-term disturbances of existing aquatic and floodplain habitats during construction, followed by long-term improvements to the ecosystem.

5. Anticipated Permits, Consultations, or Coordination

The proposed Action is being coordinated with federal, state, regional, and local agencies. In accordance with relevant environmental laws and regulations, USACE will consult with

the following agencies: USFWS under the Fish and Wildlife Coordination Act; USFWS under the Endangered Species Act; Arkansas Department of Environment and Energy and Tennessee Department of Environment and Conservation for Water Quality Certification; and, the Advisory Council on Historic Preservation (ACHP), Tennessee and Arkansas State Historic Preservation Offices (SHPOs), and the appropriate Tribal Historic Preservation Officers under the National Historic Preservation Act (NHPA) and integrated NHPA/EIS process. The non-Federal sponsor, the LMRCC, is comprised of the 12 state wildlife and water quality agencies from the six states bordering the LMR, and works in cooperation with the USFWS, U.S. Geological Survey (USGS), USACE, U.S. Environmental Protection Agency (EPA), U.S. Department of Agriculture's (USDA's) Natural Resources Conservation Service (NRCS), and various conservation focused non-governmental organizations (NGOs). These agencies have been active in the preceding LMRRA Report and current study to date and continued coordination is expected throughout the study process.

6. Public Participation

USACE invites all affected federal, state, and local agencies, affected Native American Tribes, other interested parties, and the general public to participate in the NEPA process during development of the DIFR–EIS. The purpose of the public scoping process is to provide information to the public, narrow the scope of analysis to significant environmental issues, serve as a mechanism to solicit agency and public input on the identification of potential alternatives, information, and analyses relevant to the proposed action, and ensure full and open participation in scoping for the draft SEIS.

Scoping and other study related information will continue to be made available on the project website at: *https://www.mvm.usace.army.mil/Missions/Environmental-Stewardship/Hatchie-Loosahatchie-Mississippi-River-Ecosystem-Restoration-Study/.* To ensure that public comments are considered in DIFR–EIS development process, members of the public, interested persons and entities must submit their comments to USACE by mail, email, or at the Scoping Meeting(s). Written comments submitted for consideration are due 30 days from the date of this Notice of Intent. Please include your name and return address on the first page of written comments. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by a commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Public scoping meeting(s) will be held at various locations around the study area during the scoping period which extends 30 days from the date of this Notice of Intent, to present information and receive comments from the public. Notification of the scoping meeting(s) will be publicly announced in advance by USACE on the project website at: *https://www.mvm.usace.army.mil/Missions/Environmental-Stewardship/Hatchie-Loosahatchie-Mississippi-River-Ecosystem-Restoration-Study/,* and through press releases, special public notices, and USACE-Memphis District social media platforms, at a minimum.

7. Availability

The DIFR–EIS is presently scheduled to be available for public review and comment in early 2023. A final IFR–EIS is tentatively scheduled for release in May 2024.

James A. Bodron,

Regional Business Director, Mississippi Valley Division.

[FR Doc. 2022–24019 Filed 11–3–22; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

FAFSA Simplification Act Changes for Implementation in the 2023–2024 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The U.S. Department of Education (Department) publishes this notice, as required by the Consolidated Appropriations Act, 2022, of the phased implementation of some elements of the FAFSA Simplification Act for the 2023–2024 award year. This notice also addresses other rules that will take effect for the 2023–2024 award year as part of the FAFSA Simplification Act.

FOR FURTHER INFORMATION CONTACT: Vanessa Gomez or Brian Schelling, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C179 or 2C188, Washington, DC 20202. Telephone: (202) 453–6708 or (202) 453–5966. Email: *Vanessa.Gomez@ed.gov* or *Brian.Schelling@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: Enacted into law as part of the Consolidated Appropriations Act, 2021, Division FF, Title VII (116 Pub. L. 260), the FAFSA Simplification Act makes many significant changes to the Higher Education Act of 1965, as amended (HEA), regarding the Free Application for Federal Student Aid (FAFSA®) form, need analysis, and related policies and procedures for schools that participate in the title IV, HEA programs. Due to the magnitude of these changes and to ensure that both the Department and the higher education community were prepared to fully implement the FAFSA Simplification Act, in June 2021, Federal Student Aid (FSA) announced a phased approach to implementation.[1] As part of this approach, in the FAFSA Simplification Act Technical Corrections Act, Division R (117 Pub. L. 103) of the Consolidated Appropriations Act, 2022 (CAA 2022), Congress extended the full implementation of the FAFSA Simplification Act until the 2024–2025 award year while also enabling the Department to implement the following elements in the 2023–2024 award year:

1. Section 702(b) of the FAFSA Simplification Act regarding cost of attendance.

2. Section 702(i) regarding discretion of student financial aid administrators. However, the system change required by this section's provisional independent student status will not be implemented until the FAFSA Simplification Act is fully integrated into our new systems for the 2024–2025 award year.

3. Section 702(l) regarding special rules for independent students and definitions for independent students and determinations but excluding the revised definitions for veteran and marital status, which will be implemented in the 2024–2025 award year.

4. Section 703 regarding only the period of eligibility for Pell grants under section 401(d) of the HEA, as amended by the FAFSA Simplification Act.

Under the CAA 2022, the Department must announce in the **Federal Register** implementation of any of the above elements for the 2023–2024 award year. Accordingly, the Department announces that it will implement all the provisions described above for the 2023–2024 award year. Certain provisions, including sections 702(b), 702(i), and 702(l) of the FAFSA Simplification Act, require institutions to develop policies

[1] *https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-06-11/beginning-phased-implementation-fafsa-simplification-act-ea-id-general-21-39.*

and procedures that address the updated requirements for students who apply for title IV, HEA student assistance prior to the beginning of that award year. Institutions must comply with the new statutory requirements when calculating awards of title IV, HEA programs for the 2023–2024 award year; performing professional judgments under the discretion of financial aid administrators for awards from that award year; and establishing a student's dependency status for that award year, even if such activities occur prior to the beginning of the 2023–2024 award year on July 1, 2023. We will provide more detailed guidance on the changes for cost of attendance, professional judgment, and independent student statuses for the 2023–2024 Award Year in an upcoming Dear Colleague Letter.

The Department also announces that it will implement new rules establishing Pell Grant eligibility for incarcerated students in Federal and State penal institutions as well as new rules governing the prison education programs in which these students will be enrolled. Although these rules are not specifically addressed in the CAA 2022, they will also be in effect for the 2023–2024 award year, as authorized in section 702(n) of the FAFSA Simplification Act. Because these are complex topics, the Department is developing additional guidance on these rules and policies.

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.

Nasser H. Paydar,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2022–24045 Filed 11–3–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0138]

Agency Information Collection Activities; Comment Request; Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) Kindergarten and First-Grade National Data Collection and Transfer School Recruitment

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection request.

DATES: Interested persons are invited to submit comments on or before January 3, 2023.

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–0138. 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 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Claraday, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department 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: Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) Kindergarten and First-Grade National Data Collection and Transfer School Recruitment.

OMB Control Number: 1850–0750.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 159,964.

Total Estimated Number of Annual Burden Hours: 110,186.

Abstract: The Early Childhood Longitudinal Study (ECLS) program, conducted by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), draws together information from multiple sources to provide rich, descriptive data on child development, early learning, and school progress. The ECLS program studies deliver national data on children's status at birth and at various points thereafter; children's transitions to nonparental care, early care and education programs, and school; and children's experiences and growth through the elementary grades. The Early Childhood Longitudinal Study, Kindergarten Class of 2023–24

(ECLS–K:2024) is the fourth cohort in the series of early childhood longitudinal studies. The study will advance research in child development and early learning by providing a detailed and comprehensive source of current information on children's early learning and development, transitions into kindergarten and beyond, and progress through school. The ECLS–K:2024 will provide data about the population of children who will be kindergartners in the 2023–24 school year, focusing on children's early school experiences continuing through the fifth grade, and will include collection of data from parents, teachers, and school administrators, as well as direct child assessments.

The ECLS–K:2024 K–1 field test (OMB# 1850–0750 v.19–25) is currently ongoing. This current request is to conduct the ECLS–K:2024 national kindergarten and first-grade data collection activities, as well as transfer district and school recruitment. There are two phases of the kindergarten data collection. The first, the fall kindergarten round, will occur from September through November 2023, followed by an additional round, the spring kindergarten round, conducted from March through June 2024. Data collection covered under the current clearance request will then occur again in the spring of 2025, when most of the sampled students are in first grade. Prior to each of these data collection rounds are advance school contact periods, during which schools will be contacted to complete tasks in preparation for the upcoming in-person school visit.

The current submission includes survey instruments, respondent materials, and specifications for the MyECLS website for the two kindergarten rounds and the first-grade round, as well as the recruitment of transfer districts and schools. Some of these materials were previously submitted in the request to conduct the K–1 field test (OMB# 1850–0750 v.24 and v.25) and have been updated to reflect additional NCES decisions and the tasks and procedures that will be followed for national data collections. However, many of the survey instruments, respondent materials, and MyECLS website specifications will undergo further revision based on the results of the K–1 field test, available in early 2023. In addition, the spring kindergarten materials are expected to be revised further in response to the national fall kindergarten field experiences, and the spring first-grade materials are expected to be revised further in response to experiences in both national kindergarten rounds. Further, the spring surveys submitted at this time have several known errors and issues (*e.g.,* items collecting respondent and household members' genders have not yet been updated), with needed updates forthcoming in future revision requests. All revised materials, as well as the translated materials, will be included in future revision requests including a 30D public comment period. The first of these revision requests (OMB 1850–0750 v.27) is planned for submission in April 2023.

Dated: October 31, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–24003 Filed 11–3–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0137]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Trends in International Mathematics and Science Study (TIMSS 2023) Main Study International Questionnaire

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection request.

DATES: Interested persons are invited to submit comments on or before December 5, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed ICR that is described below. The Department is especially interested in public comments addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public record.

Title of Collection: Trends in International Mathematics and Science Study (TIMSS 2023) Main Study International Questionnaire.

OMB Control Number: 1850–0695.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 50,996.

Total Estimated Number of Annual Burden Hours: 20,336.

Abstract: The Trends in International Mathematics and Science Study (TIMSS), conducted by the National Center for Education Statistics (NCES), within the U.S. Department of Education (ED), is an international assessment of fourth and eighth grade students' achievement in mathematics and science. Since its inception in 1995, TIMSS has continued to assess students every 4 years (1995, 1999, 2003, 2007, 2011, 2015, and 2019), with the next TIMSS assessment, TIMSS 2023, being the eighth iteration of the study. In TIMSS 2023, approximately 65 countries or education systems will participate. The United States will

participate in TIMSS 2023 to continue to monitor the progress of its students compared to that of other nations and to provide data on factors that may influence student achievement.

TIMSS is led by the International Association for the Evaluation of Educational Achievement (IEA), an international collective of research organizations and government agencies that create the frameworks used to develop the assessment, the survey instruments, and the study timeline. IEA decides and agrees upon a common set of standards, procedures, and timelines for collecting and reporting data, all of which must be followed by all participating countries. As a result, TIMSS is able to provide a reliable and comparable measure of student skills in participating countries. In the U.S., NCES conducts this study in collaboration with the IEA and a number of contractors to ensure proper implementation of the study and adoption of practices in adherence to the IEA's standards. Participation in TIMSS is consistent with NCES's mandate of acquiring and disseminating data on educational activities and student achievement in the United States compared with foreign nations [The Educational Sciences Reform Act of 2002 (ESRA 2002, 20 U.S.C. 9543)].

Previous requests associated with the TIMSS 2023 field test, which was conducted in March and April 2022, were approved by OMB between May 2021 and February 2022 (OMB# 1850–0695 v.16–19). Because TIMSS is a collaborative effort among many parties, the United States must adhere to the international schedule set forth by the IEA, including the availability of final field test and main study plans as well as draft and final questionnaires. In order to meet the international data collection schedule, to align with recruitment for other NCES studies (*e.g.,* the National Assessment of Education Progress, NAEP), and for schools to put the TIMSS 2023 field test assessment on their Spring 2022 calendars, recruitment activities for the field test began in June of 2021. Recruitment activities for the main study began in January 2022, with the data collection activities currently scheduled to begin in March 2023.

This package solicits 30 days of public comment and requests OMB approval for the final international version of the main study questionnaires. Adaptation activities to fit the questionnaire text into the U.S. education context are currently underway. The U.S. questionnaires for the main study will be submitted via non-substantive change request in January 2023.

Dated: October 31, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–24001 Filed 11–3–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability for the Draft Site-Wide Environmental Impact Statement for Continued Operation of the Lawrence Livermore National Laboratory

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States (U.S.) Department of Energy (DOE), announces the availability of a Draft Site-Wide Environmental Impact Statement for Continued Operation of the Lawrence Livermore National Laboratory (Draft LLNL SWEIS) (DOE/EIS–0547) in compliance with the National Environmental Policy Act of 1969 (NEPA). NNSA is also announcing a 60-day public comment period and three public hearings to receive comments on the Draft LLNL SWEIS. NNSA prepared the Draft LLNL SWEIS to analyze the potential environmental impacts associated with continuing LLNL operations and foreseeable new and/or modified operations and facilities for approximately the next 15 years.

DATES: NNSA invites other Federal agencies, Native American Tribes, state and local governments, industry, other organizations, and members of the public to review and submit comments on the Draft LLNL SWEIS through January 3, 2023. NNSA will hold three public hearings (two in-person and one virtual) to receive comments on the Draft LLNL SWEIS. Dates, locations, and times for the public hearings are listed in the **SUPPLEMENTARY INFORMATION** section of this Notice of Availability. Any changes or updates to the public hearing will also be published in local newspapers and on social media platforms at least 15 days before the hearings.

ADDRESSES: Written and verbal comments will be given equal weight and NNSA will consider all comments received or postmarked by the end of the comment period in preparing the Final LLNL SWEIS. Comments received or postmarked after the comment period will be considered to the extent practicable. Written comments on the Draft LLNL SWEIS or requests for information related to the Draft LLNL SWEIS should be sent by email to: *LLNLSWEIS@nnsa.doe.gov* or to Ms. Fana Gebeyehu-Houston, LLNL SWEIS Document Manager, DOE/NNSA, 1000 Independence Ave. SW, Washington, DC 20585. Before including your address, phone number, email address, or other personally identifiable information in your comment, please be advised that your entire comment—including your personally identifiable information—may be made publicly available. If you wish for NNSA to withhold your name and/or other personally identifiable information, please state this prominently at the beginning of your comment. You may also submit comments anonymously.

The Draft LLNL SWEIS is available online at: *https://www.energy.gov/nnsa/nnsa-nepa-reading-room* and *https://www.energy.gov/nepa/listings/latest-documents-and-notices.* Copies of the Draft LLNL SWEIS will also be available for review at the Livermore Public Library, 1188 South Livermore Avenue, Livermore, California, and the Tracy Public Library, 20 East Eaton Avenue, Tracy, California.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact Ms. Fana Gebeyehu-Houston, LLNL SWEIS Document Manager, DOE/NNSA, 1000 Independence Ave. SW, Washington, DC 20585; call 833–778–0508 to leave a message or via email at: *LLNLSWEIS@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: NNSA is responsible for meeting the national security requirements established by the President and Congress to maintain and enhance the safety, reliability, and performance of the U.S. nuclear weapons stockpile. The continued operation of LLNL is critical to NNSA's Stockpile Stewardship and Management Program, to prevent the spread and use of nuclear weapons worldwide, and to many other areas that may impact national security and global stability. The Draft LLNL SWEIS analyzes two alternatives: (1) the No-Action Alternative and (2) the Proposed Action. The Draft LLNL SWEIS also analyzes the new hybrid work environment under both alternatives due to increases in remote work at LLNL. Under the No-Action Alternative, NNSA would

continue current facility operations throughout LLNL in support of assigned missions. The No-Action Alternative includes previously approved construction of new facilities; modernization, upgrade, and utility projects; and decontamination, decommissioning, and demolition of excess and aging facilities through 2022.

The Proposed Action includes the scope of the No-Action Alternative and an increase in current facility operations or enhanced operations that may require new or modified facilities and that are reasonably foreseeable over the next 15 years. Continued re-investment in site infrastructure would allow LLNL to meet mission deliverables and sustain science, technology, and engineering excellence to respond to future national security challenges. The Proposed Action includes 75 new projects, totaling 3.3 million square feet, between 2023 and 2035. This comprises 61 proposed projects, totaling 2.9 million square feet, at LLNL's main site in Livermore, California and 14 proposed projects, totaling 385,000 square feet, at LLNL's remote testing site, Site 300, near Tracy, California. In addition, NNSA proposes 20 types of modernization, upgrade, and utility projects, each involving several facilities. Under the Proposed Action, NNSA would also decontaminate, decommission, and demolish 150 facilities, totaling 1,170,000 square feet. NNSA proposes operational changes that would increase the tritium emission limits in the National Ignition Facility (Building 581) and the Tritium Facility (Building 331), decrease the administrative limit for fuels-grade-equivalent plutonium in the Superblock (Building 332), increase the administrative limits for plutonium-239 at Building 235, and revise the National Ignition Facility radioactive materials administrative limits to be consistent with DOE's Facility Hazard Categorization Standard (DOE–STD–1027).

NNSA will hold three public hearings (two in-person and one virtual) to receive comments on the Draft LLNL SWEIS:

Date and time	Location	Address
December 7, 2022; 6:00–8:30 p.m. p.s.t	Garré Vineyard & Winery	7986 Tesla Road, Livermore, CA 94550.
December 8, 2022; 6:00–8:30 p.m. p.s.t	Tracy City Hall, City Council Chambers	333 Civic Center Drive, Tracy, CA 95376.

For the in-person hearings, NNSA will hold an Open House from 6:00 p.m. until 6:30 p.m. to provide the public with an opportunity to engage with NNSA personnel and ask questions about the Draft SWEIS and NNSA activities at LLNL. Following the Open House, NNSA will make a presentation on the Draft SWEIS lasting approximately 20-minutes, then answer any clarifying questions on the presentation. Following this presentation, NNSA will receive formal public comments with transcription by a court stenographer. NNSA will not answer questions during the formal public comment period.

In addition to the two in-person hearings, NNSA will hold an on-line virtual public hearing. The date and time of the virtual public hearing will be announced at least 15 days before the hearing, access instructions will be published in local newspapers, posted on social media platforms, and available on the following websites: *https://www.energy.gov/nnsa/nnsa-nepa-reading-room* and *https://www.energy.gov/nepa/listings/latest-documents-and-notices.*

Following the public comment period, and after consideration of comments received, NNSA will prepare a Final LLNL SWEIS. NNSA will announce the availability of the Final LLNL SWEIS in the **Federal Register** and local media outlets. Following completion of the Final LLNL SWEIS, NNSA intends to decide how operations will be conducted at LLNL, including construction and operation of new facilities, modification and upgrade of existing facilities and utilities, operational changes, and/or decontamination, decommission and demolition of excess and aging facilities. These decisions will be provided in an NNSA Record of Decision published in the **Federal Register**, which would be issued no sooner than 30 days after publication by the Environmental Protection Agency of the notice of availability of the Final LLNL SWEIS.

Signing Authority

This document of the Department of Energy was signed on October 24, 2022 by Jill Hruby, Under Secretary for Nuclear Security and Administrator, National Nuclear Security Administration, 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 November 1, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–24069 Filed 11–3–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–287–000.

Applicants: Duke Energy Carolinas, LLC, Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii: JOINT OATT Amendment—Gulf Power Company's Withdrawal from the SERTP to be effective 1/1/2023.

Filed Date: 10/31/22.

Accession Number: 20221031–5072.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–288–000.

Applicants: Guzman Energy, LLC.

Description: § 205(d) Rate Filing: Normal filing 2022 change in status to be effective 11/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5075.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–289–000.

Applicants: Guzman Energy Partners LLC.

Description: § 205(d) Rate Filing: Normal filing 2022 change in status to be effective 11/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5078.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–290–000.

Applicants: Guzman Western Slope LLC.

Description: § 205(d) Rate Filing: Normal filing 2022 change in status to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5079.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–291–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement No. 6665; Queue Position No. AG1–507 to be effective 9/30/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5084.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–292–000.
Applicants: Crete Energy Venture, LLC.
Description: § 205(d) Rate Filing: Non-Material Notice of Change in Status to be effective 12/31/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5094.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–293–000.
Applicants: Lincoln Generating Facility, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status to be effective 12/31/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5095.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–294–000.
Applicants: Southern Illinois Generation Company, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status to be effective 12/31/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5096.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–295–000.
Applicants: American Electric Power Service Corporation, 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 update to Attachment 1 of ILDSA, SA No. 1336 (10/31/22) to be effective 10/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5099.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–296–000.
Applicants: Basin Electric Power Cooperative.
Description: Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreements 9 & 16 to be effective 12/31/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5101.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–297–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE 2023 TRBAA Update to be effective 1/1/2023.
Filed Date: 10/31/22.
Accession Number: 20221031–5102.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–298–000.
Applicants: Southern Maryland Electric Cooperative, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Southern Maryland Electric Cooperative, Inc. submits tariff filing per 35.13(a)(1): SMECO Revisions to OATT Schedule 1A and Attachment H–9C to be effective 1/1/2023.
Filed Date: 10/31/22.
Accession Number: 20221031–5106.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–299–000.
Applicants: ISO New England Inc., The Narragansett Electric Company.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Change to Attachment F to add The Narragansett Electric Company as a PTO to be effective 1/1/2023.
Filed Date: 10/31/22.
Accession Number: 20221031–5110.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–300–000.
Applicants: Jayhawk Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status and MBR Tariff Revisions to be effective 12/31/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5133.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–301–000.
Applicants: CenterPoint Energy Houston Electric, LLC.
Description: § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT to be effective 10/28/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5158.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–302–000.
Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–10–31_SA 3926 METC-Branch Solar E&P (J1550) to be effective 10/12/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5159.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–303–000.
Applicants: Danske Commodities US LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authorization to be effective 1/1/2023.
Filed Date: 10/31/22.
Accession Number: 20221031–5166.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–304–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Calhoun Facility IA Amendment Filing to be effective 9/30/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5177.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–305–000.
Applicants: Dynasty Power Inc.
Description: Compliance filing: Cost Justification Regarding Certain WECC Spot Market Sales to be effective N/A.
Filed Date: 10/31/22.
Accession Number: 20221031–5185.
Comment Date: 5 p.m. ET 11/21/22.
Docket Numbers: ER23–306–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: PG&E UOG Amendments for Attachments 4 and 5 (SA Nos. 448, 449, 450, and 495) to be effective 1/1/2023.
Filed Date: 10/31/22.
Accession Number: 20221031–5205.
Comment Date: 5 p.m. ET 11/21/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–4–000.
Applicants: Kingsport Power Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Kingsport Power Company.
Filed Date: 10/28/22.
Accession Number: 20221028–5317.
Comment Date: 5 p.m. ET 11/18/22.

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: October 31, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24037 Filed 11–3–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–235–000]

Old Gold Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Old Gold Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 21, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the *Federal Register,* the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Dated: October 31, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24040 Filed 11–3–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1580–018.

Applicants: Saguaro Power Company LP.

Description: Notice of Non-Material Change in Status of Saguaro Power Company.

Filed Date: 10/28/22.

Accession Number: 20221028–5385.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER10–1818–032.

Applicants: Public Service Company of Colorado.

Description: Notice of Change in Status of Public Service Company of Colorado.

Filed Date: 10/28/22.

Accession Number: 20221028–5322.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER15–1905–011.

Applicants: AZ721 LLC.

Description: Notice of Change in Status of Amazon Energy LLC.

Filed Date: 10/31/22.

Accession Number: 20221031–5047.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER16–1496–001.

Applicants: Canadian Hills Wind, LLC.

Description: Compliance filing: Canadian Hills Wind, LLC Notice of Non-Material Change in Status to be effective 11/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5144.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER17–1217–001.

Applicants: Total Gas & Power North America, Inc.

Description: Notice of Non-Material Change in Status of TotalEnergies Gas & Power North America, Inc., et al.

Filed Date: 10/28/22.

Accession Number: 20221028–5384.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER19–1078–001; ER20–443–001; ER22–611–001.

Applicants: Wildcat I Energy Storage, LLC, Acorn I Energy Storage, LLC, PPA Grand Johanna LLC.

Description: Triennial Market Power Analysis and Notice of Change of Status for Southwest Region of Acorn I Energy Storage, LLC, et al.

Filed Date: 10/31/22.

Accession Number: 20221031–5199.

Comment Date: 5 p.m. ET 12/30/22.

Docket Numbers: ER20–1653–001.

Applicants: Kingfisher Wind, LLC.

Description: Compliance filing: Kingfisher Wind, LLC Notice of Non-Material Change in Status to be effective 11/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5142.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER22–2719–001.

Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: Tariff Amendment: PPL Electric Utilities Corporation submits tariff filing per 35.17(b): PPL Electric submits Response to Deficiency Letter in ER22–2719 to be effective 10/25/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5092.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–265–001.

Applicants: Buckeye Power, Inc., PJM Interconnection, L.L.C.

Description: Tariff Amendment: Buckeye Power, Inc. submits tariff filing per 35.17(b): Revised SA No. 4753—NITSA Among PJM and Buckeye Power, Inc. to be effective 10/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5080.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–273–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Revisions to the AS Tariff for Reactive Supply Service to be effective 1/1/2023.

Filed Date: 10/28/22.

Accession Number: 20221028–5293.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–274–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF–FPL Concurrence SA 391 to be effective 9/28/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5295.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–275–000.

Applicants: Buckleberry Solar, LLC.

Description: § 205(d) Rate Filing: MBR Tariff Updates to be effective 10/31/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5299.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–276–000.

Applicants: TransAlta Energy Marketing (U.S.) Inc.

Description: Compliance filing: Notice and Justification for Spot Sales above WECC Soft Cap to be effective N/A.

Filed Date: 10/28/22.

Accession Number: 20221031–5002.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–277–000.

Applicants: Westlake US 2 LLC.

Description: Baseline eTariff Filing: Market Based Rate Application to be effective 1/1/2023.

Filed Date: 10/31/22.

Accession Number: 20221031–5006.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–278–000.

Applicants: Brookfield Renewable Trading and Marketing LP.

Description: Compliance filing: Notification of Spot Market Sale Above Soft Cap and Refund Report to be effective N/A.

Filed Date: 10/31/22.

Accession Number: 20221031–5039.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–279–000.

Applicants: Startrans IO, LLC.

Description: § 205(d) Rate Filing: TRBAA 2023 Update to be effective 1/1/2023.

Filed Date: 10/31/22.

Accession Number: 20221031–5040.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–280–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: Amending the SERTP's List of Enrollees_Gulf Power Company's Withdrawal from the to be effective 1/1/2023.

Filed Date: 10/31/22.

Accession Number: 20221031–5042.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–281–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–10–31_SA 3435 Entergy Mississippi-Wildwood Solar 1st Rev GIA (J908) to be effective 10/19/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5044.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–282–000.

Applicants: Cardinal Point LLC.

Description: § 205(d) Rate Filing: Notice of Change in Status to be effective 11/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5046.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–283–000.

Applicants: CP Energy Marketing (US) Inc.

Description: § 205(d) Rate Filing: Notice of Change in Status to be effective 11/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5048.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–284–000.

Applicants: Meadowlark Wind I LLC.

Description: § 205(d) Rate Filing: Notice of Change in Status to be effective 11/1/2022.

Filed Date: 10/31/22.

Accession Number: 20221031–5049.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–285–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: OATT Amendment Filing (Exhibit K–9—remove Gulf from SERTP) to be effective 1/1/2023.

Filed Date: 10/31/22.

Accession Number: 20221031–5068.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: ER23–286–000.

Applicants: AMP Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AMP Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: AMPT Revisions to OATT Attachments H–32 and H–32C to be effective 1/1/2023.

Filed Date: 10/31/22.

Accession Number: 20221031–5071.

Comment Date: 5 p.m. ET 11/21/22.

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: October 31, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24038 Filed 11–3–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–277–000]

Westlake US 2 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Westlake US 2 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 21, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 31, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24039 Filed 11–3–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–98–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming—Adelphia West Ridge Interconnect to be effective 12/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5172.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–99–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (Adelphia West Ridge) to be effective 12/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5191.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–100–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: TETLP PCB DEC 2022 Filing to be effective 12/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5193.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–101–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreements—11/1/2022 to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5026.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–102–000.
Applicants: Equitrans, L.P.
Description: Compliance filing: Operational Purchases and Sales Report for 2022 to be effective N/A.
Filed Date: 10/31/22.
Accession Number: 20221031–5029.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–103–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Remove Terminated Negotiated Rate Agreement 11/1/2022 to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5030.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–104–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: AGT FRQ 2022 Filing to be effective 12/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5038.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–105–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: 10–28–22 Amended NRA to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5066.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–106–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 12/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5067.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–107–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Negotiated Rates Filing to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5069.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–108–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) Rate Filing: Amended NRA Filing to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5070.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–109–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) Rate Filing: New Service Agreement—OUC to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5073.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–110–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) Rate Filing: Update Non-Conforming List—OUC to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5074.
Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: RP23–111–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20221031 Negotiated Rate to be effective 11/1/2022.
Filed Date: 10/31/22.
Accession Number: 20221031–5153.
Comment Date: 5 p.m. ET 11/14/22.

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: October 31, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24041 Filed 11–3–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10306–01–OMS]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation (CEC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) gives notice of a public meeting of the National Advisory Committee (NAC) and the Government Advisory Committee (GAC). The NAC and GAC provide advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NAC and GAC members represent academia, business/industry, non-governmental organizations, and state, local and tribal governments. The purpose of this meeting is to provide advice to the EPA Administrator on ways to strengthen community resilience to extreme events and other matters related to the Commission for Environmental Cooperation.

DATES: December 9, 2022, from 12 p.m.–4 p.m. (EST). A copy of the agenda will be posted at *www.epa.gov/faca/nac-gac.*

The meeting will be conducted virtually and is open to the public with limited access available on a first-come, first-served basis. Members of the public wishing to participate in the video/teleconference, should contact Clifton Townsend at *townsend.clifton@epa.gov* by December 1st. Requests to make oral comments or submit written public comments to NAC and GAC should also be directed to Clifton Townsend at least five business days prior to the video/teleconference. Requests for accessibility and/or accommodations for individuals with disabilities should be directed to Clifton Townsend at the email address listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the video/teleconference.

FOR FURTHER INFORMATION CONTACT: Clifton Townsend in the Federal Advisory Committee Management Division in the Office of Mission Support (1601M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1576; email address: *townsend.clifton@epa.gov.*

SUPPLEMENTARY INFORMATION: The NAC and GAC are Presidential federal advisory committees that advise the U.S. Government via the EPA Administrator on trade and environment matters related to the Environmental Cooperation Agreement (ECA), which entered into force at the same time as the United States-Mexico Canada Agreement (USMCA). The NAC and GAC were created in 1994 and operate in accordance with the Federal Advisory Committee Act. Establishment of the committees is authorized under article 11 of the ECA.

Dated: October 31, 2022.

Clifton Townsend,

Environmental Scientist.

[FR Doc. 2022–24093 Filed 11–3–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10149–01–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support (OMS), Environmental Protection Agency (EPA).

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Mission Support is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974. The Data Management and Analytics Platform (DMAP) is an existing analytical tool that EPA uses to store data and to create data maps, pie charts, and run statistics. EPA intends to expand DMAP to include personally identifiable information already collected by the EPA from databases recording drinking water intake locations; EPA property databases; and EPA personnel information databases.

DATES: Persons wishing to comment on this system of records notice must do so by December 5, 2022. New routine uses for this new system of records will be effective December 5, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OMS–2022–0383, by one of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: (202) 566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OMS–2022–0383. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West

Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752. Further information about EPA Docket Center services and current operating status is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *enviromail_group@epa.gov,* to the attention of DMAP System Owner: Shane Knipschild.

SUPPLEMENTARY INFORMATION: EPA's Data Management and Analytics Platform (DMAP) is designed to help users better understand environmental data by allowing them to visualize them in graphics, like maps and pie charts, and combine them together across data systems. DMAP is available to EPA agency employees and partners who have a mission-based need to access the data therein. DMAP users maintain control over the workspaces created for them and may use the system to develop analytic products as needed to support mission needs. DMAP is populated by data from other EPA systems as well as data purchased under commercial license. EPA intends to expand DMAP to include personally identifiable information already collected by the EPA from these sources.

SYSTEM NAME AND NUMBER:

Data Management and Analytics Platform (DMAP), EPA–97.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is managed by the Office of Mission Support, Environmental Protection Agency, 1301 Constitution Ave. NW, Washington, DC 20460. Electronically stored information is hosted at Amazon Web Services US East (Northern Virginia).

SYSTEM MANAGER(S):

Shane Knipschild, Program Analyst, 1301 Constitution Avenue NW Washington, DC 20460, 202–566–2712, *Knipschild.shane@epa.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3506, Federal Agency Responsibilities; 5 U.S.C. 301, Departmental Regulations; 40 U.S.C. 1401, the Clinger-Cohen Act; and 44 U.S.C. 3541 *et seq.,* Federal Information Security Modernization Act of 2014; Public Law 107–347.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to provide EPA staff and partners with a platform to access and analyze data sets collected from other EPA managed systems and purchased commercial sources. DMAP allows EPA staff and contractors to combine these data in analytic views such as maps and dashboards. EPA intends to use DMAP for administrative purposes, such as provision of information technology services in EPA facilities and to use DMAP in support of its programmatic activities, such as to facilitate other statistical analysis of the data across the source systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals on whom records will be maintained include federal employees, contractors and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system will include contact email, contact extension, contact name, and contact phone number, property owner name, property address and coordinate location information.

RECORD SOURCE CATEGORIES:

The categories of sources of the records in the system include data from internal EPA systems, such as ServiceNow (EPA–78) and Emergency Response (EPA–74) as well as data purchased under commercial license.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (*86 FR 62527*): A, D, E, F, G, H, I, J, K, L, M.

Additional routine uses that apply to this system are:

1. Records may be disclosed to federal, state, local, and tribal authorities in conformity with federal, state, local, and tribal laws when necessary to protect the environment or public health or safety, including carrying out an investigation or response.

2. In case of emergency, EPA may share information with members of the public to assure protection of the environment or public health and safety.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained electronically via EPA-managed cloud-based storage services. The cloud storage services are located at Amazon Web Services East (Northern Virginia), and are managed by Office of Mission Support, Office of Information Management, Information Access and Analysis Division. Backup files will be maintained according to EPA backup protocols as documented in FISMA compliant DMAP system security plan. Digital records are maintained in a secure password protected environment and are encrypted. Access to digital records is limited to those who have a need to know. Permission level assignments will allow users access only to those functions for which they are authorized. All records are maintained in encrypted formats and in restricted folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Personal information will be retrieved by contact name, contact email, contact extension, contact phone number, or address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

DMAP follows the EPA Records Policy for retention and disposal, per schedule 1012 (Information and Technology Management) and schedule 1049 (Information Access and Protection Records). *https://www.epa.gov/records/epa-records-policy-and-guidance*.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in DMAP are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800–53, ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5.

1. Administrative Safeguards: Those accessing the DMAP system are required to complete annual privacy and security trainings. Background checks and PIV cards are required for system administrators.

2. Technical Safeguards: Information is maintained in a secure username/password protected environment. Permission-level assignments allow users access only to those functions for which they are authorized. Audit logs are reviewed on a monthly basis to identify system access outside of normal business hours, anomalous user accounts or server names, or login failures. No external access to DMAP is

available without formal onboarding through system administrators.

3. Physical Safeguards: Access to all information and hardware is maintained in a secure, access-controlled facility managed under conditions specified in EPA's AWS cloud provider agreement.

RECORD ACCESS PROCEDURES:

All requests for access to personal records should cite the Privacy Act of 1974 and reference the type of request being made (*i.e.,* access). Requests must include: (1) the name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a statement whether a personal inspection of the records or a copy of them by mail is desired; and (4) proof of identity. A full description of EPA's Privacy Act procedures for requesting access to records is included in EPA's Privacy Act regulations at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must include: (1) the name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a description of the information sought to be corrected or amended and the specific reasons for the correction or amendment; and (4) proof of identity. A full description of EPA's Privacy Act procedures for the correction or amendment of a record is included in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURES:

Individuals who wish to be informed whether a Privacy Act system of records maintained by EPA contains any record pertaining to them, should make a written request to the EPA, Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, or by email at: *privacy@epa.gov.* A full description of EPA's Privacy Act procedures is included in EPA's Privacy Act regulations at 40 CFR part 16.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2022–24102 Filed 11–3–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10360–01–OW]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water is announcing a virtual meeting of the National Drinking Water Advisory Council (NDWAC or Council) as authorized under the Safe Drinking Water Act (SDWA). The purpose of the meeting is for EPA to update the Council on Safe Drinking Water Act programs and to consult with the NDWAC as required by the SDWA on a proposed National Primary Drinking Water Regulation (NPDWR): Lead and Copper Rule Improvements. Additional details including other topics for discussion will be provided in the meeting agenda, which will be posted on EPA's NDWAC website. See the **SUPPLEMENTARY INFORMATION** section of this announcement for more information.

DATES: The meeting will be held on November 30, 2022, from 10:30 a.m. to 5 p.m., eastern time.

ADDRESSES: This will be a virtual meeting. There will be no in-person gathering for this meeting. For more information about attending, providing oral statements, and accessibility for the meeting, as well as sending written comments, see the **SUPPLEMENTARY INFORMATION** section of this announcement.

FOR FURTHER INFORMATION CONTACT: Elizabeth Corr, NDWAC Designated Federal Officer, Office of Ground Water and Drinking Water (Mail Code 4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–3798; email address: *corr.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: *Attending the Meeting:* The meeting will be open to the general public. The meeting agenda and information on how to register for and attend the meeting online will be provided on EPA's website at: *https://www.epa.gov/ndwac* prior to the meeting.

Oral Statements: EPA will allocate one hour for the public to present oral comments during the meeting. Oral statements will be limited to three minutes per person during the public comment period. It is preferred that only one person present a statement on behalf of a group or organization. Persons interested in presenting an oral statement should send an email to *NDWAC@epa.gov* by noon, eastern time, on November 22, 2022.

Written Statements: Any person who wishes to file a written statement can do so before or after the Council meeting. Send written statements by email to *NDWAC@epa.gov* or see the **FOR FURTHER INFORMATION CONTACT** section if sending statements by mail. Written statements received by noon, eastern time, on November 22, 2022, will be distributed to all members of the Council prior to the meeting. Statements received after that time will become part of the permanent file for the meeting and will be forwarded to the Council members after conclusion of the meeting. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the NDWAC website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Elizabeth Corr by email at *corr.elizabeth@epa.gov,* or by phone at (202) 564–3798, preferably at least 10 days prior to the meeting to allow as much time as possible to process your request.

National Drinking Water Advisory Council: The NDWAC was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NDWAC was established to advise, consult with, and make recommendations to the EPA Administrator on matters relating to activities, functions, policies, and regulations under the SDWA. General information concerning the NDWAC is available at: *https://www.epa.gov/ndwac.*

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2022–23991 Filed 11–3–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0584; FRL–10365–01–OLEM]

Proposed Information Collection Request; Comment Request; Information Collection Request Submitted to OMB for Review and Approval; Spill Prevention, Control, and Countermeasure Plans (Renewal) EPA ICR No. 0328.19, OMB Control No. 2050–0021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is planning to submit an information collection request (ICR), Spill Prevention, Control, and Countermeasure (SPCC) Plans'' (EPA ICR No. 0328.19, OMB Control No. 2050–0021), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through July 30, 2023. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 3, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPA–2007–0584, to: (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submissions@omb.eop.gov.*

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Proprietary Business Information (PBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mark W. Howard, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1965; email address: *howard.markw@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) Enhance the quality, utility, and clarity of the information to be collected; and (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The authority for EPA's oil pollution prevention requirements is derived from section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR part 112. An SPCC Plan will help an owner or operator identify the necessary procedures, equipment, and resources to prevent an oil spill and to respond to an oil spill in a timely manner. Although the owner or operator is the primary data user, EPA may also require the owner or operator to submit data to the Agency in certain situations to ensure facilities comply with the SPCC regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can assist local emergency preparedness planning efforts.

Form Numbers: None.

Respondents/affected entities: Owners or operators of facilities required to have Spill Prevention, Control, and Countermeasure (SPCC) plans under the Oil Pollution Prevention regulation (40 CFR part 112) and which, because of their location, could reasonably be expected to cause substantial harm to the environment.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 549,785 (total).

Frequency of response: Facilities must prepare and implement an SPCC Plan before beginning operations and review, evaluate and update the SPCC Plan every five years. In the event of certain discharges of oil into navigable waters, a facility owner or operator must submit certain information to the Regional Administrator within 60 days.

Total estimated burden: 6,309,523 hours (per year). This figure will be updated as needed during the 60-day OMB review period. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $857,835,543 (per year), includes $201,002,128 annualized capital or operation & maintenance (O&M) costs. These figures will be updated with most recent available wage rates from the Bureau of Labor Statistics and to account for any changes in O&M costs, burden and number of respondents.

Changes in Estimates: The above burden estimates are based on the current approved ICR, OMB Control No. 0328.18. In the final notice for the renewal ICR, EPA will publish revised burden estimates based on updates to respondent data and unit costs. Any change in burden will be described and explained in this section when the updated ICR Supporting Statement is completed during the 60-day OMB review period.

Donna Salyer,

Director, Office of Emergency Management.

[FR Doc. 2022–24081 Filed 11–3–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–042]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed October 24, 2022 10 a.m. EST Through October 31, 2022 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20220157, Final, USFS, CA, Sugar Pine Project Water Right 15375 Extension and Radial Gates Installation, Review Period Ends: 12/05/2022, Contact: Timothy Cardoza 530–559–2665.

EIS No. 20220158, Draft, NNSA, CA, Draft Site-Wide Environmental Impact Statement for Continued Operation of the Lawrence Livermore National Laboratory, Comment Period Ends: 01/03/2023, Contact: Ms. Fana Gebeyehu-Houston 833–778–0508.

EIS No. 20220159, Draft, NASA, UT, Mars Sample Return (MSR) Campaign Programmatic Environmental Impact Statement, Comment Period Ends: 12/19/2022, Contact: Steve Slaten 202–358–0016.

Dated: October 31, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–24036 Filed 11–3–22; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, November 10, 2022.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of October 13, 2022, Minutes
- Update on Farm Credit System Funding Conditions
- Farm Credit System Building Association Budget for 2023

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–24163 Filed 11–2–22; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the FDIC proposes to establish a new FDIC system of records titled, ''Mailing, Event, and other Contact Lists.'' This system of records notice describes FDIC's collection, maintenance, and use of contact information to support FDIC's mission.

DATES: This action will become effective on November 4, 2022. The routine uses in this action will become effective on December 5, 2022 unless the FDIC makes changes based on comments received. Written comments should be submitted on or before December 5, 2022.

ADDRESSES: Interested parties are invited to submit written comments identified by Privacy Act Systems of Records (FDIC–040) by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the FDIC website.
- *Email: Comments@fdic.gov.* Include ''Comments-SORN (FDIC–040)'' in the subject line of communication.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments SORN (FDIC–040), Legal Division, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Shannon Dahn; Chief, Privacy Program; 703–516–5500; *privacy@fdic.gov.*

SUPPLEMENTARY INFORMATION: The FDIC's mission encompasses a wide variety of activities, including: insuring deposits, examining and supervising financial institutions for safety and soundness, making large and complex financial institutions resolvable, managing receiverships, and protecting consumers. In order to meet its mission, FDIC interacts with a wide variety of stakeholders in various settings. As part of this interaction, FDIC collects contact information from individuals who correspond with the FDIC; request information from the FDIC; register for events, training, or other programs; and for other purposes for which mailing or contact lists may be created.

SYSTEM NAME AND NUMBER:

Mailing, Event, and other Contact Lists, FDIC–040.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at FDIC facilities in Arlington, Virginia and regional offices. Duplicate systems may exist, in whole or in part, at secure sites and on secure servers maintained by third-party service providers for the FDIC.

SYSTEM MANAGER(S):

Director, Division of Administration, 3501 Fairfax Drive, Arlington, VA 22226, *MailingEventsContactLists@FDIC.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Deposit Insurance Act (*e.g.,* 12 U.S.C. 1811, 1819).

PURPOSE(S) OF THE SYSTEM:

FDIC uses contact information to correspond with individuals who request information from the FDIC; maintain lists of individuals who register for events, training, or other programs; maintain lists and credentials of individuals whom FDIC may consult professionally in furtherance of its mission; and for other purposes for which mailing or contact lists may be created.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system of records include individuals who request to receive information; subscribe to newsletters; seek materials from FDIC; register or participate in FDIC-sponsored or FDIC-funded events or contests; respond to surveys or feedback forms from FDIC or a third party contracted by FDIC; have business with the FDIC and provide their contact information; or otherwise provide contact information to facilitate future communication or collaboration with the FDIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information including:

- Name;
- Telephone number;
- Mailing address;
- Email address;
- Organizational or institutional affiliation;
- Industry type;
- General descriptions of particular topics or subjects of interest as related to individuals or organizations who communicate with FDIC;
- Special accommodation information for individuals attending events sponsored by FDIC (*e.g.,* dietary restrictions, seating, access accommodations);
- Computer-generated identifier or case number when created in order to retrieve information; and
- Other identifiers specific to the request, subscription, event, or communication.

RECORD SOURCE CATEGORIES:

Information contained in these systems is obtained from individuals and organizations interacting with FDIC; public source data; other government agencies; and information in other FDIC records systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

(1) To appropriate Federal, State, local and foreign authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate agencies, entities, and persons when (a) the FDIC suspects or has confirmed that there has been a breach of the system of records; (b) the FDIC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FDIC (including its information systems, programs, and operations), the Federal Government, or national security; the FDIC and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FDIC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(5) To another Federal agency or Federal entity, when the FDIC 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;

(6) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media or on paper format in secure facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic media and paper format are indexed and retrieved by name, email address, computer assigned identification number, business affiliation, event name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained until no longer needed in accordance with approved records retention schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are protected from unauthorized access and improper use through administrative, technical, and physical security measures. Administrative safeguards include written guidelines on handling personal information including agency-wide procedures for safeguarding personally identifiable information. In addition, all FDIC staff are required to take annual privacy and security training. Technical security measures within FDIC include restrictions on computer access to authorized individuals who have a legitimate need to know the information; required use of strong passwords that are frequently changed; multi-factor authentication for remote access and access to many FDIC network components; use of encryption for certain data types and transfers; firewalls and intrusion detection applications; and regular review of security procedures and best practices to enhance security. Physical safeguards include restrictions on building access to authorized individuals, security guard service, and maintenance of records in lockable offices and filing cabinets.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW,

Washington, DC 20429, or email *efoia@fdic.gov*. Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest or request an amendment to their records in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov*. Requests must specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals wishing to know whether this system contains information about them must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov*. Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 1, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–24096 Filed 11–3–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10024	PFF BANK AND TRUST	POMONA	CA	11/01/2022
10026	SANDERSON STATE BANK	SANDERSON	TX	11/01/2022
10062	STRATEGIC CAPITAL BANK	CHAMPAIGN	IL	11/01/2022
10185	LA JOLLA BANK, FSB	LA JOLLA	CA	11/01/2022
10190	WATERFIELD BANK	GERMANTOWN	MD	11/01/2022
10226	CF BANCORP	PORT HURON	MI	11/01/2022
10267	SOUTHWESTUSA BANK	LAS VEGAS	NV	11/01/2022
10298	SECURITY SAVINGS BANK	OLATHE	KS	11/01/2022
10305	THE GORDON BANK	GORDON	GA	11/01/2022

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 1, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–24095 Filed 11–3–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm*. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 21, 2022.

A. Federal Reserve Bank of Kansas City: Jeff Imgarten, Assistant Vice President, 1 Memorial Drive, Kansas City, Missouri 64198, or to *kcapplicationcomments@kc.frb.org:*

1. *Amy C. Adkins, Houston, Texas; Megan M. Adkins, Kearney, Nebraska; Betsy J. Becker, Valley, Nebraska; and Sara E. Skretta, Lincoln, Nebraska;* to join the Adkins Family Group, a group acting in concert, to retain voting shares of First Laurel Security Co., and thereby indirectly retain voting shares of Security Bank, both of Laurel, Nebraska.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–24090 Filed 11–3–22; 8:45 am]

BILLING CODE 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 Savings and Loan Holding Company Registration Statement (FR LL–10(b); OMB No. 7100–0337).

DATES: Comments must be submitted on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by FR LL–10(b), 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 Proposals

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 collections of information are 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 collections, 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 Collections

Collection title: Savings and Loan Holding Company Registration Statement.

Collection identifier: FR LL–10(b).

OMB control number: 7100–0337.

Frequency: Event-generated.

Respondents: Savings and loan holding companies (SLHCs).

Estimated number of respondents: Registration, 6; deregistration, 1; recordkeeping, 6.

Estimated average hours per response: Registration, 8; deregistration, 1; recordkeeping, 0.25.

Estimated annual burden hours: Registration, 48; deregistration, 1; recordkeeping, 2.

General description of collection: The FR LL–10(b) requests information from registering SLHCs on the financial condition, ownership, operations, management, and intercompany relationships of the SLHC and its subsidiaries. Additionally, respondents must include information concerning the transaction that resulted in the respondent becoming an SLHC, a description of the SLHC's business, and a description of any changes related to the financial condition, ownership, operations, intercompany relationships, and management of the SLHC and its subsidiaries since the registrant's application to become an SLHC was approved. The principal executive or principal financial officer of the registering SLHC must certify that the information contained in the submission has been carefully reviewed and is true, correct, and complete.

Proposed revisions: The Board proposes to revise the FR LL–10(b) by clearing an existing information collection that has not previously been cleared. Specifically, Supervision and Regulation Letter (SR Letter) 11–12 [1] notes that an SLHC that controls only one savings association subsidiary, provided that subsidiary functions solely in a trust or fiduciary capacity, may submit a request to the Board to deregister as an SLHC in accordance

[1] SR 11–12: Deregistration Procedures for Certain Savings and Loan Holding Companies (July 21, 2011), *available at https://www.federalreserve.gov/supervisionreg/srletters/sr1112.htm.*

with a statutory exception.[2] In submitting such a request, the requesting SLHC should affirm that its savings association affiliate meets the relevant statutory requirements described in the SR Letter. The Board also plans to make certain clarifications to the instructions for the registration statement:

- In the Filing Requirements section, adding additional language clarifying that a respondent must retain a copy of the signed form at least three years, unless it ceases to be an SLHC before then.
- In the Public Information section, adding additional language on the Board's procedures for requesting confidential treatment, including the relevant regulatory citation.
- In the Requested Information section, Item 1.C., General Information, clarifying that the background information requested includes formations of savings associations or SLHCs.
- In the Requested Information section, Item 2, Amendments and Revisions to Information Provided in Savings and Loan Holding Company Application, clarifying that the requested information includes formations of SLHCs and related subsidiaries.
- In the Requested Information section, Item 4, Savings and Loan Holding Company Status and Basis of Control, clarifying that the documentation requirements include formations of savings associations and SLHCs, and that responses should be limited to changes since submitting the SLHC application.

Legal authorization and confidentiality: The FR LL–10(b) is authorized by sections 10(b)(1) and 10(b)(6) of the Home Owners' Loan Act.[3] The FR LL–10(b) is mandatory for new SLHCs required to obtain a benefit for requests for deregistration as an SLHC.

The information submitted under the FR LL–10(b) is not considered confidential unless an applicant requests confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[4] Requests for confidential treatment of information are reviewed on a case-by-case basis. Information provided under the FR LL–10(b) may be nonpublic commercial or financial information that is both customarily and actually treated as private by the respondent, which is protected from disclosure pursuant to exemption 4 of the Freedom of Information Act (FOIA).[5] Submissions under the FR LL–10(b) may also contain personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, which are protected under exemption 6 of the FOIA.[6]

Board of Governors of the Federal Reserve System, November 1, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–24030 Filed 11–3–22; 8:45 am]

BILLING CODE 6210–01–P

[2] See 12 U.S.C. 1467a(a)(1)(D)(ii)(II).

[3] 12 U.S.C. 1467a(b)(1) and (b)(6) (requiring SLHCs to register with the Board on such forms as it may prescribe and authorizing the Board to release a registered SLHC from registration upon motion or application).

[4] 12 CFR 261.17.

[5] 5 U.S.C. 552(b)(4).

[6] 5 U.S.C. 552(b)(6).

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 Information Collections and Forms Related to Regulation MM (FR MM; OMB No. 7100–0340).

DATES: Comments must be submitted on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by FR MM, 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/reportingforms/home/review* 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 Proposals

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 collections of information are 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 collections, 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 Collections

Collection title: Information Collections and Forms Related to Regulation MM.

Collection identifier: FR MM.

OMB control number: 100–0340.

Frequency: On occasion.

Respondents: Mutual savings associations that wish to reorganize to form a mutual holding company under the Home Owner's Loan Act, subsidiary holding companies of a mutual holding company, mutual holding companies, members of applying mutual organizations.

Estimated number of respondents: FR MM–10(o)–1: 3; FR MM–10(o)–2: 1; FR MM–AC: 2; FR MM–PS: 4; FR MM–OC: 3; FR MM–OF: 3; Notice of Reorganization: 1; Offering Period Extension: 1; Voluntary Supervisory Conversion: 1; Newspaper Publication: 1.

Estimated average hours per response: FR MM–10(o)–1: 60; FR MM–10(o)–2: 30; FR MM–AC: 60; FR MM–PS: 50; FR MM–OC: 1; FR MM–OF: 1; Notice of Reorganization: 1; Offering Period Extension: 1; Voluntary Supervisory Conversion: 1; Newspaper Publication: 1.

Estimated annual burden hours: FR MM–10(o)–1: 180; FR MM–10(o)–2: 30; FR MM–AC: 120; FR MM–PS: 200; FR MM–OC: 3; FR MM–OF: 3; Notice of Reorganization: 1; Offering Period Extension: 1; Voluntary Supervisory Conversion: 1; Newspaper Publication: 5.

General description of collection: The FR MM consists of information that must be filed in connection with certain proposals involving savings and loan holding companies (SLHCs) that are organized in mutual holding company (MHC) form, including the reorganization of a savings association into MHC form, stock issuances of holding company subsidiaries of MHCs, and conversions of MHCs to stock form, as well as certain disclosures related to these filings. The Board requires the submission of these filings to allow the Board to fulfill its obligations to review such transactions under section 10(o) of the Home Owners' Loan Act (HOLA), as amended (12 U.S.C. 1467a(o)) and the Board's Regulation MM–Mutual Holding Companies (12 CFR part 239). The Board uses the information submitted by an applicant or notificant to evaluate these transactions with respect to the relevant statutory and regulatory factors.

Proposed revisions: The Board proposes to update the reference to the Board's Rules Regarding Availability of Information, which governs requests for confidential treatment and modify the language to clarify which Reserve Bank a currently supervised institution should reach out to with inquiries. Additionally, recent legislative and regulatory changes implemented the community bank leverage ratio (CBLR) framework in 2020, which, if used by a qualifying depository organization, eliminates the requirement for the organization to track risk-weighted assets and report risk-based capital ratios. In light of this change, the Board proposes to revise the FR MM–10(o)–1, 10(o)–2, and AC instructions to provide applicants that have elected to use the CBLR framework with the option not to submit information related to risk-weighted assets or risk-based capital ratios. Finally, the Board proposes to correct obsolete references within the requested information section of the General Instructions of the FR MM–PS which were carried forward from the former Office of Thrift Supervision.

Legal authorization and confidentiality: The FR MM is authorized pursuant to section 10(o) of the HOLA, as amended,[1] and the Board's Regulation MM.[2] The FR MM is also authorized under the Board's general authority under sections 10(b)[3] and 10(g)[4] of HOLA. The FR MM is required to obtain a benefit. The information submitted under the FR MM is not considered confidential unless an applicant requests confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[5] Requests for confidential treatment of information are reviewed on a case-by-case basis. Information provided under the FR MM may be nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, which is protected from disclosure pursuant to exemption 4 of the Freedom of Information Act (FOIA).[6] Submissions under the FR MM may also contain personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, which are protected under exemption 6 of the FOIA.[7]

Board of Governors of the Federal Reserve System, November 1, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–24027 Filed 11–3–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1467a(o) (requiring a savings association seeking to reorganize in MHC form to provide written notice to the Board containing such information as the Board requires by regulation or specific request in connection with a particular notice).

[2] 12 CFR part 239 (implementing sections 10(g) and 10(o) of HOLA).

[3] 12 U.S.C. 1467a(b) (requiring SLHCs to register with the Board on such forms as it may prescribe and authorizing the Board to require reports from SLHCs containing such information concerning the operations of SLHCs and their subsidiaries as the Board may require.)

[4] 12 U.S.C. 1467a(g) (authorizing the Board to issue such regulations and orders as it deems necessary or appropriate to enable it to administer and carry out the purposes of section 10).

[5] 12 CFR 261.17.

[6] 5 U.S.C. 552(b)(4).

[7] 5 U.S.C. 552(b)(6).

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 Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation Q (FR Q; OMB No. 7100–0313).

DATES: Comments must be submitted on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by FR Q, 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: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation Q.

Collection identifier: FR Q.

OMB control number: 7100–0313.

Frequency: Annual, quarterly.

Respondents: State member banks (SMBs), certain bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and certain covered savings and loan holding companies (SLHCs) [1] (collectively, Board-regulated institutions).

Estimated number of respondents:

Minimum Capital Ratios
Recordkeeping (Ongoing)—1,055.

Standardized Approach
Reporting (Ongoing)—1.
Recordkeeping (Initial Setup)—1.
Recordkeeping (Ongoing)—1,055.
Disclosure (Initial Setup)—1.
Disclosure (Ongoing)—38.

Advanced Approach
Reporting (Initial Setup)—1.
Reporting (Ongoing)—21.
Recordkeeping (Initial Setup)—1.
Recordkeeping (Ongoing)—21.
Recordkeeping (Ongoing quarterly)—21.
Disclosure (Initial setup)—1.
Disclosure (Ongoing)—21.
Disclosure (Ongoing quarterly)—21.
Disclosure (Ongoing quarterly Table 13)—27.

Estimated average hours per response:

Minimum Capital Ratios
Recordkeeping (Ongoing)—16.

Standardized Approach
Reporting (Ongoing)—1.
Recordkeeping (Initial Setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial Setup)—226.25.
Disclosure (Ongoing)—131.25.

Advanced Approach
Reporting (Initial Setup)—161.
Reporting (Ongoing)—111.77.
Recordkeeping (Initial Setup)—299.
Recordkeeping (Ongoing)—429.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—328.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—41.5.
Disclosure (Ongoing quarterly Table 13)—5.

Estimated annual burden hours:
Initial setup—1,136; Ongoing—75,114.

General description of collection: The Board's Regulation Q—Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks (12 CFR part 217) sets forth the capital adequacy requirements for Board-regulated institutions.

The reporting, recordkeeping, and disclosure requirements included in the FR Q information collection provide the

[1] The Board's capital rule generally does not apply to BHCs or covered SLHCs that meet the requirements of the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement, 12 CFR part 225, Appendix C. For the definition of ''Covered savings and loan holding company,'' see 12 CFR 217.2.

Board and other stakeholders, including market participants, with information regarding the interaction between firms and the regulatory capital framework. Specifically, the reporting and recordkeeping requirements allow the Board to verify that firms are appropriately implementing the capital framework; they also provide the Board with information necessary for monitoring firms participating in the advanced approaches framework. The disclosure requirements are intended to support market discipline by providing information regarding banking organizations' activities, overall risk profiles, and risk management policies. Together, these requirements help to ensure the safety and soundness of the financial system by facilitating the identification of problems at firms and ensuring that firms have implemented any corrective actions imposed by the Board, as well as by allowing stakeholders to make meaningful assessments of firms' financial position.

Proposed revisions: The Board proposes to revise the FR Q information collection to account for a reporting provision in section 217.37(c)(4)(i)(E) of Regulation Q and a disclosure provision in section 217.124(a) of Regulation Q, which have not been previously cleared by the Board under the PRA.

Section 217.37 of Regulation Q relates to when a Board-regulated institution may recognize the credit risk mitigation benefits of financial collateral that secures a transaction. With the prior written approval of the Board, a Board-regulated institution may calculate haircuts using its own internal estimates of the volatilities of market prices and foreign exchange rates. A Board-regulated institution must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the Board-regulated institution's own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. Section 217.37(c)(4)(i)(E) requires Board-regulated institutions to obtain the prior approval of the Board for, and notify the Board if the Board-regulated institution makes any material changes to, these policies and procedures.

Subpart E of Regulation Q requires a Board-regulated institution to have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital. Section 217.124(a) permits a Board-regulated institution that merges with or acquires a company that does not calculate its risk-based capital requirements using advanced systems to use a standardized approach to determine the risk-weighted asset amounts for the merged or acquired company's exposures. A Board-regulated institution that takes advantage of this provision must disclose publicly the amounts of risk-weighted assets and qualifying capital using advance approaches for the acquiring Board-regulated institution and standard approaches for the acquired company.

Legal authorization and confidentiality: Section 38 of the Federal Deposit Insurance Act [2] and section 908 of the International Lending Supervision Act of 1983 [3] require each appropriate Federal banking agency to develop capital standards and to ensure that banking institutions maintain adequate capital. The Board is the appropriate Federal banking agency for SMBs, and thus, these provisions authorize the FR Q with respect to SMBs.[4] The FR Q is authorized for BHCs by section 5(b) of the Bank Holding Company Act of 1956 (BHC Act), which authorizes the Board to ''issue such regulations and orders, including regulations and orders relating to the capital requirements for [BHCs], as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.'' [5] The FR Q is authorized for SLHCs by section 10(g) of the Home Owners' Loan Act (HOLA), which states that ''[t]he Board is authorized to issue such regulations and orders, including regulations and orders relating to capital requirements for [SLHCs], as the Board deems necessary or appropriate to enable the Board to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.'' [6]

Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), as amended by section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, requires the Board to establish prudential standards for nonbank financial companies supervised by the Board, as well as certain large BHCs supervised by the Board, that are more stringent than the standards and requirements applicable to companies that do not present similar risks to financial stability.[7] These include risk-based capital requirements and leverage limits.[8] The Board has required, pursuant to section 165(b)(1)(B)(iv) of the Dodd-Frank Act,[9] certain foreign banking organizations subject to section 165 of the Dodd-Frank Act to form IHCs, and section 165 of the Dodd-Frank Act authorizes the FR Q with regards to these IHCs.

The reporting requirements contained in the FR Q are also authorized by the Board's reporting authorities, which are contained in section 9(6) of the Federal Reserve Act for SMBs,[10] section 5(c) of the BHC Act for BHCs and their subsidiaries,[11] and section 10(b)(2) of HOLA for SLHCs.[12] Additionally, with respect to SMBs, the reporting requirements contained in the FR Q are authorized by section 11(a) of the Federal Reserve Act, which authorizes the Board to ''require such statements and reports as it may deem necessary'' from member banks.[13] The information collections associated with the FR Q are mandatory.

The disclosure requirements in Regulation Q must be made publicly and therefore are generally not confidential. If a Board-regulated institution described in section 217.61 of Regulation Q concludes that specific commercial or financial information that it would otherwise be required to disclose under sections 217.62 or 217.63 of Regulation Q would be exempt from disclosure by the Board under the Freedom of Information Act (FOIA),[14] then the Board-regulated institution is not required to disclose that specific information, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

The information submitted pursuant to the reporting requirements in Regulation Q is likely to be nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and therefore eligible for confidential treatment pursuant to exemption 4 of FOIA.[15]

Because the information required to be retained pursuant to the recordkeeping requirements in Regulation Q is not routinely reported to the Board, it would likely only come into the Board's possession through the

[2] 12 U.S.C. 1831o.
[3] 12 U.S.C. 3907(a)(l).
[4] 12 U.S.C. 1813(q).
[5] 12 U.S.C. 1844(b).
[6] 12 U.S.C. 1467a(g).
[7] 12 U.S.C. 5365.
[8] 12 U.S.C. 5365(b)(1)(A)(i). See 12 U.S.C. 5371.
[9] 12 U.S.C. 5365(b)(1)(B)(iv).
[10] 12 U.S.C. 324.
[11] 12 U.S.C. 1844(c).
[12] 12 U.S.C. 1467a(b)(2).
[13] 12 U.S.C. 248(a).
[14] 5 U.S.C. 552.
[15] 5 U.S.C. 552(b)(4).

supervisory process. Under these circumstances, information collected under the recordkeeping requirements would be eligible for confidential treatment pursuant to exemption 8 of FOIA, which protects information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.[16] Additionally, information retained pursuant to these requirements may be nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and therefore may be eligible for confidential treatment pursuant to exemption 4 of FOIA.[17]

Consultation outside the agency: The Board worked with staff from the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency to confirm the burden estimates for this renewal.

Board of Governors of the Federal Reserve System, November 1, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–24028 Filed 11–3–22; 8:45 am]

BILLING CODE 6210–01–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, without revision, the Reporting and Recordkeeping Requirements Associated with Regulation L (FR L; OMB No. 7100–0378).

DATES: Comments must be submitted on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by FR L, 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, Without Revision, the Following Information Collection

Collection title: Reporting and Recordkeeping Requirements Associated with Regulation L.

Collection identifier: FR L.

OMB control number: 7100–0378.

Frequency: Event-generated.

Respondents: State member banks, bank holding companies (BHCs), and savings and loan holding companies (SLHCs).

Estimated number of respondents: Reporting, 2; recordkeeping, 2.

Estimated average hours per response: Reporting, 4; recordkeeping, 3.

Estimated annual burden hours: Reporting, 8; recordkeeping, 6.

General description of collection: The Depository Institution Management Interlocks Act (DIMIA) generally

[16] 5 U.S.C. 552(b)(8).

[17] 5 U.S.C. 552(b)(4).

prohibits management officials from serving simultaneously with two unaffiliated depository organizations (*i.e.,* depository institutions and depository institution holding companies), but allows for exemptions from the prohibition in certain circumstances. The FR L information collection accounts for the reporting and recordkeeping requirements associated with implementation of DIMIA.

Legal authorization and confidentiality: The FR L is authorized by sections 205 and 209 of the DIMIA, as amended.[1] The FR L is required to obtain a benefit.

Information submitted to the Board under the reporting requirements associated with the FR L is not considered confidential unless an applicant requests confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[2] Requests for confidential treatment of information are reviewed on a case-by-case basis. Information provided to the Board under the FR L's reporting requirements may be nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, which is protected from disclosure pursuant to exemption 4 of the Freedom of Information Act (FOIA).[3] Submissions to the Board under these requirements may also contain personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, which are protected under exemption 6 of the FOIA.[4]

Information covered by the recordkeeping requirements associated with the FR L is maintained at the relevant banking organization. The FOIA would therefore only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information would be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[5] Information covered by the FR L's recordkeeping requirements may also be protected from disclosure under exemption 4 or 6 of the FOIA, depending on the contents of the information.[6]

Consultation outside the agency: The Board consulted with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, the other agencies with responsibilities related to these requirements associated with DIMIA, to confirm alignment of the burden estimates.

Board of Governors of the Federal Reserve System, November 1, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–24029 Filed 11–3–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 3205 (exempting a director of a diversified SLHC who is also a director of an unaffiliated depository organization from the DIMIA's interlock prohibitions if both the SLHC and the unaffiliated depository organization notify their appropriate federal regulatory agency at least 60 days before the dual service is proposed to begin and no agency disapproves the dual service before the end of the 60-day period) and 3207 (authorizing the Board to prescribe regulations carrying out the DIMIA with respect to state member banks, BHCs, and SLHCs).

[2] 12 CFR 261.17.

[3] 5 U.S.C. 552(b)(4).

[4] 5 U.S.C. 552(b)(6).

[5] 5 U.S.C. 552(b)(8).

[6] 5 U.S.C. 552(b)(4) and (6).

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Monique Fortenberry, Acting Chief Human Capital Officer, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2017.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the Chairman.

The following individuals have been designated to serve on the Commission's Performance Review Board:

Reilly James Dolan, Principal Deputy General Counsel

Monique Fortenberry, Acting Chief Human Capital Officer and Deputy Executive Director

Tara Koslov, Deputy Director, Bureau of Competition

David Rebich, Deputy Executive Director

David Robbins, Executive Director, PRB Chair

Monica Vaca, Deputy Director, Bureau of Consumer Protection

Michael Vita, Deputy Director, Bureau of Economics

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–24043 Filed 11–3–22; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. P222100]

HISA Anti-Doping and Medication Control Rule; Correction

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule; correction.

SUMMARY: The Federal Trade Commission (''Commission'') published a document in the **Federal Register** of October 28, 2022, concerning the Anti-Doping and Medication Control proposed rule submitted by the Horseracing Integrity and Safety Authority. The Authority alerted the Commission that its submission contained an incorrect number. The Commission is issuing this correction to reflect the corrected number.

FOR FURTHER INFORMATION CONTACT: Austin King, Associate General Counsel for Rulemaking, 202–326–3166, *aking3@ftc.gov,* Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2022–22970 appearing at 87 FR 65292 in the **Federal Register** of Friday, October 28, 2022, in the table on page 65365, in the entry for ''ketoprofen,'' change the first sentence of the final column, which currently reads [4 ng/mL in serum or plasma.], to read [2 ng/mL in serum or plasma.], which is the amount the Authority intended to submit but did not because of a typographical error.

Dated: October 31, 2022.

April J. Tabor,

Secretary.

[FR Doc. 2022–24016 Filed 11–3–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23AN; Docket No. CDC–2022–0127]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled 2022 Ebola Traveler Follow Up Evaluation. Information collected will be used to gather feedback from state and local health department partners on CDC's interim guidance and post-arrival management of travelers and to assess the quality of contact information provided to states.

DATES: CDC must receive written comments on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0127 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

2022 Ebola Traveler Follow Up Evaluation—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ) requests approval for a new information collection. Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services (HHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Under its delegated authority, DGMQ works to fulfill this responsibility through a variety of activities, including the operation of Quarantine Stations at ports of entry and administration of foreign quarantine regulations; 42 Code of Federal Regulation part 71, specifically 42 CFR 71.20—Public health prevention measures to detect communicable disease.

This information collection concerns CDC's statutory and regulatory authority related to conducting public health screening of travelers upon arrival to the United States and assessing individual travelers for public health risk following a report of illness from a conveyance. The purpose of this information collection is to inform CDC and interagency decision makers on state/local health department activities related to travelers coming from areas affected by an Ebola outbreak originating in Uganda. This information will be used to (1) gather feedback from state and local health department partners on CDC's interim guidance and post-arrival management of travelers; (2) assess the quality of contact information provided to states by determining the proportion of travelers that state and local health departments were able to contact for recommended assessment and monitoring; and (3) inform the development of future guidance and recommendations for post-arrival traveler management during Ebola outbreaks abroad.

CDC collects international travelers' contact information under authorities in the Interim Final Rule: Control of Communicable Diseases: Foreign Quarantine and CDC's Order Requirement for Airlines and Operators to Collect and Transmit Designated Information for Passengers and Crew Arriving Into the United States; Requirement for Passengers to Provide Designated Information. Traveler contact information is sent to CDC through an existing data-sharing infrastructure in place between the United States Department of Homeland Security (DHS) and HHS/CDC and approved in OMB Control No. 0920–1354. Contact information for travelers who have been to an area affected by the outbreak during the 21 days prior to arrival will be confirmed at the port of entry. CDC will share contact information for these travelers with state and local health departments so that they can do possible public health follow up, including public health assessment of exposure risk and monitoring for Ebola symptoms, and education to travelers. These public

health interventions will help state and local health departments determine the appropriate level of follow up needed based on the traveler's level of risk and rapidly identify any travelers with symptoms that may need to be prioritized for more targeted public health measures, such as quarantine, due to a higher risk of exposure to Ebola. State and local health departments will utilize the contact information provided by CDC to prioritize and identify the level of follow up needed based on the level of risk of exposure to Ebola and determine if additional targeted public health measures are necessary. The purpose of this evaluation will be to gather feedback from state and local health departments regarding traveler monitoring activities and determine the usability of contact information and public health risk assessment information shared by CDC.

CDC anticipates certain time and cost burdens to respondents and record keepers due to the requirements and requests OMB approval for an estimated 4,550 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Information collection tool	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
Traveler	Risk Assessment and Post-Arrival Monitoring Outcome REDCap Reporting.	350	52	15/60	4,550

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24047 Filed 11–3–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delegation of Authority Under Section 564A(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3a(e))

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: CDC has redelegated the authority under the Federal Food, Drug, and Cosmetic (FD&C) Act to create and issue amended emergency use instructions (EUI) to inform healthcare providers or individuals to whom an eligible product, as defined under the FD&C Act, is to be administered, concerning the product's approved, licensed, or cleared conditions of use that deviate from approved labeling, standard clinical practice, and/or standard medical modality (*e.g.,* individual prescription within the patient-clinician relationship). This notice announces the redelegation of the above-mentioned authority, without the authority to redelegate, from the Director, CDC, to the Director, National Center for Immunizations and Respiratory Diseases (NCIRD).

DATES: This delegation was approved by the Director, CDC, and is effective October 28, 2022.

SUPPLEMENTARY INFORMATION: Only the Director, CDC, can issue original EUIs. The Director, NCIRD, may only issue amendments that are substantially within the scope of the original EUI and only for countermeasures within the scope of the NCIRD Director's official responsibilities. This authority shall be exercised under section 564A(e) of the FD&C Act (21 U.S.C. 360bbb–3a(e)), and any related HHS policies. This delegation became effective on October 28, 2022. The Director, CDC, affirms and ratifies any actions taken that involve the exercise of the authority delegated herein prior to the effective date of this delegation.

Sherri A. Berger,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2022–24044 Filed 11–3–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–1301; Docket No. CDC–2022–0126]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Templates for Extramural Data Management Plans. The aim of this collection is to provide contract and cooperative agreement applicants and awardees with templates for the creation of data management plans (DMPs).

DATES: CDC must receive written comments on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0126 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov. Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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

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

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

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

5. Assess information collection costs.

Proposed Project

Templates for Extramural Data Management Plans (OMB Control No. 0920–1301, Exp. 6/30/2023)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Data management plans (DMPs) are required of entities using CDC funds to collect or generate public health data. DMPs will be submitted to CDC by grant and cooperative agreement awardees for assessment to verify that they are concordant with CDC's data sharing policy. CDC contractors collecting public health data are also required to create and submit DMPs. This information collection request was developed by CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to create standardized templates for DMPs so that they will be easier to create, easier to review, better able to ensure compliance with CDC's requirements, and able to increase the likelihood of first draft approval by project officers. The project was initially approved from June 2019 through June 2023. CDC will request an Extension for approval for another three years. Minor updates will be made to the templates for this extension period to better serve awardee and CDC needs.

CDC requests OMB approval for an estimated 1,240 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Applicants and Award Recipients	DMP Template	1240	1	60/60	1240
Total					1240

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24048 Filed 11–3–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–282]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 3, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA

website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–282 Medicare Advantage Appeals and Grievance Data Form

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Advantage Appeals and Grievance Data Form; *Use:* Part 422 of Title 42 of the Code of Federal Regulations (CFR) distinguishes between certain information a Medicare Advantage (MA) organization must provide to each enrollee (on an annual basis) and information that the MA organization must disclose to any MA eligible individual (upon request). This requirement can be found in § 1852(c)(2)(C) of the Social Security Act and in 42 CFR 422.111(c)(3) which states that MA organizations must disclose information pertaining to the number of disputes, and their disposition in the aggregate, with the categories of grievances and appeals, to any individual eligible to elect an MA organization who requests this information.

The appeals and grievance data form is an OMB approved form for use by Medicare Advantage organizations to disclose grievance and appeal data, upon request, to individuals eligible to elect an MA organization. By utilizing the form, MA organizations will meet the disclosure requirements set forth in regulations at 42 CFR 422.111(c)(3). *Form Number:* CMS–R–282 (OMB control number: 0938–0778); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 949; *Total Annual Responses:* 63,740; *Total Annual Hours:* 5,964. (For policy questions regarding this collection contact Sabrina Edmonston at 410–786–3209.)

Dated: November 1, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–24097 Filed 11–3–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10003, CMS–1771, CMS–10789 and CMS–10379]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by December 5, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title:* Notice of Denial of Medical Coverage (or Payment); *Use:* Section 1852(g)(1)(B) of the Social Security Act (the Act) requires Medicare health plans to provide enrollees with a written notice in understandable language of the reasons for the denial and a description of the applicable appeals processes.

Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue the Notice of Denial of Medical Coverage (or Payment) (NDMCP) when a request for either a medical service or payment is denied, in whole or in part. Additionally, the notices inform Medicare enrollees of their right to file an appeal, outlining the steps and timeframes for filing. All Medicare health plans are required to use these standardized notices. *Form Number:* CMS–10003 (OMB Control Number: 0938–0829); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 937*; Number of Responses:* 16,191,812; *Total Annual Hours:* 2,697,556. (For policy questions regarding this collection contact Sabrina Edmonston at 410–786–3209.)

2. Type of Information Collection Request: Extension of a currently approved collection; *Title:* Emergency and Foreign Hospital Services and Supporting Regulation in 42 CFR Section 424.103; *Use:* Section 1866 of the Social Security Act states that any provider of services shall be qualified to participate in the Medicare program and shall be eligible for payments under Medicare if it files an agreement with the Secretary to meet the conditions outlined in this section of the Act. Section 1814(d)(1) of the Social Security Act and 42 CFR 424.100, allows payment of Medicare benefits for a Medicare beneficiary to a nonparticipating hospital that does not have an agreement in effect with the Centers for Medicare and Medicaid Services. These payments can be made if such services were emergency services and if CMS would be required to make the payment if the hospital had an agreement in effect and met the conditions of payment. This form is used in connection with claims for emergency hospital services provided by hospitals that do not have an agreement in effect under Section 1866 of the Social Security Act.

42 CFR 424.103 (b) requires that before a non-participating hospital may be paid for emergency services rendered to a Medicare beneficiary, a statement must be submitted that is sufficiently comprehensive to support that an emergency existed. Form CMS- 1771 contains a series of questions relating to the medical necessity of the emergency. The attending physician must attest that the hospitalization was required under the regulatory emergency definition (42 CFR 424.101 attached) and give clinical documentation to support the claim. A photocopy of the beneficiary's hospital records may be used in lieu of the CMS–1771 if the records contain all the information required by the form.; *Form Number:* CMS–1771 (OMB Control Number: 0938–0023); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 100*; Number of Responses:* 200; *Total Annual Hours:* 50. (For policy questions regarding this collection contact Shauntari Cheely at 410–786–1818.)

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Customer Satisfaction Survey for Enterprise Portal Services (EPS) Users; *Use:* This EPS customer satisfaction survey will support EADG's goal of promoting improvements in the quality of EPS for all end-users and business owners. The collection of this information is necessary to enable EADG to obtain feedback in an efficient, timely manner, in accordance to our commitment to improving the quality and usability of our system. It will also allow for ongoing, collaborative, and actionable communications between EADG and all customers, stakeholders, and end-users.

The goal of this Generic clearance and its survey is to capture feedback from actual users of the system immediately after they finish using the system, while their user experience, negative or positive, is still fresh in their minds. This user feedback will allow our team to discover areas of improvement within EPS. It will help us improve the user experience, provide better service/support, improve marketing strategies, and identify gaps/issues that require resolution. For example, if we get several responses through the collection instrument stating that users feel that the EPS system is slow, we can use that feedback to invest efforts into increasing the EPS response times. As the feedback is analyzed and implemented over time, the survey questions will evolve to support implemented changes, providing the EPS team with the most up-to-date feedback on system improvement.

By using a Generic Instrument Collection, the survey will evolve over time. Within the CMS EPS, features are frequently added, and sometimes even removed. The team needs to be able to add new survey questions, specific to those new features, in order to capture valuable feedback on the effectiveness, ease-of-use, pain points, and areas of improvement for the 2 feature. When features are removed from the CMS EPS, questions relevant to those features must be modified or removed from the survey as well. In general, given that the CMS EPS is a dynamic system, designed to meet enterprise needs that change over time, a Generic Instrument Collection will allow the survey to evolve as the system evolves, and remain relevant, capturing up-to-date feedback on the system. *Form Number:* CMS–10789 (OMB control number: 0938-New); *Frequency:* Quarter; *Affected Public:* Individuals and Households, Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 300,000; *Total Annual Responses:* 360,000; *Total Annual Hours:* 90,000. (For policy questions regarding this collection contact Corey L. Redden at 410–279–5152.)

4. *Type of Information Collection Request:* Revision of a previously approved information collection; *Title of Information Collection:* Rate Increase Disclosure and Review Reporting Requirements; *Use:* 45 CFR part 154 implements the annual review of unreasonable increases in premiums for health insurance coverage called for by section 2794. The regulation established a rate review program to ensure that all rate increases that meet or exceed an established threshold are reviewed by a state or the Centers for Medicare and Medicaid Services (CMS) to determine whether the rate increases are unreasonable. Accordingly, issuers offering non-grandfathered health insurance coverage in the individual and/or small group markets are required to submit Rate Filing Justifications to CMS. Section 154.103 exempts grandfathered health plan coverage as defined in 45 CFR 147.140, excepted benefits as described in section 2791(c) of the PHS Act and student health insurance coverage, as defined in § 147.145, from Federal rate review requirements.

The Rate Filing Justification consists of three parts. All issuers must continue to submit a Uniform Rate Review Template (URRT) (Part I of the Rate Filing Justification) for all single risk pool plans. Section 154.200(a)(1) establishes a 15 percent federal default threshold for reasonableness review. Issuers that submit a rate filing that includes a plan that meets or exceeds the threshold must include a written description justifying the rate increase, also known as the consumer justification narrative (Part II of the Rate Filing Justification). We note that the threshold set by CMS constitutes a minimum standard and most states currently employ stricter rate review standards and may continue to do so. Issuers offering a QHP or any single risk pool submission containing a rate

increase of any size must continue to submit an actuarial memorandum (Part III of the Rate Filing Justification). *Form Number:* CMS–10379 (OMB control number: 0938–1141); *Frequency:* Annually; *Affected Public:* Private Sector; Businesses or other for-profits, Not-for-profit institutions; *Number of Respondents:* 626; *Total Annual Responses:* 820; *Total Annual Hours:* 17,788. (For policy questions regarding this collection contact Lisa Cuozzo at 410–786–1746.)

Dated: November 1, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–24098 Filed 11–3–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Administration for Children and Families Uniform Project Description

AGENCY: Office of Administration, Office of Grants Policy, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a revision of the approved ACF Uniform Project Description (UPD) (Office of Management and Budget (OMB) # 0970–0139, expiration March 31, 2025).

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION: *Description:* The proposed information collection would revise the approved ACF UPD. The UPD provides a uniform format for applicants to submit project information in response to ACF discretionary Notices of Funding Opportunity. The UPD requires applicants to describe how program objectives will be achieved and provide a rationale for the project's budgeted costs. All ACF discretionary grant programs are required to use the UPD.

ACF uses this information, along with other OMB-approved information collections (Standard Forms), to evaluate and rank applications. Use of the UPD protects the integrity of the ACF award selection process.

The UDP has been revised as follows: (1) included a text field for the Geographic Location standardized text, which will allow ACF program offices to enter project-specific language; (2) under Organizational Capacity, inserted an option to allow submission of an Audit Summary report in lieu of a full audit report; (3) inserted a checkbox and standardized language to request current and pending funding support; (4) added a prior written approval requirement to Plan for Oversight of Federal Award Funds and Activities; (5) included Memoranda of Agreement (MOA) under Third Party Agreements; and (6) updated The Project Budget and Budget Justification standardized language related to salary limitation, budget preparation, fringe benefits, definition of supplies, contractual costs, accounting for real property, the Other Costs category, and Indirect Costs.

Respondents: Applicants responding to ACF Discretionary Notices of Funding Opportunity.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ACF Uniform Project Description	3,218	1	60	193,080

Estimated Total Annual Burden Hours: 64,360.

Authority: 45 CFR 75.203 and 75.204, and 45 CFR part 75, appendix I.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–23976 Filed 11–3–22; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0150]

Revocation of Two Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Cleveland Clinic Robert J. Tomsich Pathology and Laboratory Medicine Institute (Cleveland Clinic) for the Cleveland Clinic SARS–CoV–2 Assay and SelfCheck COVID–19 TaqPath Multiplex PCR. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorizations for the Cleveland Clinic SARS–CoV–2 Assay and SelfCheck COVID–19 TaqPath Multiplex PCR are revoked as of October 19, 2022.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On August 3, 2020, FDA issued an EUA to Cleveland Clinic for the Cleveland Clinic SARS–CoV–2 Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On August 9, 2021, FDA issued an EUA to Cleveland Clinic for the SelfCheck COVID–19 TaqPath Multiplex PCR, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on October 28, 2021 (86 FR 59738), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Requests

In a request received by FDA on October 7, 2022, Cleveland Clinic requested revocation of, and on October 19, 2022, FDA revoked, the Authorization for the Cleveland Clinic SARS–CoV–2 Assay. Because Cleveland Clinic notified FDA that it is no longer using the Cleveland Clinic SARS–CoV–2 Assay and does not plan to use it in the future and requested FDA revoke the EUA for the Cleveland Clinic SARS–CoV–2 Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on October 7, 2022, Cleveland Clinic requested revocation of, and on October 19, 2022, FDA revoked, the Authorization for the SelfCheck COVID–19 TaqPath Multiplex PCR. Because Cleveland Clinic notified FDA that it is no longer using the SelfCheck COVID–19 TaqPath Multiplex PCR and does not plan to use it in the future and requested FDA revoke the EUA for the SelfCheck COVID–19 TaqPath Multiplex PCR, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/*.

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs of Cleveland Clinic for the Cleveland Clinic SARS–CoV–2 Assay and SelfCheck COVID–19 TaqPath Multiplex PCR. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

October 19, 2022

Susan Harrington, Ph.D.
Medical Director
The Cleveland Clinic Foundation
9500 Euclid Avenue
Cleveland, OH 44195
Re: Revocation of EUA200313

Dear Dr. Harrington:

This letter is in response to the request from Cleveland Clinic Robert J. Tomsich Pathology and Laboratory Medicine Institute ("Cleveland Clinic"), received via email on October 7, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Cleveland Clinic SARS-CoV-2 Assay issued on August 3, 2020, and amended on January 19, 2021, and September 23, 2021. Cleveland Clinic indicated that it is no longer using the Cleveland Clinic SARS-CoV-2 Assay and does not plan to use it in the future.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Cleveland Clinic has notified FDA that it is no longer using the Cleveland Clinic SARS-CoV-2 Assay and does not plan to use it in the future and requested FDA revoke the EUA for the Cleveland Clinic SARS-CoV-2 Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200313 for the Cleveland Clinic SARS-CoV-2 Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Cleveland Clinic SARS-CoV-2 Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

October 19, 2022

Susan Harrington, Ph.D.
Medical Director
The Cleveland Clinic Foundation
9500 Euclid Avenue
Cleveland, OH 44195
Re: Revocation of EUA210363

Dear Dr. Harrington:

This letter is in response to the request from Cleveland Clinic Robert J. Tomsich Pathology and Laboratory Medicine Institute ("Cleveland Clinic"), received via email on October 7, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the SelfCheck COVID-19 TaqPath Multiplex PCR assay issued on August 9, 2021. Cleveland Clinic indicated that it is no longer using the SelfCheck COVID-19 TaqPath Multiplex PCR assay and does not plan to use it in the future.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Cleveland Clinic has notified FDA that it is no longer using the SelfCheck COVID-19 TaqPath Multiplex PCR assay and does not plan to use it in the future and requested FDA revoke the EUA for the SelfCheck COVID-19 TaqPath Multiplex PCR assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210363 for the SelfCheck COVID-19 TaqPath Multiplex PCR assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the SelfCheck COVID-19 TaqPath Multiplex PCR assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Namandjé N. Bumpus, Ph.D.
Chief Scientist
Food and Drug Administration

Dated: October 31, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–24072 Filed 11–3–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Tick-Borne Disease Working Group

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; revision to meeting date.

SUMMARY: The Office of the Assistant Secretary for Health published a notice in the **Federal Register** on September 16, 2022, concerning a meeting of the Tick-Borne Disease Working Group (TBDWG) that was scheduled to occur on December 7, 2022. This notice is being amended to announce that the meeting has been rescheduled to November 21, 2022. This will be the final TBDWG meeting.

DATES: The meeting date announced in the **Federal Register** at 87 FR 5693 on September 16, 2022 is amended. The public can view the meeting online via webcast on November 21, 2022 from approximately 10 a.m. to 12 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the TBDWG web page at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/index.html* when this information becomes available.

FOR FURTHER INFORMATION CONTACT: James Berger, Designated Federal Officer for the TBDWG; Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Rockville, MD 20852. Email: *tickbornedisease@hhs.gov.* Phone: 202–795–7608.

SUPPLEMENTARY INFORMATION: A link to view the webcast can be found on the meeting website at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/index.html* when it becomes available. The public will have an opportunity to present their views to the TBDWG orally during the meeting's public comment session or by submitting a written public comment. Comments should be pertinent to the meeting discussion. Persons who wish to provide verbal or written public comment should review instructions at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/index.html* and respond by midnight November 13, 2022 ET. Verbal comments will be limited to three minutes each to accommodate as many speakers as possible during the 30-minute session. Written public comments will be accessible to the public on the TBDWG web page prior to the meeting.

Dated: October 25, 2022.

James J. Berger,

Designated Federal Officer, Tick-Borne Disease Working Group, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2022–23989 Filed 11–3–22; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed) Re-Issue PA–20–207.

Date: December 5–7, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20852, (240) 669–5048, *yong.gao@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: November 1, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24064 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Enhancing HIV Reservoir Susceptibility to Elimination (R01 Clinical Trial Not Allowed).

Date: November 30–December 1, 2022.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kristina S. Wickham, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20852, 301–761–5390, *kristina.wickham@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 1, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24063 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC). The BSC, a federally chartered, external advisory group composed of scientists from the public and private sectors, will review and provide advice on programmatic activities. This meeting is a virtual meeting and is open to the public. Written comments will be accepted, and registration is required to present oral comments.

DATES: Meeting: Scheduled for December 15, 2022, 1:30 p.m.–5:00 p.m. Eastern Standard Time (EST). Ending times are approximate; meeting may end earlier or run later. Written Public Comment Submissions: Deadline is December 08, 2022. Registration for Oral Comments: Deadline is December 08, 2022.

ADDRESSES: Meeting web page: The preliminary agenda, registration, and other meeting materials will be available at *https://ntp.niehs.nih.gov/go/165* by November 10, 2022. Virtual Meeting: The URL for viewing the virtual meeting will be provided on the meeting web page the day before the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Milene Brownlow, Designated Federal

Official for the BSC, Office of Policy, Review, and Outreach, Division of Translational Toxicology, NIEHS. Phone: 984–287–3364, Email: *milene.brownlow@nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2161, Durham, NC 27713.

SUPPLEMENTARY INFORMATION: The BSC will provide input to the NTP on programmatic activities and issues. The preliminary agenda topics include presentations on three contract concepts: Chemistry, Toxicology, and Pathology Support Services for the NIEHS. The preliminary agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Official for the BSC. Following the meeting, summary minutes will be prepared and made available on the BSC meeting web page.

Meeting Attendance Registration: The meeting is open to the public with time scheduled for oral public comments. Registration is not required to view the virtual meeting; the URL for the virtual meeting is provided on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*), the day before the meeting. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: NTP invites written public comments. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

The deadline for submission of written comments is December 08, 2022. Written public comments should be submitted through the meeting web page. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP web page, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comment Registration: The agenda allows for public comment periods on the agenda topics (up to five commenters per topic, up to five minutes per speaker per topic). Persons wishing to make an oral comment are required to register online at *https://ntp.niehs.nih.gov/go/165* by December 08, 2022. Oral comments will be received only during the formal comment periods indicated on the preliminary agenda. Registration is on a first-come, first-served basis. Each organization is allowed one time slot per topic. After the maximum number of speakers is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. Commenters will be notified approximately one week before the meeting to provide logistical information for their presentations. If possible, oral public commenters should send a copy of their slides and/or statement or talking points to Ms. Robbin Guy by email: *robbin.guy@nih.gov* by December 08, 2022.

Meeting Materials: The preliminary meeting agenda will be available on the meeting web page (*https://ntp.niehs.nih.gov/go/165*) by November 10, 2022 and updated one week before the meeting. Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Background Information on the BSC: The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, epidemiology, risk assessment, carcinogenesis, mutagenesis, cellular biology, computational toxicology, neurotoxicology, genetic toxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets periodically. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended.

The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of advisory committees.

Dated: October 31, 2022.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2022–24000 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on December 12, 2022. The topic for this meeting will be ''NIDDK's Office of Obesity Research: Evolving Concepts in the Heterogeneity of Obesity''. The meeting is open to the public.

DATES: The meeting will be held on December, 12 2022 from 1:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The meeting will be held via the Zoom online video conferencing platform. For details, and to register, please contact *dmicc@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, which will be posted when available, see the DMICC website, *www.diabetescommittee.gov,* or contact Dr. William Cefalu, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Democracy 2, Room 6037, Bethesda, MD 20892, telephone: 301–435–1011; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S. Code 285c–3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The December 12, 2022 DMICC meeting will focus on ''NIDDK's Office of Obesity Research: Evolving Concepts in the Heterogeneity of Obesity.''

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and

representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their 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. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC website, *www.diabetescommittee.gov.*

William T. Cefalu,

Director, Division of Diabetes, Endocrinology, and Metabolic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, and Metabolic Diseases, National Institutes of Health.

[FR Doc. 2022–24087 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Small Business: Biological Chemistry, Biophysics, and Assay Development, November 15–16, 2022, 9:00 a.m. to 5:00 p.m., The Bethesdan Hotel Tapestry Collection by Hilton (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on October 20, 2022, 87 FR 63790, Doc 2022–22763.

This meeting is being amended to change the meeting start time from 9:00 a.m. to 8:30 a.m. The meeting is closed to the public.

Dated: November 1, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24061 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Immunology and Infectious Diseases C.

Date: December 1–2, 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: Shannon J. Sherman, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–0715, *shannon.sherman@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Biomaterials, Biointerfaces, Gene and Drug Delivery.

Date: December 2, 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: Joseph D. Mosca, BA, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: Maternal and Pediatric Pharmacology and Therapeutics.

Date: December 2, 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: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@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: October 31, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24033 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: December 12–14, 2022.

Time: 7:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Laurie Lewallen, Committee Manager, Division of Intramural Research Program Support Staff, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 33, Room 1N24, 33 North Drive, Bethesda, MD 20892, 301–761–6362, *Laurie.Lewallen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 1, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24059 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed) which was published in the **Federal Register** on October 28, 2022, FR Doc 2022–23540, 87 FR 65215.

Amendment to change meeting date and time from November 14, 2022, at 2:00 p.m. to 5:00 p.m. to November 15, 2022, at 1:00 p.m. to 4:00 p.m. The meeting is closed to the public.

Dated: November 1, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24060 Filed 11–3–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0035; OMB No. 1660–0115]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental and Historic Preservation Screening Form

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the information collection activities required to administer the Environmental and Historic Preservation Environmental Screening Form.

DATES: Comments must be submitted on or before January 3, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0035. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beth McWaters-Bjorkman, Environmental Protection Specialist, FEMA, Grant Programs Directorate, 202–431–8594, *elizabeth.mcwaters-bjorkman@fema.dhs.gov*. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: FEMA's Grant Programs Directorate (GPD) awards thousands of grants each year through various grant programs. These programs award funds for projects used to improve homeland security and emergency preparedness. The National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, sec. 102 (B) and (C), 42 U.S.C. 4332, the National Historic Preservation Act of 1966 (NHPA), Public Law 89–665, 16 U.S.C. 470f, the Endangered Species Act of 1973, Public Law 93–205, 16 U.S.C. 1531 *et seq.,* and a variety of other environmental and historic preservation laws and Executive Orders (E.O.) require the Federal Government to examine the potential environmental impacts of its proposed actions on communities, public health and safety, and cultural, historic, and natural resources including endangered and threatened species prior to implementing those actions. The GPD process of considering these potential impacts is called an environmental and historic preservation (EHP) review which is employed to achieve compliance with multiple EHP authorities through one consolidated process.

With input from recipients, FEMA is proposing to revise the EHP Screening Form for clarity and ease of use. The 2022 EHP Screening Form does not require any new information and includes an appendix with guidance on providing photographs with the EHP submission. Recipients are no longer required to submit Authorized Equipment List (AEL) numbers.

Collection of Information

Title: Environmental and Historic Preservation Screening Form.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0115.

FEMA Forms: FEMA Form FF–119–FY–21–105 (formerly 024–0–1), Environmental and Historic Preservation Screening Form.

Abstract: The National Environmental Policy Act of 1969 (NEPA) requires that each Federal agency examine the impact of a major Federal action (including the actions of recipients using grant funds) significantly affecting the quality of the human environment. This involves considering the environmental impact of the proposed action, alternatives to the proposed action, informing both decision-makers and the public of the impacts through a transparent process, and identifying mitigation measures for any potential adverse impacts (40 CFR 1500.1, 1501.5 and 1501.6). Among other environmental laws, the review also involves considering the effects of the undertaking on historic properties under Section 106 of the National Historic Preservation Act and the effects of the action on any threatened or endangered species and their habitat under Section 7 of the Endangered Species Act of 1973. This Screening Form will facilitate the Federal Emergency Management Agency's (FEMA's) review of recipient Federally-funded actions in FEMA's effort to comply with the environmental requirements.

Affected Public: State, local or Tribal government; Not-for-Profit Institutions.

Estimated Number of Respondents: 2,300.

Estimated Number of Responses: 2,300.

Estimated Total Annual Burden Hours: 16,752.

Estimated Total Annual Respondent Cost: $1,039,877.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $6,153,716.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–24066 Filed 11–3–22; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2022–0014]

Communications Assets Survey and Mapping (CASM) Tool

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; extension without change of a currently approved collection request: 1670–0043.

SUMMARY: CISA is issuing a 60-day notice and request for comments to extend use of Information Collection Request (ICR) 1670–0043. CISA will submit the ICR to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until January 3, 2023.

ADDRESSES: You may submit comments, identified by docket number CISA–2022–0012, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Mail:* CISA strongly prefers comments to be submitted electronically. Written comments and questions about this Information Collection Request should be forwarded to DHS/CISA/ECD, ATTN: 1670–NEW, 245 Murray Lane SW, Mail Stop 0640, Kendall Carpenter, Arlington VA 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Steven Singer at 202–499–0289 or at *steven.singer@cisa.dhs.gov*.

SUPPLEMENTARY INFORMATION: The CISA ECD, formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 571 *et seq.,* as amended, is required to develop and maintain the Nationwide Emergency Communications Plan (NECP). The vision of the NECP is to ensure emergency response personnel can communicate as needed, on demand, and as authorized. To achieve this vision, ECD provides the Communications Assets and Survey Mapping (CASM) Tool. The CASM Tool is the primary resource nationwide for the emergency communications community to inventory and share asset and training information for the purpose of planning public safety communications operability and interoperability.

ECD provides the CASM Tool as a secure and free nationwide database to contain communications capabilities for use by Federal, State, Local, Territorial, and Tribal (SLTT) emergency personnel. CASM allows Federal employees and SLTT Statewide Interoperability Coordinators (SWIC) to inventory emergency communication equipment and resources. The information entered is voluntary and used by SWIC to support tactical planning and coordination during emergencies. ECD does not utilize the information entered into CASM. ECD only provides, maintains, and stores the information entered in the CASM database and only has administrative access to the information entered. All information is collected via electronic means. The CASM registration and database tool is available online via *https://casm.dhs.gov/.* Users can also access and enter information via the CASM Resource Finder mobile app.

This is an *EXTENSION* of a current approved information collection without change.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

Title of Collection: Communications Assets Survey and Mapping Tool.

OMB Control Number: 1670–0043.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments.

Number of Annualized Respondents: 56.

Estimated Time per Respondent: 5 minutes (0.08 hours) per registration or 30 minutes (0.50 hours) for tool modules.

Total Annualized Burden Hours: 341 hours.

Total Annualized Respondent Opportunity Cost: $16,215.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $3,000,000.

Robert Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2022–23987 Filed 11–3–22; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0050]

Homeland Security Advisory Council

AGENCY: The Department of Homeland Security (DHS), The Office of Partnership and Engagement (OPE).

ACTION: Notice of new taskings for the Homeland Security Advisory Council (HSAC).

SUMMARY: On October 16, 2022 the Secretary of DHS, Alejandro N. Mayorkas, tasked the Homeland Security Advisory Council (HSAC) to establish four new subcommittees further outlined below. This notice is not a solicitation for membership.

FOR FURTHER INFORMATION CONTACT: Rebecca Sternhell, Executive Director of the Homeland Security Advisory Council, Office of Partnership and Engagement, U.S. Department of Homeland Security at *HSAC@hq.dhs.gov* or 202–891–2876.

SUPPLEMENTARY INFORMATION: The HSAC provides organizationally independent, strategic, timely, specific, and actionable advice and recommendations for the consideration of the Secretary of the Department of Homeland Security on matters related to homeland security. The HSAC is comprised of leaders in local law enforcement, first responders, public health, State, local and tribal government, national policy, the private sector, and academia.

The four new subcommittees are as follows:

Subcommittee (1): DHS Leadership in Supply Chain Security

A subcommittee to provide recommendations on how the Department can take a greater leadership role in supply chain security, including by strengthening supply chain cybersecurity.

Subcommittee (2): DHS Intelligence and Information Sharing

A subcommittee to provide recommendations on how the Department can improve upon its intelligence and information sharing with our key federal, state, local, tribal, territorial, and private sector partners. The subcommittee will assess whether the Department's information sharing architecture developed by the DHS Office of Intelligence and Analysis (I&A) is adequate for the threats of today and tomorrow, and provide advice and recommendations to better enable the Office of Intelligence and Analysis (I&A) to rapidly and efficiently share information and intelligence with our key partners.

Subcommittee (3): DHS Transparency and Open Government

A subcommittee to provide recommendations on how the Department can improve its commitment to transparency and open government. The subcommittee will provide advice and recommendations that will position the Department as the leader in this critical area of model government conduct.

Subcommittee (4): Homeland Security Technology and Innovation Network

A subcommittee to provide recommendations on how the Department can create a more robust and efficient Homeland Security Technology and Innovation Network. The subcommittee will provide advice and recommendations that will develop the Department's innovation, research and development, and technology network with the private sector.

Tasking (1): DHS Leadership in Supply Chain Security

The United States needs resilient, diverse, and secure supply chains to ensure our economic prosperity and national security. DHS continues to protect America's national and economic security by facilitating legitimate trade and travel and rigorously enforcing U.S. customs and immigration laws and regulations.

As the Department strives to stay ahead of the curve and take a greater leadership role by harnessing new technologies, minimizing environmental impact, and increasing partnerships in this vital area, this HSAC subcommittee is tasked to provide recommendations on how the Department can take a greater leadership role in supply chain security. The subcommittee's assessment will include, but need not be limited to, the following:

a. strengthening physical security;

b. strengthening cybersecurity; and,

c. increasing efficiencies to ensure a resilient, safe, and secure supply chain for critical manufacturing and technology sectors.

Tasking (2): DHS Intelligence and Information Sharing

Federal, state, local, tribal, and territorial partners convened shortly after the September 11, 2001 terrorist attacks, creating a domestic information sharing architecture to enable the timely and seamless exchange of information to detect and eliminate terrorist threats. In the 21 years since 9/11, our law enforcement and homeland security community has made great progress in reshaping our information sharing environment. Working together, we put policies and processes in place that help us to be safer and more secure than we were years ago.

As the Department approaches its 20th Anniversary, the HSAC subcommittee is asked to provide recommendations on:

1. How the Department can rapidly and efficiently share intelligence and information with its federal, state, local, tribal, territorial, and private sector partners. Have DHS investments in information sharing technology and changes in law and policy resulted in increased knowledge transfer and resilience? Are further investments or changes in law or policy needed?

2. Has DHS created an information and intelligence sharing architecture that efficiently spreads knowledge and rapidly shares critical information? Are there steps that we need to take to revitalize or improve this architecture?

3. Whether the current DHS information sharing architecture optimizes information sharing for threats other than counterterrorism; for example, cyber, border security, foreign influence/propaganda, strategic advantage, and others.

4. Internal DHS Information Sharing: Has DHS fully implemented internal DHS information sharing policy—for example, the One DHS Memo—to leverage DHS data and information to support Departmental missions like border security as well as to develop and share relevant, quality intelligence with our partners?

Tasking (3): DHS Transparency and Open Government

DHS is committed to transparency and promoting the principles of an Open Government. The United States has worked both domestically and internationally to ensure global support for Open Government principles to promote transparency, fight corruption, energize civic engagement, and leverage new technologies in order to strengthen

the foundations of freedom in our own nation and abroad.

DHS has expanded transparency in concert with the development of Open Government Plans, recognizing that increased access to research data and information can encourage research collaboration and help successfully address the nation's constantly evolving homeland security challenges.

The HSAC subcommittee is asked to provide recommendations on:

1. How the Department and its components can expand on the foundation set by previous Open Government Plans for DHS.

2. New initiatives to increase transparency and sustaining the DHS mission to protect the homeland.

3. How DHS can be held accountable in meeting its commitment to be a leader in modeling government openness and transparency.

Tasking (4): Homeland Security Technology and Innovation Network

DHS employs more than 240,000 individuals working in multiple offices and components across the country and the world. While the mission is uniform across the Department—to protect the homeland from foreign and domestic threats—the tools necessary to accomplish this can vary widely by office and can change in time. Moreover, while some threats are known and have been core to the DHS mission since its inception, we must remain ever vigilant and responsive to countering both unknown and future threats. In this scenario we may face accelerated timelines that do not fit into our normal acquisition life cycle to acquire key technology to counter a threat. It is critical to our nation's security to have a robust and efficient Homeland Security Technology and Innovation Network that promotes an enhanced schedule of development and deployment of critical technology and assets to protect the homeland.

To maximize the opportunity afforded by partnership with the private sector and the expertise within the Department, the HSAC subcommittee is asked to assess the private sector experience, specifically in the areas of technology development and innovation, and provide recommendations on how the Department can create a more robust and efficient Homeland Security Technology and Innovation Network. The subcommittee's assessment will include, but need not be limited to, the following:

a. an assessment of how the private sector engages with the current Research and Development (R&D) and acquisition programs and opportunities, including where those can be maximized or improved;

b. different means of increasing innovative technology partnerships with the private sector;

c. recommendations on harmonizing existing innovation efforts across the Department and its components to best leverage funding and resources; and

d. identifying current barriers to developing a more robust technology and innovation network, including legal, contracting, and policy considerations.

Schedule: The four subcommittees' findings and recommendations will be submitted to the HSAC for its deliberation and vote during a public meeting. Once the recommendations from the four subcommittees are voted on by the HSAC, they will be submitted to the Secretary. The four subcommittees will submit their findings and recommendations to the HSAC in March 2023.

Dated: October 26, 2022.

Rebecca K.K. Sternhell,

Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2022–24042 Filed 11–3–22; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19605]

Hazardous Materials Endorsement (HME) Threat Assessment Program and Transportation Worker Identification Credential (TWIC®) Program Fees

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) administers the Hazardous Materials Endorsement (HME) and Transportation Worker Identification Credential (TWIC®) vetting programs. TSA conducts security threat assessments (STAs) of applicants to these programs, and in accordance with statutory requirements, collects fees from the applicants to recover TSA's costs to conduct the vetting and credentialing. In this Notice, TSA announces changes to the existing fee structure and fees for the HME and TWIC Programs to include initial in-person applications, in-person renewals, comparable STAs, and new online renewal fees. These updates will allow TSA to continue to improve the HME and TWIC enrollment experience, mitigate potential security risks, and ensure that the programs remain fully funded. TSA maintains a current listing of the overall fees for all HME enrollment options at *https://www.tsa.gov/for-industry/hazmat-endorsement* and for all TWIC enrollment options at *https://www.tsa.gov/for-industry/twic.*

DATES: The fee changes in this notice are effective November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Stephanie Hamilton, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6047; 571–227–2851; or email at *TWIC.Issue@tsa.dhs.gov* and *HME.Question@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: You can find an electronic copy of rulemaking documents relevant to this action by searching the electronic FDMS web page at *https://www.regulations.gov* or at *https://www.federalregister.gov.* In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section.

Abbreviations and Terms Used in This Document

CDL—Commercial Driver's License
CHRC—Criminal History Records Check
FBI—Federal Bureau of Investigation
FAST—Free and Secure Trade
HME—Hazardous Materials Endorsement
MTSA—Maritime Transportation Security Act
STA—Security Threat Assessment
TWIC—Transportation Worker Identification Credential
UES—Universal Enrollment Services
USCG—U.S. Coast Guard

I. TWIC Program

A. Background

The Maritime Transportation Security Act (MTSA) of 2002 requires the Secretary of the Department of Homeland Security to issue a biometric transportation security card to an individual requiring unescorted access to MTSA-regulated entities after determining that the individual does not pose a security risk.[1] The TWIC Program is administered jointly by TSA and the U.S. Coast Guard (USCG). TSA conducts the STA and issues the credential, and USCG enforces the use of the TWIC at MTSA-regulated facilities and vessels.[2]

Under TSA's regulations in 49 CFR part 1572, applicants for TWIC pay a fee to cover (1) the costs of performing and

[1] *See* Maritime Transportation Security Act of 2002, Public Law 107–295, 116 Stat. 2064 (November 25, 2002).

[2] *See* 46 U.S.C. 70105.

adjudicating STAs, appeals, and waivers; (2) the costs of enrolling and transmitting biometric (fingerprints) and biographic applicant information; and (3) the Federal Bureau of Investigation (FBI) fee to process a criminal history records check (CHRC). The STA and physical TWIC card expire five years after the STA is approved by TSA, provided the individual continues to meet the eligibility standards. Individuals who require unescorted access to secure areas of MTSA-regulated entities must re-apply and undergo a new STA when their STA expires to maintain TWIC eligibility.[3]

In August 2022, TSA implemented a new online renewal capability for certain TWIC applicants who maintain or previously maintained an active TWIC STA.[4] Approximately 54 percent of active TWIC cardholders enroll for a new TWIC after their STA expires five years from the date of issuance. Online TWIC renewals will reduce the applicant's cost and time burdens by permitting eligible applicants to obtain a new TWIC without enrolling in-person at a TSA enrollment center. Additionally, TSA mitigates certain security risks associated with online renewals by enrolling current TWIC cardholders in recurrent vetting services, such as the FBI's Rap Back Services.

The current application and renewal fee for the TWIC Program is $125.25. The current reduced application fee for applicants who possess a comparable STA, such as an HME, is $105.25. The current replacement card fee for lost, stolen, or damaged TWICs is $60.00.

B. TWIC Fee Changes

TSA is revising the existing fee structure and fees for the TWIC program. Fees are impacted by several factors such as changes in contractual services. TSA uses contract services for enrollment services, vetting and adjudication support, credentialing services, information technology development, technology operations and maintenance, and customer service support. When the pertinent contracts for services are amended or renegotiated, the fees may be affected. Also, cost variations, such as changes in the number of applicants and FBI fee impact the STA fees. TSA reviews vetting fees once every two years.[5] Upon review, if TSA finds that the fees collected exceed the total cost to provide the services, or do not cover the total cost for services, TSA must adjust the fee.

In August 2022, TSA implemented a new online renewal process for certain TWIC applicants. This new capability permits eligible applicants to renew their TWIC without visiting a TSA enrollment center. With the implementation of this capability, TSA is updating the TWIC fee structure to include two renewal types: (1) in-person renewal at the enrollment center; and (2) online renewal using a desktop or mobile device to complete the enrollment transaction. Most individuals with an active TWIC will be able to renew online. Some individuals may need to visit an enrollment center for renewal for TSA to verify immigration status or update certain biometric or biographic information. Also, individuals eligible for online renewal may choose to visit a center in-person for renewal based on individual needs.

The implementation of TWIC online renewals will result in a fee change for eligible applicants who renew within 12 months of their current STA expiration date. Operational efficiencies with the renewal process, such as limited or no in-person interaction with enrollment agents, will reduce the enrollment and vetting transaction costs for applicants and TSA. Also, TSA will use the applicant's biometric (fingerprint and photograph) information provided during the applicant's initial enrollment for renewals. With this notice, TSA is announcing that the new fee for an online renewal is $117.25. The fee for TWIC in-person enrollments and for in-person renewals at a Universal Enrollment Service (UES) enrollment center will remain the same at $125.25.

TSA also analyzed the costs associated with the use of a comparable STA [6]. TSA is announcing that the revised fee for an eligible reduced-fee enrollment is decreasing from $105.25 to $93.00. The TSA fee for a replacement card remains the same at $60.00. Future changes to TWIC services and fees will be published as a Notice in the **Federal Register** and on the TSA website at *https://www.tsa.gov/for-industry/twic.*

II. HME Program

A. Background

TSA conducts an STA for any driver seeking to obtain, renew, or transfer an HME on a State issued commercial driver's license (CDL) for the TSA HME Program. Under 49 U.S.C. 5103a, a State is prohibited from issuing or renewing a CDL unless TSA has first determined that the driver does not pose a security threat warranting denial of the HME. Currently, the HME program regulations in 49 CFR part 1572 permit States to collect and transmit the fingerprints and applicant information of drivers who apply to renew or obtain an HME; or to have a TSA agent collect and transmit the fingerprints and applicant information of such drivers.[7]

Applicants for an HME pay a fee to cover (1) the costs of performing and adjudicating STAs, appeals, and waivers; (2) the costs of enrolling and transmitting fingerprints and applicant information; and (3) the FBI fee charged to process a CHRC.[8] States that choose to collect applicant information and submit it to TSA may charge applicants a State fee for that service, and TSA has no authority to establish, determine, or limit the amount of that fee. The HME STA expires five years after the STA is approved by TSA, provided the individual continues to meet the eligibility standards. Individuals who require an HME must re-apply and undergo a new STA when their STA expires to maintain eligibility for the HME.

B. HME Fee Changes

The fees will remain the same for new HME enrollments and renewals. However, TSA is revising the fees that apply when using a comparable STA to obtain an HME. Fees are impacted by several factors, including changes in contractual services. Similar to the TWIC Program, TSA uses contract services for enrollment, vetting, adjudication support, information technology development, technology operations and maintenance, and customer service. When the pertinent contracts for services are amended or renegotiated, the fees may be affected. Also, cost variations, such as changes in the number of applicants, and FBI fee impacts the STA fees.

TSA reviews vetting fees once every two years.[9] Upon review, if TSA finds that the fees collected exceed the total cost to provide the services or do not cover the total costs for services, TSA must adjust the fee. TSA analyzed the costs associated with the use of a comparable STA for an HME, and found that the fees for these enrollments could

[3] *See* 49 CFR part 1572 for STA standards and TWIC expiration.

[4] *See* 30-Day notice, 86 FR 11323 (February 24, 2021), for OMB Control Number 1652–0047 and related Supporting Statement.

[5] *See* 31 U.S.C. 3512 (the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 104 Stat. 2838, Nov. 15, 1990)).

[6] Comparable STAs include HME and FAST

[7] *See* 49 CFR 1572.13.

[8] *See 70* FR 2542 (Jan. 13, 2005).

[9] *See* 31 U.S.C. 3512 (the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 104 Stat. 2838, Nov. 15, 1990)).

be lowered from $67.00 to $41.00. The fee for a new and renewal HME enrollment at a UES enrollment center will remain the same at $86.50.

Future changes to HME services and fees will be published as Notice in the **Federal Register** and on the TSA website at *https://www.tsa.gov/for-industry/hazmat-endorsement.*

III. Authority To Collect and Methodology To Calculate Fee Changes

Congress directed TSA to collect user fees to cover the costs of its transportation vetting and credentialing programs.[10] TSA must collect fees to pay for conducting all portions of an STA; reviewing and adjudicating requests for correction of records, appeals, and waivers; information technology costs; personnel costs; and any other costs related to conducting the STA, providing a credential, or providing states the driver's eligibility determination.

The statute requires that any fee collected must be available only to pay for the costs incurred in providing services in connection with performing the STA. The funds generated by the fee do not have a limited period of time in which they must be used; as fee revenue and service costs do not always match perfectly for a given period, a program may need to carry over funding from one fiscal year to the next to ensure that sufficient funds are available to continue normal program operations. TSA complies with applicable requirements, such as the Chief Financial Officers Act of 1990[11] and Office of Management and Budget Circular A–25,[12] and regularly reviews the fees to ensure they recover, but do not exceed the full cost of services.

TSA established the methodology for calculating the vetting fees for the TWIC and HME programs through notice and comment rulemaking, and stated that any fee changes using that same methodology would be published in a Notice.[13] TSA uses that same methodology to evaluate the current fees and in establishing new fee amounts.

In 2013, TSA revised the TWIC and HME regulations to remove references to specific fee amounts and provide TSA with flexibility to modify fees, as necessary, to ensure that STA, enrollment, and credentialing fees reflect their associated costs and the programs could continue to operate if the costs exceeded regulatory caps.[14] As a result of this rulemaking, TSA may change the fees as appropriate and provide Notice in the **Federal Register** to inform affected stakeholders of the revised fees and the basis for the changes.[15]

IV. Fee Announcements

The vetting fees for the TWIC and HME programs are set forth below:

TABLE 1—COMPARISON OF CURRENT AND NEW TWIC AND HME FEES AND ENROLLMENT TYPE

Enrollment type	TWIC Program Fees		HME Program Fees	
	Current	New	Current	New
New Enrollment	$125.25	$125.25	$86.50	$86.50
Renewal (In-Person)	125.25	125.25	86.50	86.50
Renewal (Online)	N/A	117.25	N/A	N/A
Comparable STA	105.25	93.00	67.00	41.00
Replacement Card	60.00	60.00	N/A	N/A

In addition to a notice published in the **Federal Register**, TSA will publish these fees on the TSA website: *https://www.tsa.gov/for-industry/hazmat-endorsement* and *https://www.tsa.gov/for-industry/twic,* as applicable.

Note that applicants may choose the respective program's enrollment option that best meets their needs based on the convenience of enrollment center locations and their eligibility for in-person or online renewal options. Drivers who require an HME in a state that does not use TSA's enrollment agent are subject to fees established by the state, not TSA.

Dated: November 1, 2022.

Austin Gould,

Acting Executive Assistant Administrator, Operations Support.

[FR Doc. 2022–24101 Filed 11–3–22; 8:45 am]

BILLING CODE 9110–05–P

[10] *See* 6 U.S.C. 469(a).

[11] *See* 31 U.S.C. 501 *et seq.*

[12] *See http://www.whitehouse.gov/omb/circulars_a025.*

[13] *See* 72 FR 55043 (September 28, 2007), 70 FR 2542 (Jan. 13, 2005).

[14] *See* Final Rule, *Provisions for Fees Related to Hazardous Materials Endorsements and Transportation Worker Identification Credentials,* 78 FR 45353 (April 16, 2013).

[15] *See* 49 CFR 1572.403(a) (State collection of HME fees), 1572.405(a) (TSA collection of HME fees), and 1572.501(g) (imposition of TWIC fees).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–18]

60-Day Notice of Proposed Information Collection: Implementation of the Violence Against Women Reauthorization Act of 2013, OMB Control No.: 2577–0286

AGENCY: Offices of Housing, Public and Indian Housing, and Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov.* A copy of the proposed forms is available from Ms. Pollard. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Leea Thornton, Office of Policy, Program and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–6455. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Implementation of the Violence Against Women Reauthorization Act of 2013.

OMB Approval Number: 2577–0286.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–5380, HUD–5381, HUD–5382, and HUD–5383. Other: Emergency transfer reporting, lease bifurcation, and lease addendum.

Description of the need for the information and proposed use: The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4, 127 Stat. 54, reauthorized and amended the Violence Against Women Act of 1994, as previously amended (title IV, sec. 40001–40703 of Pub. L. 103–322, 42 U.S.C. 13925 *et seq.*). In doing so, VAWA 2013 expanded the VAWA protections that applied to HUD's Section 8 and Public Housing programs and widened the range of HUD's housing programs that are subject to VAWA protections. The provisions of VAWA 2013 that afford protections to victims of domestic violence, dating violence, sexual assault, and stalking are statutory and statutorily directed to be implemented. Accordingly, on November 16, 2016, HUD published a final rule at 81 FR 80724 (VAWA Rule), implementing VAWA 2013's provisions in its housing programs. The Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) was signed March 15, 2022, however certain provisions are not self-implementing. Once VAWA 2022 has been implemented this PRA will be further updated, as appropriate.

The HUD programs that include VAWA protections as required by VAWA 2013 and the VAWA rule include:

- Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q);
- Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013);
- Housing Opportunities for Persons with AIDS (HOPWA) program (42 U.S.C. 12901 et seq);
- HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*);
- Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*), including the Emergency Solutions Grants (ESG) program; the Continuum of Care (CoC) program; and the Rural Housing Stability Assistance program;
- Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5);
- Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z–1);
- HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f), and the Section 8 Moderate Rehabilitation Single Room Occupancy; and
- The Housing Trust Fund (12 U.S.C. 4568).

To assure covered housing providers (CHPs) under the programs listed above comply with VAWA 2013 and the VAWA Rule, the Department must provide to all CHPs certain model documents for use, as follows:

- *Form HUD–5380:* Notice of Occupancy Rights Under the Violence Against Women Act. HUD must provide this notice to CHPs, which must, in turn, distribute it to tenants and to applicants at the times specified in the VAWA rule at minimum to ensure they are aware of their rights under VAWA and its implementing regulations. CHPs must add specific information to this form as indicated by the imbedded instructions. The use of ''*we*'' or ''*us*'' and use of shorthand will require customization depending on whether the provider and the landlord are the same, and, particularly for the CPD programs, the program decisions made by the grantee and subgrantee.
- *Form HUD–5381:* Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. HUD must provide this model document to CHPs. CHPs must develop their own emergency transfer plans, as required by the VAWA rule, must make their emergency transfer plan available upon request, and, when feasible, must make their plan publicly available. CHPs may, at their discretion, use HUD–5381 to develop these plans. This model contains only general provisions of an emergency transfer plan that apply across the covered HUD programs. Adoption of this model plan without further customization and information concerning how the emergency transfer plan will operate will not be sufficient to meet a covered housing provider's responsibility to adopt an emergency transfer plan. CHPs must consult the applicable regulations and are encouraged to consult program-specific HUD guidance when developing their own emergency transfer plans to ensure those plans contain all required elements.
- *Form HUD–5382:* Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation. HUD must provide this certification form to CHPs, which must, in turn, distribute it to tenants and applicants as a required complement and extension of the required Notice of Occupancy Rights Under the Violence Against Women Act (Form HUD–5380). As further explained on the Form HUD–5382, an applicant or tenant who is asking for or about VAWA protections may choose to fill out and submit this certification form as one of the four legally acceptable options the VAWA final rule provides for answering any covered housing provider's written request for documentation that an individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking or that a covered incident or incidents of domestic violence, dating violence, sexual assault, and stalking occurred. (Note: This is a revision of and supersedes form HUD–50066. VAWA 2013 required that the form be updated and made applicable to all covered housing programs.)
- *Form HUD–5383:* Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. HUD provides this model emergency transfer request form to CHPs. CHPs may, at their discretion, distribute it to tenants and applicants. This form serves as a model for use by a CHP to accept requests for emergency transfers under its required VAWA 2013 Emergency Transfer Plan.

HUD has, as part of this package, revised the forms that were published with HUD's final rule in order to more closely align with the rule and to clarify language. In addition to the minor changes, HUD makes the following specific changes:

- *Form HUD–5380:* Streamline information and language used in the notice to reduce pages. Translated regulatory language into plain language. Made titles of sections into questions that directly address the reader. CHPs must add specific information to this form as indicated by the imbedded instructions. Other areas of the form may be used by the provider to include customized information as necessary. The use of ''*we*'' or ''*us*'' and use of shorthand will require some customization depending on whether the provider (grantee/recipient) and the landlord are the same, and, particularly for the Office of HIV/AIDS Housing (OHH) and Office of Special Needs Assistance Programs (SNAPS), the program decisions made by the grantee/recipient.
- *Form HUD–5381:* Add a note to covered housing providers that the use of the model form without adding program specific and housing provider specific policies will not be sufficient to meet the emergency transfer plan requirements. Add a definition section with definitions taken from the regulation. Rename the section titled ''Emergency Transfer Timing and Availability'' to ''Emergency Transfer Procedures'' and add two new sections, ''Emergency Transfer Policies'' section, which clarifies that the provider must specify their individual policies for different categories of transfers (*i.e.* internal or external transfers) where applicable, and a ''Priority for Transfers'' section, which requires providers to provide any type of priority being provided to a victim consistent with 24 CFR 5.2005(e)(3) and (e)(6). Update the ''Confidentiality'' section to more closely follow the regulation at 24 CFR 5.2007(c) and put individuals on notice of confidentiality protections. Lastly, add a ''Making Plan Available'' section to describe how the plan will be made publicly available, where possible.
- *Form HUD–5382:* Update the ''Submission of Documentation'' section to include information about reasonable accommodations.
- *Form HUD–5383:* Update the ''Confidentiality'' section to use more plain language. Added information about family members in household, current address, best method of contact, what type of transfer is being requested, what features they want to request in a safe unit, and optional documentation to include with form.

In addition, the Department seeks approval for the following information collection activities required by VAWA 2013 and HUD's final rule:

- *Lease Addendum:* The VAWA regulation includes certain requirements that must be incorporated into tenants' leases.
- *Emergency Transfer Reporting:* CHPs must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must also be reported to HUD annually. Requests and outcomes of such requests must be reported to HUD annually. HUD proposes to include the following data fields in its program reporting systems to help standardize the information CHPs provide on emergency transfer requests and outcomes of those requests:
  - Total number of VAWA Emergency Transfer Requests
  - Number of requests that resulted in Internal Transfers
  - Number of requests that resulted in External Transfers
  - Number of requests yet to be placed
  - Number of approved Emergency Transfer requests that resulted in no transfer
  - Number of requests that did not qualify for Emergency Transfer and were denied
  - Length of time needed to process emergency transfers

Consistent with House Report 116–109, part of the fiscal year 2022 Omnibus Spending Bill, Public Law 113–4, HUD is also adding a request as part of this information collection to seek information about the extent to which public housing agencies and owners, and managers have adopted VAWA emergency transfer policies since the publication of the Department's model emergency transfer plan, and the effectiveness of those emergency transfer policies in allowing victims to access safe housing. The information would include the type of covered housing provider; a request for sharing their VAWA emergency transfer plan and whether such plan is publicly available; how many VAWA emergency transfer requests were received over the last three years and outcome of those requests; a request for indicating if a waiting list preference is available for victims of domestic violence, sexual assault, dating violence, and stalking; information about collaborations or coordination with consortiums or other providers for purposes of providing housing and services for victims; whether a VAWA service coordinator exists; and whether a VAWA lease bifurcation policy exists. This information may be collected by way of email communication, updated systems, or survey. This collection is also consistent with reporting in 24 CFR part 5, subpart L. HUD expects to request this information annually and it would take housing providers one hour per annual submission.

- *Lease Bifurcation Option:* VAWA 2013 mandates that HUD provide for lease bifurcation. In other words, CHPs may, subject to their program rules and state and local law, bifurcate a lease in order to evict or remove any member of a household who has allegedly engaged in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, while allowing the victim and other members of the household to remain. This is optional.
- *Respondents (i.e. affected public):* Public housing agencies, private multifamily housing owners and management agents, state and local agencies, and grant recipients.

Estimated Number of Respondents: 328,485.

Estimated Number of Responses: 7,969,000.

Frequency of Response: Varies. For the HUD–5380 and HUD–5382 there are approximately 3,918 Public Housing and Housing Choice Voucher respondents with 801 responses per respondent. For Multifamily Housing there are approximately 23,000 respondents with 104 responses per respondent. For HOME there are 1,874 respondents with approximately 62 responses. For HOPWA there are 255 respondents with 176 responses. For Homelessness programs (CoC, ESG, Rural Housing Stability) there are 1,040 respondents with 410 responses.

Each respondent indicated will have to complete an emergency transfer plan using the HUD–5381 or other format. For the HUD–5382 certification for documentation by survivor and emergency transfer request there are approximately 210,725 responses. For the HUD–5382 and HUD–5383 certification for documentation by professional and emergency transfer request there are 69,714 responses.

24 CFR section and description of activity	Number of respondents	Frequency of response (annual, per respondent)	Annual responses	Est. avg. time for requirement (hours)	Annual hour burden	Cost per hour	Total cost
5.2005(a) Form HUD–5380: Notice of Occupancy Rights and form HUD–5382: Certification Form-Distribution and Review							
Public Housing and Housing Choice Voucher (HCV)							
Annual Average of Denied Admissions	3,918	7	27,426	0.08	2,194	$24	$52,658
Annual Average of new Households that Move In	3,918	55	215,490	0.08	17,239	24	413,741
Annual Average of Eviction Notices Sent	3,918	3	11,754	0.08	940	24	22,568
Multifamily Housing							
Annual Average of Denied Admissions	23,000	15	345,000	0.08	27,600	24	662,400
Annual Average of new Households that Move In	23,000	9	207,000	0.08	16,560	24	397,440
Annual Average of Eviction Notices Sent	23,000	10	230,000	0.08	18,400	24	441,600
HOME							
Annual Average of Denied Admissions	1,874	20	37,480	0.08	2,998	24	71,962
Annual Average of new Households that Move In	1,874	16	29,984	0.08	2,399	24	57,569
Annual Average of Eviction Notices Sent	1,874	8	14,992	0.08	1,199	24	28,785
HOPWA							
Annual Average of Denied Admissions	255	20	5,100	0.08	408	24	9,792
Annual Average of new Households that Move In	255	20	5,100	0.08	408	24	9,792
Annual Average of Eviction Notices Sent	255	10	2,550	0.08	204	24	4,896
Homeless (CoC, ESG, and Rural Housing Stability)							
Annual Average of Denied Admissions	1,040	5	5,200	1.5	7,800	24	187,200
Annual Average of new Households that Move In	1,040	1	1,040	1.5	1,560	24	37,440
Annual Average of Eviction Notices Sent	1,040	1	1,040	1.5	1,560	24	37,440
5.2005(e) Form HUD–5381: Emergency Transfer Plan-Completion							
Public Housing and Housing Choice Voucher (HCV)	3,918	1	3,918	8	31,344	24	752,256
Multifamily Housing	23,000	1	23,000	8	184,000	24	4,416,000
HOME	11,874	1	1,874	8	14,992	24	359,808
HOPWA	255	1	255	8	2,040	24	48,960
Homeless (CoC, ESG, and Rural Housing Stability)	1,040	1	1,040	4	4,160	24	99,840
5.2007(b) Form HUD–5382: Certification Form—Documentation by Survivor							
Public Housing and Housing Choice Voucher (HCV)	3,918	10	39,180	0.33	12,929	7.25	93,738
Multifamily Housing	23,000	6	138,000	0.33	45,540	7.25	330,165
HOME	1,874	15	28,110	0.33	9,276	7.25	67,253
HOPWA	255	5	1,275	0.33	421	7.25	3,050
Homeless (CoC, ESG, and Rural Housing Stability)	1,040	4	4,160	0.5	2,080	7.25	15,080
5.2007(b)(1)(ii) Form HUD–5382: Certification Form—Documentation by Professional							
Public Housing and Housing Choice Voucher (HCV)	3,918	3	11,754	0.5	5,877	24	141,048
Multifamily Housing	23,000	2	46,000	0.5	23,000	24	552,000
HOME	1,874	5	9,370	0.5	4,685	24	112,440
HOPWA	255	2	510	0.5	255	24	6,120
Homeless (CoC, ESG, and Rural Housing Stability)	1,040	2	2,080	0.5	1,040	24	24,960
5.2005(e) Form HUD–5383: Emergency Transfer Request—Documentation by Survivor							
Public Housing and Housing Choice Voucher (HCV)	3,918	10	39,180	0.33	12,929	7.25	93,738
Multifamily Housing	23,000	3	69,000	0.33	22,770	7.25	165,083
HOME	1,874	5	9,370	0.33	3,092	7.25	22,418
HOPWA	255	5	1,275	0.33	421	7.25	3,050
Homeless (CoC, ESG, and Rural Housing Stability)	1,040	4	4,160	0.5	2,080	7.25	15,080
5.2005(e) Form HUD–5383: Emergency Transfer Request—Annual Reporting							
Public Housing and Housing Choice Voucher (HCV)	3,918	1	3,918	1	3,918	24	94,032
Multifamily Housing	23,000	1	23,000	1	23,000	24	552,000
HOME	1,874	1	1,874	3	5,622	24	134,928
HOPWA	255	1	255	1	255	24	6,120
Homeless (CoC, ESG, and Rural Housing Stability)	1,040	1	1,040	1	1,040	24	24,960
5.2005(a) Lease Addendum—Distribution and Review							
Public Housing and Housing Choice Voucher (HCV)	3,918	59	231,162	0.5	115,581	24	2,773,944
Multifamily Housing	23,000	24	552,000	0.5	276,000	24	6,624,000
HOME	1,874	18	33,732	0.5	16,866	24	404,784
HOPWA	255	50	12,750	0.5	6,375	24	153,000
Homeless (CoC, ESG, and Rural Housing Stability)	1,040	403	419,120	0.5	209,560	24	5,029,440
5.2009 Lease Bifurcation							
Public Housing and Housing Choice Voucher (HCV)	3,918	4	15,672	8	125,376	24	3,009,024
Multifamily Housing	23,000	4	92,000	2	184,000	24	4,416,000
HOME	1,874	3	5,622	2	11,244	24	269,856
HOPWA	255	2	510	2	1,020	24	24,480
Homeless (CoC, ESG, and Rural Housing Stability)	1,040	0.5	520	1.5	780	24	18,720
NEW: Emergency Transfer Report							
Public Housing and Housing Choice Voucher (HCV)	3,918	1	3,918	1	3,918	24	94,032
Multifamily Housing	23,000	1	23,000	0.5	11,500	24	276,000
Grand Total	328,485	Varies	7,968,918	Varies	2,856,717	.....	339,292,658

Notes:

• This matrix amends the one of the same titles provided in the OMB Emergency PRA approval, 2577–0286, approved 12/13/2016, which provided for 3,622,370 hours.

• For each category, HUD assumes the following breakdown of Covered Housing Provider respondents in covered programs: 3,918 public housing agencies that administer either or both public housing and HCV; 23,000 Multifamily Housing properties; 1,874 HOME Participating Jurisdictions (PJs) and housing owners; 255 HOPWA grant recipients, and 1,040 Homeless (CoC, ESG, and Rural Housing Stability) grant recipients.

• The ''Frequency of Response (annual, per respondent)'', provides the estimated average of actions anticipated for each CHP in each program area. For example, HUD estimates that each Multifamily Housing property will deny assistance to 20 applicants each year. Therefore, the total number of responses and total number of Multifamily Housing assistance denials in one year is 23,000 × 20 = 460,000. Similarly, HUD estimates that each of the 255 HOPWA grant recipients will receive 5 completed Certification forms each year. The total number of responses and total number of certifications received in the HOPWA program in one year is 255 × 5 = 1,275.

• The $24 hourly rate is based on an average salary of $50,000 per annum. An internet search on 11/5/2020 shows housing specialist positions with an average of $40,000 per annum and $55,000 per annum for residential property managers. This dollar amount is a reasonable average for employees of CHPs at differing levels of seniority.

• $7.25 is used as the cost to tenants, as it is the federal minimum hourly wage amount.

Average Hours per Response: 0.39.

Total Estimated Burdens: 2,856,718.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

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

(5) HUD solicits comment on the implementation of the requirement that covered housing providers must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and that such data must be reported to HUD annually. Specifically, is HUD's list of potential outcomes adequate or are there outcomes that should be added or modified? Further, HUD proposes to collect data on the ''length of time'' for emergency transfers to be implemented. What is an appropriate measure for ''length of time'' for emergency transfers? Should a covered housing provider only measure from when the emergency transfer was requested to approval/denial and/or should it be measured to move-in date? If a victim is issued a Housing Choice Voucher (HCV) as a result of their emergency transfer request, should the length of time be measured from request to voucher issuance and/or lease-up date? Should covered housing providers be able to explain the circumstances that affected the length of time for emergency transfers (*e.g.,* the victim turned down offered units due to safety concerns)?

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Laura Miller-Pittman,

Chief Office of Policy, Programs and Legislative Initiatives.

BILLING CODE P

Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking

What is the Violence Against Women Act (VAWA)? This notice describes protections that may apply to you as an applicant or a tenant under a housing program covered by the Violence Against Women Act of 1994, as amended (VAWA). VAWA provides protections for victims of domestic violence, dating violence, sexual assault or stalking. Applicable protections must be in VAWA-covered leases and other program documents, as applicable. These protections may be raised at any time. To learn more about these protections or read this information in Spanish or another language, please contact [INSERT COVERED HOUSING PROVIDER (HP) CONTACT INFORMATION] or go to [INSERT WEBSITE, IF APPLICABLE].

What the words in this notice mean:

- *VAWA violence/abuse* means one or more incidents of domestic violence, dating violence, sexual assault or stalking.
- *Victim* means any victim of *VAWA violence/ abuse*, regardless of actual or perceived sexual orientation, gender identity, sex, or marital status.
- *Affiliated person* means the tenant's spouse, parent, sibling, or child; or any individual, tenant, or lawful occupant living in the tenant's household; or anyone for whom tenant acts as parent/guardian.
- *"We"* or *"us"* means [ENTER NAME OF EACH COVERED HOUSING PROVIDER FOR THE HOUSING OR RENTAL ASSISTANCE AND SPECIFY WHEN DIFFERENT FOR DIFFERENT PURPOSES (E.G. DOCUMENTATION)].

What if I am an applicant under a program covered by VAWA? You can't be denied assistance covered by VAWA or admission to any housing covered by VAWA just because you (or a member of your household) are or were a victim or just because of problems you or a member of your household has had as a direct result of being or having been a victim

What if I am a tenant under a program covered by VAWA? You can't be removed from a housing program covered by VAWA, lose your assistance covered by VAWA, or be evicted just because of real or threatened abuse against you or a member of your household, the fact that you (or a member of your household) are or were a victim, or problems you (or a member of your household) have as a direct result of being or having been a victim. Nor can you be evicted or be removed from your housing just because of another person's criminal actions that directly relate to the abuse or threatened abuse against you or an affiliated person.

How can I remove an abuser from my household? Depending on applicable state law and program rules, your lease or assistance may be "bifurcated" to remove or evict ONLY the person doing the alleged criminal activity directly relating to the abuse. [For HOME and housing trust fund programs, INSERT "The remaining tenant(s) can keep receiving assistance or living in the assisted housing as applicable." For the Continuum of Care Program (except for permanent supportive housing), HUD-VASH program, ESG program, Section 221(d)(3) Program, or Section 221(d)(5) Program, INSERT "The remaining family member(s) can keep receiving assistance or living in the assisted housing as applicable." For permanent supportive housing funded by the Continuum of Care Program, INSERT "If that person is the qualifying member of your household, the remaining household member(s) can still receive rental assistance until expiration of the lease in effect when that person is evicted." For the HCV and public housing programs, INSERT "If a household's eligibility was based on the person removed, the other household member(s) must be given 30 calendar days to establish program eligibility or find alternative housing. In all other cases, INSERT the preceding sentence for HCV and Public Housing Programs BUT REPLACE "30 calendar days" WITH: the APPLICABLE time period in the table in Section XVII of Notice H 2017-05 (for HUD multifamily programs); the APPLICABLE grace period set by the HOPWA Grantee or Project sponsor (for HOPWA); or "until the end of the lease term or 90 calendar days (whichever is sooner)" for the Rural Housing Stability Assistance Program.].

Are there any reasons that I can be evicted or lose assistance? Although you can't be held to a more demanding standard because you or an affiliated person is a victim, you can still be evicted or lose assistance for a lease violation or program violation or other requirements that is not due to the VAWA violence/ abuse committed against you or an affiliated person. VAWA also will not prevent eviction, termination, or removal if other tenants or housing staff are shown to be in immediate, physical danger that could lead to serious bodily harm or death if you are not evicted or removed from assistance.

How can tenants request an emergency transfer? An emergency transfer cannot be guaranteed, but you can request an emergency transfer when: (1) you (or a member of your household) are a victim of VAWA violence/abuse; (2) you specifically request the emergency transfer; and either (3)(A) you reasonably believe you (or a member of your household) will soon face more violence if you stay in your housing; or (B) you (or a member of your household) are a victim of sexual assault that occurred on the premises and you request an emergency transfer within 90 days (including holidays and weekend days) after the date of that assault. You can request an emergency transfer even if you owe rent. If you request an emergency transfer, your request, the information you provided to make the request, and your new unit's location must be kept strictly confidential. To

request an emergency transfer or read the emergency transfer plan we are required to follow and to make available to you upon request, [ENTER SPECIFIC CONTACT INFORMATION, WEBSITE, AND/OR INSTRUCTIONS FOR REQUESTING AN EMERGENCY TRANSFER OR A COPY OF THE APPLICABLE EMERGENCY TRANSFER PLAN]. The emergency transfer plan includes what we do to make sure your address and other relevant information are not disclosed to your abuser.

What do I need to document that I am a victim? If you ask for VAWA protection, we may request documents showing that you are a victim (which includes if a member of your household is a victim). BUT this request must be in writing and must give you at least 14 business days (weekends and holidays do not count) to respond, AND you are free to choose any ONE of the following:

1. A self-certification form, which we must give you along with this notice and either you fill out or someone fills out for you. The form asks for your name; the abuser's name, if known and safe to provide; and a description of the incident(s). It also further explains your confidentiality rights under VAWA.
2. A statement from a victim service provider, attorney, mental health professional or medical professional who has helped you address incidents of VAWA violence/ abuse. The professional must state "under penalty of perjury" that he/she/they believes that the incidents of VAWA violence/ abuse are real and covered by VAWA. Both you and the professional must sign the statement.
3. A police, administrative, or court record (such as a protective order) that shows you (or a member of your household) were a victim of VAWA violence/ abuse. [HP MAY INSERT AS #4 ANY OTHER STATEMENT OR EVIDENCE THAT CAN BE PROVIDED AS DOCUMENTATION THE APPLICANT OR TENANT IS A VICTIM]

If you do not provide one of these forms of documentation by the deadline, we do not have to provide the protection you requested. If the documentation we receive has conflicting information about the abuse, we may require you to provide documents under #2 or #3 [OR ENTER #4, IF APPLICABLE] above, but we must give you another 30 business days to do so.

Confidentiality If you share information with your housing agency, manager or landlord about why you need VAWA protections, we will keep the information you share confidential.

Exceptions:

1) If you ask us to share that information;
2) If we need to use that information to try to evict the person accused of being the abuser; or
3) If other laws require us to share the information.

How do other laws apply? VAWA does not prevent or excuse us from following laws that provide more protection to victims or court orders that concern your home or property. We must follow all applicable fair housing and civil rights requirements. If you have a disability, we must provide reasonable accommodations to rules, policies, practices, or services that may be necessary to allow you to equally benefit from VAWA protections (for example, giving you more time to submit documents, or assistance with filling out forms). We must ensure effective communication with individuals with disabilities. If you speak or read in a language other than English, we must give you language assistance regarding your VAWA protections (for example, oral interpretation and/or written translation).

Have your protections under VAWA been denied? If you believe we have violated these rights, you may seek help by contacting [INSERT LOCAL HUD FIELD OFFICE & CONTACT INFORMATION]

Need further help?

- For advice concerning an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-7233 or 1-800-787-3224 (TTY).
- For advice concerning sexual assault, call the National Sexual Assault Hotline at 1-800-656-4673.
- For advice concerning stalking, visit https://victimconnect.org/ or call 1-855-4VICTIM (1-855-484-2846).
- To talk with a housing advocate, contact [ENTER CONTACT INFO FOR LOCAL ADVOCACY AND LEGAL AID ORGANIZATIONS].

Public reporting burden for this collection of information is estimated to range from 10 to 90 minutes per each housing provider's response, depending on the program. This includes time to print and distribute the form. Comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. This notice is required for covered housing programs under section 41411 of VAWA and

24 CFR 5.2003. Covered housing providers must give this notice to applicants and tenants to inform them of the VAWA protections as specified in section 41411(d)(2). This is a model notice, and no information is being collected. A Federal agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

DRAFTING NOTES FOR HPs (MUST NOT APPEAR WORD FOR WORD IN PLAN): *This model contains only general provisions of an emergency transfer plan that apply across the covered HUD programs. Adoption of this model plan without further information addressing how the emergency transfer plan will operate will not be sufficient to meet a covered housing provider's responsibility to adopt an emergency transfer plan. Covered housing providers (HP) must consult applicable regulations and program-specific HUD guidance when developing their own emergency transfer plans to ensure their plans contain all required elements. Highlighted text throughout this document is used to assist HPs in drafting their policies, and should be removed in actual plan.**[HP ACRONYM]** MUST BE REPLACED WITH THE ACRONYM OF THE COVERED HOUSING PROVIDER.]*

MODEL EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

[INSERT NAME OF COVER HOUSING PROVIDER **[HP ACRONYM]**] is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act of 1994, as amended (VAWA), **[HP ACRONYM]** allows any tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. Despite this law's name, VAWA protections are not limited to women, and are available regardless of a victim's sex, actual or perceived gender identity or sexual orientation, or marital status. Victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must also be made available to all otherwise eligible individuals and families regardless of actual or perceived gender identity, sexual orientation, or marital status.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on Federal regulations at 24 Code of Federal Regulations (CFR) part 5, subpart L, related program regulations, and the model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD). HUD is the Federal agency that oversees that [INSERT NAME OF PROGRAM OR RENTAL ASSISTANCE HERE is in compliance with VAWA.

Definitions

- *External emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is, the tenant must undergo an application process in order to reside in the new unit.
- *Internal emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.
- *Safe unit* refers to a unit that the victim of VAWA violence/abuse believes is safe.

- *VAWA violence/ abuse* means an incident or incidents of domestic violence, dating violence, sexual assault, or stalking, as those terms are defined in 24 CFR 5.2003 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (Form HUD-5382).

Eligibility for Emergency Transfers

A tenant may seek an emergency transfer to another unit if the tenant or a household member is a victim of VAWA violence/ abuse, as explained in the "Notice of Occupancy Rights Under the Violence Against Women Act," Form HUD-5380 (VAWA Notice). This Emergency Transfer Plan provides further information on emergency transfers, and **[HP ACRONYM]** must provide a copy if requested. Before allowing an emergency transfer, **[HP ACRONYM]** may ask for submission of a written request or form HUD-5383 to certify eligibility.

A Tenant is eligible for an emergency transfer if:

(1) Tenant (or a household member) is a victim of VAWA violence/abuse;
(2) Tenant specifically requests the emergency transfer, and
(3) Tenant reasonably believes* they will soon face more violence if they stay in their housing
OR
Tenant is a victim of sexual assault that occurred on the premises and have requested an emergency transfer within 90 days (including holidays and weekend days) after the date of that assault.

**Reasonable belief may stem from VAWA violence/abuse concerning a household member.*

A housing provider, in response to an emergency transfer request, should not evaluate whether the tenant is in good standing as part of the assessment or provision of an emergency transfer

Emergency Transfer Policies

[INSERT HP'S EMERGENCY TRANSFER POLICIES, INCLUDING THE FOLLOWING, WHERE APPLICABLE]

Internal transfers when a safe unit is immediately available:

[INSERT HP'S POLICIES, INCLUDING TIME FRAMES, POSSIBLE INTERNAL TRANSFER LOCATIONS, AND PRIORITY STATUS RELATIVE TO OTHER TENANTS SEEKING TRANSFERS.]

Internal transfers when a safe unit is not immediately available:

[INSERT HP'S POLICIES, INCLUDING TIME FRAMES, POSSIBLE INTERNAL TRANSFER LOCATIONS, AND PRIORITY STATUS RELATIVE TO OTHER TENANTS SEEKING TRANSFERS.]

External transfers:

[INSERT HP'S POLICIES, INCLUDING HP'S ROLE IN FACILITATING TRANSFERS; IDENTIFYING AND DESCRIBING ANY TRANSFER AGREEMENTS WITH OUTSIDE HPS, PROVIDING REFERRALS TO COMMUNITY PARTNERS AND AFFORDABLE HOUSING OPTIONS, TIME FRAMES, AND PRIORITY STATUS GIVEN TO VAWA VICTIMS SEEKING EXTERNAL TRANSFERS INTO HP'S PROPERTY.]

[INSERT POLICIES AND PROCEDURES FOR ASSISTING TENANTS WITH HOUSING CHOICE VOUCHERS OR OTHER TENANT-BASED RENTAL ASSISTANCE WHO QUALIFY FOR AN EMERGENCY TRANSFER TO MOVE QUICKLY WITH THAT ASSISTANCE.]

VAWA provisions do not supersede eligibility or other occupancy requirements that may apply under a covered housing program. **[HP ACRONYM]** may be unable to transfer a tenant to a particular unit if the tenant cannot establish eligibility for that unit.

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify [ENTER SPECIFIC CONTACT INFORMATION, WEBSITE, AND/OR INSTRUCTIONS FOR REQUESTING AN EMERGENCY TRANSFER OR A COPY OF THE APPLICABLE EMERGENCY TRANSFER PLAN] and submit a written request for a transfer to [INSERT LOCATION]. Unless **[HP ACRONYM]** receives conflicting documentation, as described in 24 CFR 5.2007(b)(2), **[HP ACRONYM]** cannot require third-party documentation to determine emergency transfer eligibility. **[HP ACRONYM]** will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer must include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the tenant's current dwelling unit; OR
2. In the case of a tenant who is a victim of sexual assault, either a statement that the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or a statement that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

DRAFTING NOTES FOR HPs (MUST NOT APPEAR WORD FOR WORD IN PLAN)

- The emergency transfer plan must include the length of time (at least 14 business days) that the tenant has to provide the requested documentation.
- HPs are not required to request documentation from a tenant seeking an emergency transfer. However, if a HP elects to require documentation from tenants seeking an emergency transfer then the documentation requirement must be included in the HP's emergency transfer plan and must comply with 24 CFR 5.2005(e)(10).
- HPs do not have to require that emergency transfer requests be written. The request may be oral or written, at the HP's option, but the HP must make its policy and procedures clear in this plan.
- HPs cannot require any third-party documentation in order to determine whether a tenant seeking an emergency transfer is eligible for an emergency transfer, unless HP receives documentation of VAWA violence/ abuse that contains conflicting information.

Priority for Transfers

Tenants who qualify for an emergency transfer under VAWA will be given the following priority over other categories of tenants seeking transfers and individuals seeking placement on waiting lists. [INSERT ANY MEASURE OF PRIORITY GIVEN UNDER THIS EMERGENCY TRANSFER PLAN.]

DRAFTING NOTES FOR HPs (MUST NOT APPEAR WORD FOR WORD IN PLAN)

- The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.
- The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.

- The emergency transfer plan must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.
- HPs should also refer to the applicable program regulations to determine if priorities or admission preferences are required with respect to external emergency transfers.

Confidentiality

If a tenant inquires about or requests any of the protections described in this Notice or represents that they are a victim of VAWA violence/abuse entitled to the protections under this Notice, **[HP ACRONYM]** must keep any information they provide concerning the VAWA abuse and their status as a victim strictly confidential. All the information provided by or on behalf of the tenant to support an emergency transfer request, including information on the Certification form, HUD-5382, and the Emergency Transfer Request form, HUD-5383, (collectively referred to as "Confidential Information") may only be accessed by **[HP ACRONYM]** employees or contractors if explicitly authorized by **[HP ACRONYM]** for reasons that specifically call for those individuals to have access to that information under applicable Federal, State, or local law.

Confidential information must not be entered into any shared database or disclosed to any other entity or individual, except if:

- Requested or consented to in writing by the tenant in a time-limited release;
- Required for use in an eviction proceeding or hearing regarding termination of assistance, or
- Otherwise required by applicable law.

In addition, HUD's VAWA regulations require Emergency Transfer Plans to provide strict confidentiality measures to ensure that the location of the victim's dwelling unit is never disclosed to a person who committed or threatened to commit the VAWA violence/abuse. Accordingly, [INSERT ANY SPECIFIC MEASURES HERE.]

Emergency Transfer Procedure

[HP ACRONYM] cannot specify how long it will take to process a transfer request. **[HP ACRONYM]** will, however, act as quickly as possible to assist a tenant who qualifies for an emergency transfer. If **[HP ACRONYM]** identifies an available unit and the tenant believes that unit would not be safe, the tenant may request a transfer to a different unit. **[HP ACRONYM]** may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If **[HP ACRONYM]** has no safe and available units for which the tenant is eligible, **[HP ACRONYM]** will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, **[HP ACRONYM]** will also assist tenants in contacting the local organizations offering assistance to victims of VAWA violence/abuse that are attached to this plan.

Making Plan Available

[INSERT HP'S POLICY FOR MAKING THE PLAN AVAILABLE UPON REQUEST AND, WHEN FEASIBLE, PUBLICLY AVAILABLE.]

All materials must ensure effective communication with individuals with disabilities, including making materials available in alternative accessible formats, as well as providing reasonable accommodations.

In addition, each provider must have VAWA forms available in multiple languages consistent with their language access plan to meet limited English proficiency (LEP) obligations.

Safety and Security of Tenants

When **[HP ACRONYM]** receives any inquiry or request regarding an emergency transfer, **[HP ACRONYM]** will encourage the person making the inquiry or request to take all reasonable precautions to be safe, including seeking guidance and assistance from a victim service provider. However, tenants are not required to receive guidance or assistance from a victim service provider.

- Tenants who are or have been victims of domestic violence will be encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).
- Tenants who have been victims of sexual assault will be encouraged to call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at https://ohl.rainn.org/online.
- Tenants who are or have been victims of stalking seeking help will be encouraged to visit the National Center for Victims of Crime's Stalking Resource Center at https://www.victimsofcrime.org/our-programs/stalking-resource-center.
- [INSERT CONTACT INFORMATION FOR LOCAL ORGANIZATIONS OFFERING ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING.]

DRAFTING NOTES FOR HPs (SHOULD NOT APPEAR WORD FOR WORD IN PLAN)

- This section of the plan and providing additional resources is encouraged, but not required.
- If HP's have arrangements, including memoranda of understanding with other covered housing providers to facilitate moves, this information should be attached to the emergency transfer plan as well.

Public reporting burden for this collection of information is estimated to range from four to eight hours per each covered housing provider's response, depending on the covered housing program. This includes the time to develop program and project-specific emergency transfer policies and develop contacts with local service providers. Comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. This is a model plan and housing providers in programs covered by VAWA may, at their discretion, use it to develop their own emergency transfer plans, as required under 24 CFR 5.2005(e). While HUD does not intend to collect emergency transfer plans, HUD may access these plans to ensure compliance with the regulations. A Federal agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

PURPOSE OF FORM: A tenant or applicant who asks for protection under the Violence Against Women Act (VAWA), referred to in this form as " you," may use this form to fulfill a housing provider's written request to certify status as a "victim" or document the incident(s) of "VAWA violence/abuse" as explained in the accompanying "Notice of Occupancy Rights Under the Violence Against Women Act," Form HUD-5380 (VAWA Notice). For protections that depend on more than victim status or VAWA violence/abuse, you (the tenant or applicant) may be asked to provide other information or documentation to show that you qualify. However, you are not expected **and cannot be asked or required**—to claim, document, or prove victim status or VAWA violence/abuse other than as stated in the VAWA Notice.

This form is just **one of your available options** for responding to a housing provider's written request for documentation of victim status or the incident(s) of VAWA violence/abuse. If you choose, you may submit one of the types of third-party documentation described in the VAWA Notice, in the section titled "What do I need to document that I am a victim?".

NOTE: VAWA protects individuals and families regardless of a victim's actual or perceived sexual orientation, gender identity, or marital status.

CONFIDENTIALITY: Your housing provider will keep strictly confidential any information you provide about the VAWA violence/abuse or the fact you are a victim, including the information on this form. This information can only be accessed by a person working for your housing provider if your housing provider explicitly authorizes that person's access for a reason specifically called for under applicable law. This information will not be given to others or put in a database shared with others, unless your housing provider gets your written permission to do so for a limited time, is required to do so as part of an eviction or termination hearing or is required to do so by law.

Note: Any personal information you share in this form will not be collected nor maintained by HUD and will only be maintained by your Covered Housing Providers according to the confidentiality provisions above.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. **Date the written request for documentation of VAWA violence/abuse was received:**

2. **Name(s) of victim(s):** _____

3. **Name of applicant or tenant making (signing) this certification:** _____

4. **Name(s) of other member(s) of the household:** _____

5. **Name of the perpetrator** *(if known and can be safely disclosed)*: _____

6. **In your own words, briefly describe the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and include the relevant location(s), date(s), time(s) and the victim's relationship to the perpetrator** (*if known and can be safely disclosed*)**:**

_____

(Please note that you may attach additional pages as needed)

Reasonable Accommodations: If you are an individual with a disability and may need a reasonable accommodation, please contact [INSERT CONTACT]. A reasonable accommodation related to this documentation may include, for example, allowing an oral

statement instead of written documentation, or an extension of time to submit the requested documentation.

Regulatory VAWA definitions of domestic violence, dating violence, sexual assault, or stalking:

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim by a person with whom the victim shares a child in common, by a person who lives with or has lived with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Dating violence means violence committed by a person:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; and (iii) The frequency of interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) Fear for the person's individual safety or the safety of others or

(2) Suffer substantial emotional distress.

Certification of Applicant or Tenant: By signing below, I am certifying that the information provided on this form is true and correct to the best of my knowledge and recollection and that one or more members of my household is or has been a victim of domestic violence, dating violence, sexual assault, or stalking as described in the VAWA definitions above.

Signature_____ **Signed on (Date)**_____

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response. This includes the time for collecting, reviewing, and reporting. Comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. Housing providers in programs covered by VAWA may request certification that the applicant or tenant is a victim of VAWA violence/abuse. A Federal agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

Purpose of Form: If you or a member of your household is a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer for yourself or your household, you may use this form to request an emergency transfer and certify that you are eligible for an emergency transfer under the Violence Against Women Act of 1994, as amended (VAWA). This form refers to domestic violence, dating violence, sexual assault, or stalking as *VAWA violence/abuse*. Despite this law's name, protections are not limited to women, and are available regardless of a victim's sex, actual or perceived gender identity, sexual orientation, or marital status. Submitting this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's Emergency Transfer Plan for more information about emergency transfers. **Note:** Any personal information you share in this form will not be collected nor maintained by HUD and will only be maintained by your Covered Housing Providers according to the confidentiality provisions below.

You may request an emergency transfer when:

(1) You (or a member of your household) are a victim of VAWA violence/abuse;
(2) You specifically request the emergency transfer; and
(3) (A) You reasonably believe* you (or a member of your household) will soon face more violence if you stay in your housing; or
(B) You (or a member of your household) are a victim of sexual assault that occurred on the premises and you request an emergency transfer within 90 days (including holidays and weekend days) after the date of that assault.

**Reasonable belief* may stem from VAWA violence/abuse impacting a household member.

Submission of Documentation: If you have not already done so, your housing provider may require you to document that you, or a member of your household, are a victim of VAWA violence/abuse in addition to completing this emergency transfer request form. This can be met by a self-certification (Form HUD-5382) unless there is conflicting information. If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you may submit that documentation to your housing provider if you choose. See HUD-5380 (VAWA Notice) for more information.

Confidentiality: Your housing provider will keep strictly confidential any information you provide about the VAWA violence/abuse or the fact you are a victim, including the information on this form. This information can only be accessed by a person working for your housing provider if your housing provider explicitly authorizes that person's access for a reason specifically called for under applicable law. This information will not be given to others or put in a database shared with others, unless your housing provider gets your written permission to do so for a limited time, is required to do so as part of an eviction or termination hearing or is required to do so by law. In addition, your housing provider must keep your address strictly confidential to ensure that it is not disclosed to a person who committed or threatened to commit VAWA violence/abuse against you.

TO BE COMPLETED BY OR ON BEHALF OF THE TENANT REQUESTING A TRANSFER

1. **Name(s) of Victim(s):** _____

2. **Your Name** (*if different from victim's*): _____

3. **Name(s) of other member(s) of the household:** _____

4. **Name(s) of other household member(s) who would transfer with the victim:**
_____

5. **Address of location from which the victim seeks to transfer:**

_____

Best Method of Contact:

☐ Phone Phone Number: _____
Is it okay to leave a voicemail? ☐ *Yes* ☐ *No*
☐ Email Email Address: _____
☐ Mail Mailing Address:

☐ Other Please List: _____

6. **Name of the abuser** (*if known and can be safely disclosed*): _____
7. **Relationship of the abuser to the victim** (*if known and can be safely disclosed*): _____

8. **What features are requested for a safe unit?** You may also list here any information that would facilitate a suitable transfer, such as accessibility needs, and a description of where it is safe/unsafe for you to live
(*Please note, ability to provide is based on availability.*)

☐ New Neighborhood	☐ Second Floor unit (and above)	☐ Well-lit hallways/walkways
☐ New Building	☐ Near an Exit	☐ 24 Hour Security
☐ First Floor unit		☐ Other:

9. **NOTE:** Your housing provider might, in certain circumstances, request written documentation that you are a victim of VAWA violence/abuse. This information can be documented as follows: You can decide which form to submit.
   - ☐ HUD Form 5382 *Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation*, which asks your name, the abuser's name, if known and safe to provide, and a description of the incident(s).
   - ☐ A document signed by a victim service provider, attorney, mental health professional, or medical professional who has helped you address the VAWA violence/abuse. The professional must state "under penalty of perjury" that he/she/they believe in the occurrence of the incident of VAWA violence/abuse and that it is covered by VAWA. Both you and the professional must sign the statement.
   - ☐ A police, administrative, or court record (such as a protective order) that shows you (or a member of your household) are a victim of VAWA violence/abuse.
   - ☐ At the discretion of your housing provider, a statement or other documentation provided by you.
   - ☐ If permitted by your housing provider, a statement or other evidence provided by the tenant.

Certification of Tenant: By signing below, I certify that the following apply to me and my household:

1. I am requesting an emergency transfer.
   AND
2. I believe there is a threat of imminent harm to myself or someone in my household if we stay in the same housing unit, AND/OR I or a member of my household was sexually assaulted on the premises of my housing in the last 90 days.

Signature_____ **Signed on (Date)**_____

Public reporting burden for this collection of information is estimated to average 30 minutes per response. This includes the time for collecting, reviewing, and reporting. Comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. Housing providers in programs covered by VAWA may ask for a written request for an emergency transfer for a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking. Housing providers may distribute this form to tenants and tenants may use it to request an emergency transfer. The information is subject to the confidentiality requirements of VAWA. A Federal agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

[FR Doc. 2022–24070 Filed 11–3–22; 8:45 am]

BILLING CODE C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–57; OMB Control No. 2528–0324]

30-Day Notice of Proposed Information Collection: Data Collection for the HUD Secretary's Awards Including the Secretary's Award for Public-Philanthropic Partnerships, The Secretary's Awards for Healthy Homes, The Secretary's Award for Excellence in Historic Preservation, The Secretary's Award for Planning, The Secretary's Housing Design Awards, and The HUD Innovation in Affordable Housing Student Design and Planning Competition

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 5, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 13, 2022, at 87 FR 41736.

A. Overview of Information Collection

Title of Information Collection: Data Collection for the HUD Secretary's Awards Including the Secretary's Award for Public-Philanthropic Partnerships, The Secretary's Awards for Healthy Homes, The Secretary's Award for Excellence in Historic Preservation, The Secretary's Award for Planning, The Secretary's Housing Design Awards, and The HUD Innovation in Affordable Housing Student Design and Planning Competition.

OMB Approval Number: 2528–0324.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD seeks to collect information that will be used to implement the following HUD Secretary's Awards: (1) the Secretary's Award for Public-Philanthropic Partnerships, (2) the Secretary's Awards for Healthy Homes, (3) the Secretary's Award for Excellence in Historic Preservation, (4) the Secretary's Planning Award, (5) the Secretary's Housing Design Awards, and (6) the HUD Innovation in Affordable Housing Student Design and Planning Competition.

On an annual basis, HUD accepts nominations for the above listed awards. A template application form for nominations streamlines information collection across these six award programs. Each award recognizes awardees for their innovation and commitment to raising industry standards and increasing the quality of life for low- and moderate-income households. Below is a brief description of each of the six award programs.

The HUD Secretary's Award for Public-Philanthropic Partnerships

The Public-Philanthropic Partnerships Award recognizes excellence in partnerships that have transformed the relationships between the public and philanthropic sectors and led to measurable benefits in housing and community development for low- and moderate-income families. By strengthening the connection between HUD and philanthropy, these awards highlight the power of collective impact that can be achieved through public-philanthropic partnerships between government entities and foundations.

The HUD Secretary's Awards for Healthy Homes

The Healthy Homes Awards promote the innovation and partnerships needed to create healthy homes and communities for low-income residents by working across the health, environment, and housing sectors.

HUD Secretary's Award for Excellence in Historic Preservation

The Secretary's Award for Excellence in Historic Preservation recognizes developers, organizations, and agencies for their success in advancing the goals of historic preservation while providing affordable housing and/or expanded economic opportunities for low-and moderate-income families and individuals.

HUD Secretary's Planning Award

The Secretary's Planning Award honors excellence in community planning that has led to measurable benefits in economic development, employment, education, or housing choice and mobility for low- and moderate-income residents. The award stresses that communities demonstrate how integrative planning led to tangible results, such as expanding the supply of available affordable housing, employment opportunities connected by effective transportation systems, or a host of community-empowering strategies. The award recognizes the planning discipline as an important partner in how creative housing, economic development, and private investments are used in—or in tandem with—a comprehensive community development plan.

HUD Secretary's Housing Design Awards

The Secretary's Housing Design Awards recognize excellence in affordable housing design, community-based design, participatory design, and accessibility. These awards demonstrate that design matters and provide examples of important benchmarks in the housing industry.

HUD Innovation in Affordable Housing Student Design and Planning Competition

The Innovation in Affordable Housing Student Design and Planning Competition advances design and production of livable and sustainable housing for low- and moderate-income people. This competition invites teams of graduate students from multiple disciplines to submit plans in response to a real-world affordable housing design issue. The competition encourages research and innovation in

affordable housing, increases practitioner capacity to produce more livable and sustainable housing for low- and moderate-income communities through best practices in building design and construction, and fosters cross-cutting teamwork within the design and community development process.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
HUD Secretary's Award for Public-Philanthropic Partnerships	50	1	50	3	150	$18.08	$2,712.00
HUD Secretary's Awards for Healthy Homes	30	1	30	3	90	18.08	1,627.20
HUD Secretary's Award for Excellence in Historic Preservation	50	1	50	3	150	18.08	2,712.00
HUD Secretary's Planning Awards	50	1	50	3	150	18.08	2,712.00
HUD Secretary's Housing Design Awards	50	1	50	3	150	18.08	2,712.00
Innovation in Affordable Housing Student Design and Planning Competition	50	1	50	3	150	18.08	2,712.00
Total	280		280		840		15,187.20

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Data Officer.

[FR Doc. 2022–24091 Filed 11–3–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–58; OMB Control No.: 2528–0324]

30-Day Notice of Proposed Information Collection: HUD Standardized Grant Application Forms: Detailed Budget Form (HUD Form 424–CB) HUD Detailed Budget Worksheet (HUD Form 424–CBW), HUD Funding Matrix (HUD 424–M), Application for Federal Assistance (SF–424), Assurances and Certifications for Recipients and Applicants (HUD 424–B), Disclosure of Lobbying Activities (SF–LLL), Certification Regarding Lobbying Activities (Lobbying Form), HUD–2880 Applicant/Recipient Disclosure/Update Report, Project Abstract Form, and Budget Information for Non-Construction Programs (SF–424A)

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 5, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 8, 2022, at 87 FR 48194.

A. Overview of Information Collection

Title of Information Collection: HUD Standardized Grant Application Forms.

OMB Approval Number: 2501–0017.

Type of Request: Revision of a currently approved collection.

Form Number: SF 424; SF LLL; Lobbying Form; SF 424–A; HUD 424–B; HUD 424–CB; HUD 424–CBW; HUD 424–M; HUD 2880.

Description of the need for the information and proposed use: Approval is sought for revision of the Information Collection Request of HUD standardized forms which are used by various HUD programs that use a competitive application process to award financial assistance. The HUD Common Budget Form—(HUD 424–CB), the Common Budget Form Worksheet (HUD 424–CBW), the Assurances and Certifications Form—(HUD 424–B), and the HUD Matrix (HUD–M) are used to offer standardized application forms. The Federal Financial Assistance Improvement Act of 1999 (Public Law 106–107, signed November 20, 1999) encourages standardization.

In addition, as noted under the Office of Management and Budget (OMB) Control Number heading, the collection references a number of government-wide forms, including forms from the

Standard Form (SF) Family, which are used for all HUD applications and available on *grants.gov.* The burden associated with these government-wide forms are reflected in separate OMB-sponsored government-wide information collections and are not reflected in this collection. Additional OMB control numbers applicable to government wide Standardized Forms (SF) are also noted in this collection. As the burden is accounted for in those separate collections, it is not included in this calculation.

Further, HUD combined into this collection form HUD 2880 Applicant/Recipient Disclosure/Update Report (formerly approved under OMB control number 2501–0032) to consolidate public input and burden into one OMB control number. The form HUD 2880 is also updated to reflect changes to the information respondents report in the Employee ID field under Part III of the form. For each person reported in Part III, HUD expects applicants to provide a unique ID that is not the person's social security number. Lastly, the updated form HUD 2880 includes updates to the certification language, which now reads as follows:

I/We, the undersigned, certify under penalty of perjury that the information provided above is true, correct, and accurate. Warning: If you knowingly make a false statement on this form, you may be subject to criminal and/or civil penalties under 18 U.S.C. 1001. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

All HUD-specific forms in this information collection have been modified to include updated Paperwork Reduction Act burden statements, in order to comply with 5 CFR 1320.8(b)(3). The burden statements now reads as follows:

The public reporting burden for this collection of information is estimated to average [X] hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of the requested information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410–5000. Do not send completed forms to this address. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. The information you provide will enable HUD to carry out its responsibilities under this Act and ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. This information is required to obtain the benefit sought in the HUD program. Failure to provide any required information may delay the processing of your application and may result in sanctions and penalties including of the administrative and civil money penalties specified under 24 CFR 4.38. This information will not be held confidential and may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response [1]	Annual cost
SF 424	0	0		0	0	0	0
SF LLL	0	0		0	0	0	0
Lobbying Form	0	0		0	0	0	0
SF 424–A	0	0		0	0	0	0
HUD 424–B	14,375	1.2	17250	0.5	$8,625.00	$45.43	391,833.75
HUD 424–CB	1,375	1.2	1650	3	4,950.00	45.43	224,878.50
HUD 424–CBW	1,375	1.2	1650	3	4,950.00	45.43	224,878.50
HUD 424–M	250	1.2	300	0.5	150.00	45.43	6,814.50
HUD 2880	14,375	1.2	17250	2	34,500.00	45.43	1,567,335.00
Total			38,100	9	53,175.00		2,415,740.25

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Data Officer.

[FR Doc. 2022–24088 Filed 11–3–22; 8:45 am]

BILLING CODE 4210–67–P

[1] Median hourly rate for ''Project Management Specialists'' (occupation code 13–1082), May 2021 National Occupational Employment and Wage Estimates United States, *https://www.bls.gov/oes/current/oes_nat.htm#11-0000.*

INTER-AMERICAN FOUNDATION

30-Day Notice for Soliciting and Assessing Feedback From IAF Grantees (PRA)

AGENCY: Inter-American Foundation.

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Inter-American Foundation (IAF) will submit that 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 must be submitted to the office listed in the address section below within 30 days

from the date of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kaitlin Stastny, Inter-American Foundation, 202.803.6091 or via email to *kstastny@iaf.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Soliciting and Assessing Feedback From IAF Grantees.

OMB Control Number: will be assigned upon OMB approval.

Type of Review: New Collection (Request for a new OMB control number).

Affected Public: IAF grantees.

Estimated Number of IAF Grantee Survey Respondents: 400.

Estimated Number of IAF Grantee Survey Responses: 340.

Average Time per IAF Grantee Survey: 37 minutes.

Total Estimated IAF Grantee Survey Burden Time: 246.67 hours.

Frequency: Once.

Obligation to Respond: Voluntary.

Abstract: The IAF works to promote sustainable development in Latin America and the Caribbean by offering small investments directly to civil society organizations through funding actions, such as grants and cooperative agreements. By gathering perceptions from grantees on how the IAF works as a funder, the IAF is able to assess its performance and identify opportunities for improvements. The IAF seeks to work with a contractor to independently carry out this survey with IAF grantees. The contractor will use an online survey with a set of standardized questions focused primarily on grant processes, such as the approach to grant selection, the time lapse between selection and commitment, and reporting and evaluation. The contractor will also apply these standardized questions to other funders, thus providing the IAF with findings relative to that of other comparable organizations.

Request for Comments: The IAF issued a 60-day **Federal Register** notice on August 30, 2022 (87 FR 52990). Comments were solicited and continue to be invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

A Notice by the Inter-American Foundation on October 27, 2022.

Natalia Mandrus,

Acting General Counsel.

[FR Doc. 2022–23998 Filed 11–3–22; 8:45 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23WC00GJNV331; OMB Control Number 1028–0106]

Agency Information Collection Activities: USGS Ashfall Report

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 3, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0106 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kristi Wallace by email at *kwallace@usgs.gov,* or by telephone at 907–786–7109. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

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

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

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract

The USGS provides notifications and warnings to the public of volcanic activity in the U.S. in order to reduce the loss of life and property and to mitigate the economic and societal impacts. Ash fallout to the ground can pose significant disruption and damage to buildings, transportation, water and wastewater, power supply,

communications equipment, agriculture, and primary production leading to potentially substantial societal impacts and costs, even at thicknesses of only a few millimeters or inches. Additionally, fine grained ash, when ingested, can cause health impacts to humans and animals. The USGS will use reports entered by respondents in real time of ashfall in their local area to correct or refine ashfall forecasts as the ash cloud moves downwind. Retrospectively, these reports will enable the USGS to improve their ashfall models and further their research into eruptive processes.

This project is a database module and web interface allowing the public and Alaska Volcano Observatory (AVO) staff to enter reports of ashfall in their local area in real time and retrospectively following an eruptive event. Users browsing the AVO website during eruptions will be directed towards a web form allowing them to fill in ashfall information and submit the information to AVO.

Compiled ashfall reports are available in real-time to AVO staff through the AVO internal website. A pre-formatted summary report or table that distills information received online will show ashfall reports in chronological order with key fields including (1) date and time of ashfall, (2) location, (3) positive or negative ashfall (4) name of observer, and (5) contact information which is easily viewable internally on the report so that calls for clarification can be made by AVO staff quickly and Operations room staff can visualize ashfall information quickly.

Ashfall report data will also be displayed on a dynamic map interface and show positive (yes ash) and negative (no ash) ashfall reports by location. Ashfall reports (icons) will be publicly displayed for a period of 24 hours and shaded differently as they age so that the age of reports is obvious.

The ashfall report database will help AVO track eruption clouds and associated fallout downwind. These reports from the public will also give scientists a more complete record of the amount, duration, and other conditions of ashfall. Getting first-hand accounts of ashfall will support ashfall model ashfall development and interpretation of satellite imagery. AVO scientists will—as time allows—be able to contact the individuals using their entered contact information for clarification and details. Knowing the locations from which ashfall reports have been filed will improve ashfall warning messages, AVO Volcanic Activity Notifications, and make fieldwork more efficient. AVO staff will be able to condense and summarize the various ashfall reports and forward that information on to emergency management agencies and the wider public. The online form will also free up resources during an eruption, a time that exceedingly busy for the USGS as most individuals currently phone AVO with their reports.

Title of Collection: USGS Ashfall Report.

OMB Control Number: 1028–0106.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: General Public, local governments, and emergency managers.

Total Estimated Number of Annual Respondents: 250.

Total Estimated Number of Annual Responses: 250.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 21 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion, after each ashfall event.

Total Estimated Annual Nonhour Burden Cost: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq*).

Christina Neal,

Center Director, Volcano Science Center, U.S. Geological Survey.

[FR Doc. 2022–23985 Filed 11–3–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23ND00COM000P; OMB Control Number 1028–NEW]

Agency Information Collection Activities: Great Lakes Inventory Survey To Facilitate Coregonine Science, Conservation, and Restoration

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is requesting approval of an existing collection without an OMB control number.

DATES: Interested persons are invited to submit comments on or before January 3, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Brian Weidel by email at *bweidel@usgs.gov* or by telephone at (315) 343–3951. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

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

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The Coregonine Restoration Framework is a multiagency conservation plan for conducting the science and management actions to preserve the most abundant native fishes in the Great Lakes. To inform the science methodology of that framework, the USGS will survey Great Lakes fishery scientists from state, tribal, academic, and non-government institutions about the fishery-dependent or fishery-independent field surveys that their organizations conduct in the lakes and connecting channels. Examples of information to be collected about a fishery survey include geographic area, the time period covered, survey design, measurements collected, life stages of fish targeted, number of samples per year, and basic catch proportions for native coregonine (*Coregonus sp.*) fishes. This information is needed to recommend which types of native fish population and conservation models can be developed with existing survey data and identify necessary information not provided by contemporary surveys. The survey results will be published and inform analyses, and the resulting analyses will be presented in a white paper to contributing fishery institutions and management agencies.

Title of Collection: Great Lakes Inventory Survey to Facilitate Coregonine Science, Conservation, and Restoration.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: NEW.

Respondents/Affected Public: State agencies, tribal governments, academic institutions, and non-government institutions that conduct, or have conducted, annual surveys of Great Lakes fishes.

Total Estimated Number of Annual Respondents: 83.

Total Estimated Number of Annual Responses: 83.

Estimated Completion Time per Response: 30 minutes on average.

Total Estimated Number of Annual Burden Hours: 42.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: 0.

An agency may not conduct, sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq*).

Kurt Newman,

Acting Great Lakes Science Center Director, U.S. Geological Survey.

[FR Doc. 2022–23806 Filed 11–3–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 234R5065C6, RX.59389832.1009676]

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate.

SUMMARY: The Bureau of Reclamation is announcing the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 2.50 percent for fiscal year 2023.

DATES: This discount rate is to be used for the period October 1, 2022, through and including September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Brandee Blumenthal, Bureau of Reclamation, Reclamation Law Administration Division, P.O. Box 25007, Denver, Colorado 80225; telephone (303) 445–2435; or email at *bblumenthal@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2023 is 2.50 percent. The prior year's rate, as announced in the **Federal Register** on February 3, 2022 (87 FR 6199), was 2.25 percent for fiscal year 2022. Discounting is to be used to convert future monetary values to present values.

This rate has been computed in accordance with section 80(a), Public Law 93–251 (88 Stat. 34), and 18 CFR 704.39, which: (1) specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 2.7141 percent. In accordance with the Water Resource Council Rules and Regulations, the maximum adjustment allowed for the current fiscal year rate is one-quarter of one percentage point from the previous fiscal year rate, which was 2.25 percent. Therefore, the fiscal year 2023 rate is 2.50 percent.

The rate of 2.50 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Christopher Beardsley,

Director, Policy and Programs.

[FR Doc. 2022–24084 Filed 11–3–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Automated Retractable Vehicle Steps and Components Thereof, DN 3653;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://*

edis.usitc.gov. For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Lund Motion Products, Inc. on October 28, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain automated retractable vehicle steps and components thereof. The complainant names as respondents: Anhui Aggeus Auto-Tech Co., Ltd. a/k/a Wuhu Woden Auto Parts Co. Ltd. a/k/a Wuhu Wow-good Auto-tech Co. Ltd. a/k/a Anhui Wollin International Co., Ltd. of China; Rough Country LLC of Dyersburg, TN; Southern Truck LLC a/k/a Top Gun Customz of Swanton, OH, Meyer Distributing, Inc. of Jasper, IN, and Earl Owen Company, Inc. of Carrollton, TX. The complainant requests that the Commission issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3653'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 31, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23994 Filed 11–3–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1283]

Certain Composite Baseball and Softball Bats and Components Thereof; Notice of a Commission Issuance of a Limited Exclusion Order and a Cease and Desist Order Against a Defaulting Respondent; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order (''LEO'') against infringing products manufactured and/or imported by or on behalf of Proton Sports Inc. (''Proton'') of Scottsdale, Arizona, and a cease and desist order (''CDO'') against Proton. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket system (''EDIS'') at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 2, 2021, based on a complaint filed and supplemented by Easton Diamond Sports, LLC (''Easton'') of Thousand Oaks, California. 86 FR 60468–469 (Nov. 2, 2021). The complaint alleges a violation of section 337 of the Tariff Act, as amended, 19 U.S.C. 1337, based on the importation, sale for importation, or sale in the United States after importation of certain composite baseball and softball bats and components thereof by reason of infringement of one or more asserted claims of U.S. Patent No. 6,997,826 (''the '826 patent''). *Id.* The complaint further alleges the existence of a domestic industry. *Id.* The Commission's notice of investigation (''NOI'') names Proton; Juno Athletics LLC (''Juno'') of Aventura, Florida; and Monsta Athletics LLC (''Monsta'') of Calimesa, California as respondents. *Id.* at 60469. The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On January 25, 2022, the Commission amended the complaint and NOI to add TianChang Zhengmu Aluminum Technology Co., Ltd. (''TZA'') of Tianching City, China as a respondent. *See* Order No. 8 (Dec. 28, 2021), *unreviewed by* Comm'n Notice (Jan. 25, 2022). On February 16, 2022, the Commission terminated TZA from the investigation based on withdrawal of the complaint. *See* Order No. 11 (Jan. 28, 2022), *unreviewed by* Comm'n Notice (Feb. 16, 2022).

On April 12, 2022, the Commission found Proton in default for failure to respond to the complaint and NOI and for failure to respond to these order to show cause why it should not be found in default for failing to respond to the complaint and NOI (Order No. 7). *See* Order No. 13 (March 30, 2022), *unreviewed by* Comm'n Notice (April 12, 2022).

On July 25, 2022, the Commission terminated respondent Monsta from the investigation based on withdrawal of the complaint. *See* Order No. 21 (June 27, 2022), *unreviewed by* Comm'n Notice (July 25, 2022).

On July 11, 2022, the currently presiding ALJ issued Order No. 23, which terminated the investigation as to the last participating respondent, Juno, based on a settlement agreement. Easton did not request issuance of a general exclusion order. The Commission determined not to review Order No. 23 and requested written submissions on the issues of remedy, the public interest, and bonding with respect to Proton. 87 FR 48690–91 (Aug. 10, 2022).

On August 26, 2022, Easton submitted briefing responsive to the Commission's request. Easton argued that the Commission should issue an LEO directed to Proton's infringing products and a CDO directed to Proton. No other submissions were received.

When the conditions in section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) have been satisfied, section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue a limited exclusion order or a cease and desist order or both against a respondent found in default, based on the allegations regarding a violation of section 337 in the Complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue.

Having reviewed the record in the investigation, including written submissions from Easton, the Commission has determined pursuant to section 337(g)(1) that the appropriate remedy in this investigation is an LEO directed to the defaulting respondent prohibiting the unlicensed entry of composite baseball and softball bats and components thereof that infringe one or more of claims 1–5, 9–12, 14–15, and 18–19 of the '826 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Proton, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has also determined to issue a CDO prohibiting Proton from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for composite baseball and softball bats and components thereof that infringe one or more of claims 1–5, 9–12, 14–15, and 18–19 of the '826 patent.

The Commission has further determined that the public interest factors enumerated in section 337(g)(1) do not preclude issuance of the LEO or CDO. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission voted to approve this determination on November 1, 2022.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 1, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–24053 Filed 11–3–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1099]

Bulk Manufacturer of Controlled Substances Application: Organix Chemistry Solutions LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Organix Chemistry Solutions LLC, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit

electronic comments on or objections to the issuance of the proposed registration on or before January 3, 2023. Such persons may also file a written request for a hearing on the application on or before January 3, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on September 26, 2022, Organix Chemistry Solutions LLC, 240 Salem Street, Woburn, Massachusetts 01801–2029, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Lysergic acid diethylamide	7315	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
3,4,5- Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N–N-dimethyltryptamine	7431	I
Alpha-Methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C–D)	7508	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C–H)	7517	I
2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C–I)	7518	I
Heroin	9200	I
Morphine	9300	II

The company plans to synthesize the above listed controlled substances for distribution to its customers. In reference to dug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–24103 Filed 11–3–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

214th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 214th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on December 8–9, 2022.

On Thursday, December 8, 2022, the meeting will begin at 1 p.m. and end at approximately 4:30 p.m. (ET). On Friday, December 9, 2022, the meeting will begin at 8:30 a.m. and end at approximately 3 p.m. (ET), with a one-hour break for lunch. The meeting will take place at the U.S. Department of Labor, 200 Constitution Avenue NW, Room C5515—1A/1B, Washington, DC 20210. The meeting will also be accessible via teleconference and some participants, as well as members of the public, may elect to attend virtually. Instructions for public teleconference access will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* approximately one week prior to the meeting.

The purpose of the open meeting is for the members of the ERISA Advisory Council to finalize their observations and recommendations on the issues they studied in 2022, present their observations and recommendations to the Department of Labor, and receive an update from leadership of the Employee Benefits Security Administration (EBSA).

The issues studied by the ERISA Advisory Council in 2022 are: (1) Cybersecurity Issues Affecting Health Benefit Plans, and (2) Cybersecurity Insurance and Employee Benefit Plans. Descriptions of these issues are available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

Organizations or members of the public wishing to submit a written statement may do so on or before Thursday, December 1, 2022, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov.* Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Thursday, December 1, 2022, will be included in the record of the meeting and made available through the EBSA Public Disclosure Room. No deletions, modifications, or redactions will be made to the statements received as they are public records.

Individuals or representatives of organizations wishing to address the ERISA Advisory Council should forward their requests to the Executive Secretary on or before Thursday, December 1, 2022, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record.

Individuals who need special accommodations should contact the Executive Secretary on or before Thursday, December 1, 2022, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary at the address or telephone number above.

Signed at Washington, DC, this 28th day of October, 2022.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2022–24013 Filed 11–3–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Government Contractor Paid Sick Leave

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 5, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2015, President Barack Obama signed Executive Order 13706, ''Establishing Paid Sick Leave for Federal Contractors.'' The Executive Order directed the Secretary to issue regulations by September 30, 2016, to the extent permitted by law and consistent with the requirements of 40 U.S.C. 121, to implement the Order's requirements. The Final Rule established standards and procedures for implementing and enforcing the paid sick leave requirements of Executive Order 13706. Among other requirements, the regulations at 29 CFR 13 require employers subject to the Order to make and maintain records for notifications to employees on leave accrual and requests to use paid sick leave, dates and amounts of paid sick leave used, written responses to requests to use paid sick leave, records relating to certification and documentation where an employer requires this from an employee using at least 3 consecutive days of leave, tracking of or calculations related to an employee's accrual or use of paid sick leave, the relevant covered contract, pay and benefits provided to an employee using leave, and any financial payment for unused sick leave made to an employee on separation from employment. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 19, 2022 (87 FR 43059).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Government Contractor Paid Sick Leave.

OMB Control Number: 1235–0029.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 1,039,200.

Total Estimated Number of Responses: 30,700,566.

Total Estimated Annual Time Burden: 604,685 hours.

Total Estimated Annual Other Costs Burden: $1,168,157.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: October 31, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–24012 Filed 11–3–22; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Award Closure Statement Documents

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 5, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is

necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR supports the financial management and reporting requirements identified in sections 116 and 185 of Workforce Innovation and Opportunity Act (WIOA). Additionally, in accordance with OMB Uniform Guidance for grants and agreements, 2 CFR 200.302, 200.308, 200.313, 200.316, 200.344, and the requirements in signed grant agreements for recipients of ETA's federal financial assistance awards, these forms are necessary to assess grant recipient compliance, including proper and accurate disclosure of the financial results of the award. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 6, 2022 (87 FR 27187).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Award Closure Statement Documents.

OMB Control Number: 1205–0NEW.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 1,100.

Total Estimated Number of Responses: 3,300.

Total Estimated Annual Time Burden: 1,100 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: October 31, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–24011 Filed 11–3–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Peace Corps Volunteer Authorization for Examination and/or Treatment (CA–15)

AGENCY: Office of Workers' Compensation Programs, Division of Federal Employees', Longshore and Harbor Workers' Compensation—DFELHWC–FECA

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, Peace Corps Volunteer Authorization for Examination and/or Treatment (CA–15). This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 3, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Department of Labor (DOL) is requesting an approval of an information collection as a result of the Sam Farr and Nick Castle Peace Corps Reform Act of 2018 (Farr-Castle), which modified various aspects of the Peace Corps, including changes to the provision of health care to volunteers.

Peace Corps Volunteers are in the performance of duty while abroad during the period of Peace Corps service for purposes of FECA coverage. An injury sustained outside the United States during service is deemed proximately caused by such service, unless the injury or illness was proximately caused by willful misconduct, intention to bring about injury or death, or intoxication.

Under the provisions of the FECA, 5 U.S.C. 8142 of the FECA provides that,

(a) For the purpose of this section, ''volunteer'' means—

(1) a volunteer enrolled in the Peace Corps under section 2504 of title 22;

(2) a volunteer leader enrolled in the Peace Corps under section 2505 of title 22; and

(3) an applicant for enrollment as a volunteer or volunteer leader during a period of training under section 2507(a) of title 22 before enrollment.

Entitlement to disability compensation payments does not commence until the day after the date of termination of service as a volunteer. 5 U.S.C. 8142(b).

Farr-Castle—directs the Secretary of the Department of Labor to authorize the Director of the Peace Corps to furnish medical benefits to a volunteer, who is injured during the volunteer's period of service, for a period of 120 days following the termination of such service if the Director certifies that the volunteer's injury probably meets the requirements set forth in 5 U.S.C. 8142(c)(3).

To this end, the Office of Workers' Compensation Programs (OWCP) and the Peace Corps collaborated on this form which authorizes medical treatment for recently terminated Peace Corps volunteers who require medical treatment for injuries/exposure sustained in the performance of their volunteer service. Issuance of this form is solely at the discretion of the Peace Corps and bridges the gap between the occurrence of an initial injury and/or disease exposure and the actual adjudication of a claim by OWCP. This form helps to ensure that recently terminated volunteers receive prompt medical care, without delay, for a period of 120 days following separation from service. The collection of this information is authorized under 5 CFR 1320.3(c)(3), and subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration and be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB–1240–0059.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Extension without changes.

Title of Collection: Peace Corps Volunteer Authorization for Examination and/or Treatment].

Form: CA–15.

OMB Control Number: 1240–0059.

Affected Public: Individuals or households or physician/physician staff.

Estimated Number of Respondents: 252.

Frequency: On Occasion.

Total Estimated Annual Responses: 252.

Estimated Average Time per Response: 0.25 hours.

Estimated Total Annual Burden Hours: 63 hours.

Total Estimated Annual Other Cost Burden: $159.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2022–24014 Filed 11–3–22; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–088)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Aeronautics Committee of the NASA Advisory Council (NAC). This meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research, and technical information relevant to program planning.

DATES: Wednesday, November 30, 2022, 9 a.m.–5 p.m., ET

ADDRESSES: NASA Headquarters, 300 E St. SW, Room 6E40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Irma Rodriguez, Designated Federal Officer, Aeronautics Research Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0984, or *irma.c.rodriguez@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be available to the public online via MS Teams. Dial-in audio teleconference and webcast details to watch the meeting remotely will be available on the NASA Advisory Council Committee website at *https://www.nasa.gov/aeroresearch/aero-nac-committee.* Enter as a guest and type your name and affiliation. *Note:* If dialing in, please ''mute'' your telephone. The agenda for the meeting includes the following topics:

—Aerosciences Evaluation and Test Capabilities (AETC) Strategic Plan
—QueSST (Low Boom Flight Demonstrator) Mission Status
—X–57 Progress and Outlook
—Hypersonics Portfolio and Activities

It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Carol Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–24080 Filed 11–3–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (22–083); Docket Number–NASA–2022–0002]

National Environmental Policy Act; Mars Sample Return Campaign

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Mars Sample Return (MSR) Campaign Draft Programmatic Environmental Impact Statement (PEIS); notice of public meetings; and request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Executive order regarding *Environmental Effects Abroad of Major Federal Actions,* the Council on Environmental Quality's NEPA implementing regulations, NASA's procedures for implementing NEPA, and Department of the Air Force (DAF) procedures for implementing NEPA, NASA announces the availability of the MSR Campaign Draft PEIS for public review and comment. The Draft PEIS provides information and analysis related to the potential environmental impacts associated with the proposed action to retrieve a scientifically

selected set of samples from Mars and transport them to Earth for scientific analysis and research. Cooperating agencies for this effort include the DAF for Hill Air Force Base, Utah, and Cape Canaveral Space Force Station, Florida; the Department of the Army for Dugway Proving Ground; the U.S. Department of Agriculture; and the U.S. Department of Health and Human Services—Centers for Disease Control and Prevention.

DATES: The 45-day public comment period begins on November 4, 2022 and ends on December 19, 2022. NASA encourages all interested parties to provide comments concerning the content and analysis presented in the Draft PEIS. To be considered in the Final PEIS, all comments must be postmarked or received online by 11:59 p.m. Eastern Standard Time (EST) (9:59 p.m. Mountain Standard Time [MST]) on December 19, 2022. NASA will hold four public meetings to further inform the public on the proposed action and solicit comments on the Draft PEIS. Two of those meetings will be ''virtual'' public meetings that will be accessible without geographic limitation via a WebEx online link and audio-only call-in telephone number. NASA will also host two in-person meetings in Utah. The public meeting schedule is as follows:

- November 30, 2022, virtual meetings: 1–2:30 p.m. MST (3–4:30 p.m. EST) and 6–7:30 p.m. MST (8–9:30 p.m. EST), meeting number/access code: 901–525–785, online at *https://jpl.webex.com/meet/msr* and call-in for audio-only at +1–510–210–8882.
- December 6, 2022, in-person meeting: 6–8 p.m. MST (local time) at Wendover Community Center, 112 E Moriah Avenue, Wendover, UT 84083.
- December 7, 2022, in-person meeting: 6–8 p.m. MST (local time) at Clark Planetarium, 110 S 400 W, Salt Lake City, UT 84101.

To the maximum extent possible, in-person and virtual meetings will follow similar formats. At every meeting, NASA will describe the NEPA environmental review process, provide an overview of the proposed action and the environmental analysis presented in the Draft PEIS, and provide the public an opportunity to offer comments. At this time, NASA does not intend to provide English-language translation services, including American Sign Language interpretation, unless specifically requested at least one week prior to the meetings.

Each virtual meeting will begin with a brief welcome message followed by a 15-minute NASA presentation describing the purpose of the public meetings, the MSR Campaign PEIS project schedule, opportunities for public involvement, the proposed action and alternatives summary, discussion of potential environmental impacts from the proposed action, and an overview of the programmatic approach to NEPA compliance in general and NASA's proposed action specifically. The presentation will be followed by the official public comment submittal portion of the meetings. The public comment portion of the meeting is scheduled to last one hour, during which members of the public may provide up to a three-minute comment.

In-person meetings will begin with the same presentation as the virtual meetings, but with a 45-minute open house session before the official public comment portion of the meeting. The open house session will consist of subject matter experts available onsite to answer questions from the public on a one-on-one basis and to discuss posters and distribute other materials (*e.g.,* fact sheets, comment forms) related to the Draft PEIS and MSR Campaign.

The public meetings, both in-person and virtual, may end later than the stated time depending on the number of persons who wish to submit a comment. To allow everyone a chance to speak at the public meetings, NASA may extend the meeting hours. When providing a verbal comment, you must identify yourself, and any organization you represent, by name. Your remarks will be recorded and/or transcribed for inclusion in the public docket.

We encourage you to visit the informational website at *https://www.nasa.gov/feature/nepa-mars-sample-return-campaign* and attend one of the public meetings to learn about, and comment on, the content and analysis of the Draft PEIS. An electronic copy of the Draft PEIS will be made available at *https://www.nasa.gov/feature/nepa-mars-sample-return-campaign* beginning on November 4, 2022. Fact sheets and other information to be used during the public meetings will be made available at this same website beginning on November 11, 2022.

ADDRESSES: Advance registration to attend or provide a comment at the in-person or virtual public meetings is not required. Public meeting attendees may submit comments during the public meeting or by other means described below throughout the 45-day comment period. NASA will accept comments on the Draft PEIS until the expiration of the comment period on December 19, 2022. All comments received by NASA will be considered and responded to in the Final PEIS. Comments must be identified with Docket No. NASA–2022–0002, and may be sent to NASA as follows:

- *Federal e-Rulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Please note that NASA will post all comments on the internet without changes, including any personal information provided.
- By mail to Steve Slaten, NASA Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S: 180–801, Pasadena, CA 91109–8099.

We encourage you to submit comments electronically through the Federal e-Rulemaking Portal at *https://www.regulations.gov.* If you submit your comments electronically, it is not necessary to also submit a hard copy. Regardless of the method used for submitting comments, all submissions will be posted without change to the Federal Docket Management System website (*https://www.regulations.gov*) and will include any personal information you provide. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment may be publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. Therefore, submitting this information to the Docket makes it public. You may wish to read the Privacy and Use Notice available on the Federal Docket Management System website (*https://www.regulations.gov/user-notice*). You may view Docket submissions at the Federal Docket Management System or electronically on the Federal Docket Management System website.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slaten, NASA Jet Propulsion Laboratory, by electronic mail at *Mars-sample-return-nepa@lists.nasa.gov* or by telephone at 202–358–0016. For questions regarding viewing the Docket, please call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare the MSR PEIS was published in the **Federal Register** on April 15, 2022 (87 FR 22578). Two virtual public scoping meetings were held on May 4 and May 5, 2022.

Under the proposed action, NASA, in coordination with the European Space Agency, proposes to conduct a campaign to retrieve samples from Mars and transport them to Earth. A

scientifically selected set of samples (*i.e.,* Martian rocks, regolith, and atmosphere), acquired and cached on the surface of Mars by the Perseverance rover, would be returned to Earth for scientific analysis and research.

Overall, the proposed MSR Campaign spans five elements: three flight elements and two ground elements. The flight elements include: (1) the Perseverance rover (previously addressed in the *Final Supplemental Environmental Impact Statement for the Mars 2020 Mission*); (2) a Sample Retrieval Lander and its subcomponents (the ''Lander''); and (3) an Earth Return Orbiter (the ''Orbiter''), with its subcomponents (which include the Earth Entry System [EES] and recovery of the EES). The two ground elements include: (1) EES transportation after landing; and (2) a Sample Receiving Facility (SRF). Per the mission goals stated in the *Mars 2020 Final Supplemental Environmental Impact Statement,* NASA's Mars 2020 mission launched the Perseverance rover in July 2020; the rover landed on Mars in February 2021 and has begun collecting and storing samples for potential return to Earth for study.

The Lander launch would occur from either Kennedy Space Center or Cape Canaveral Space Force Station in Florida and would consist of a routine payload, which has been addressed in previous NEPA analysis (NASA's *Routine Payload Environmental Assessment*). Launch of the Orbiter would be managed by the European Space Agency and occur from French Guiana. The launch of the Orbiter is addressed in the Draft PEIS pursuant to Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions.*

The proposed EES landing location is the DAF-managed Utah Test and Training Range (UTTR), located approximately 80 miles west of Salt Lake City. Additional proposed activities associated with recovery team and support equipment staging would be conducted on the Dugway Proving Ground. As noted earlier, additional Earth-based ground elements associated with sample transportation and sample management/research (otherwise referred to as ''curation'') involving the development and operation of an SRF are also part of the overall MSR Campaign architecture.

The proposed action and a no action alternative were evaluated in the Draft PEIS. Under the no action alternative, the MSR Campaign would not be undertaken and investigation of Mars as a planetary system would be severely constrained due to the cost and complexity of sending into space (and operating) science instruments capable of conducting the appropriate level of sample analysis in space or on Mars where *in situ* analyses could be performed. The environmental resource areas analyzed in the Draft PEIS include health and safety, cultural resources, hazardous materials and waste, soils and geology, biological resources, water resources, air quality and climate, land use, socioeconomics, environmental justice/protection of children, noise, and infrastructure.

NASA provided press releases to local newspapers and distributed letters to stakeholders, Native American tribes, and other interested parties. In addition to availability on the website (*https://www.nasa.gov/feature/nepa-mars-sample-return-campaign*), hard copies of the Draft PEIS will be made available at the following public libraries.

- Cocoa Beach Public Library, 550 N Brevard Avenue, Cocoa Beach, FL 32931
- Central Brevard Library and Reference Center, 308 Forrest Avenue, Cocoa, FL 32922
- Cape Canaveral Public Library, 201 Polk Avenue, Cape Canaveral, FL 32920
- Titusville Public Library, 2121 S Hopkins Avenue, Titusville, FL 32780
- Melbourne Library, 540 E Fee Avenue, Melbourne, FL 32901
- Merritt Island Public Library, 1195 N Courtenay Parkway, Merritt Island, FL 32953
- NASA Headquarters Library, 300 E Street SW, #1120, Washington, DC 20024
- Tooele City Public Library, 128 West Vine Street, Tooele, UT 84074
- Grantsville Library, 42 Bowery Street, Grantsville, UT 84029
- Brigham City Public Library, 26 E Forest Street, Brigham City, UT 84302
- Tremonton Municipal Library, 210 N Tremont Street, Tremont, UT 84337
- West Wendover Branch Library, 590 Camper Drive, West Wendover, NV 89883
- Garland Public Library, 86 W Factory Street, Garland, UT 84312

NASA is taking a programmatic approach to analyzing the potential environmental consequences of the MSR Campaign because of the campaign's large scope and uncertainty regarding future timing, locations, and environmental impacts associated with the two ground element actions (sample transportation and SRF). This programmatic approach allows for near-term focus on issues that are ripe for decision and establishes a foundation for follow-on tiering (sequencing) to future actions, thus minimizing detailed topics previously decided at the initial programmatic level. While certain actions related to site-specific analysis of the ground elements are considered programmatically in the Draft PEIS (*i.e.,* likely methods of sample transportation and representative examples of an SRF), NASA's NEPA approach provides the public with information on the totality of the MSR Campaign, thereby avoiding possible confusion about potential future proposed actions, which may be analyzed further in a tiered NEPA document. To the extent it is required, future tiered NEPA analysis would address specific environmental impacts related to EES transportation (*e.g.,* over-the-road or via aircraft) from the UTTR complex to an SRF. The type, location, construction (if any), and operation of an SRF would also be analyzed in specific detail after facility requirements are more robustly characterized.

Planetary Protection

''Planetary protection'' is the discipline/practice of protecting solar system bodies (*e.g.,* a planet, planetary moon, or asteroid) from contamination by Earth life and, in the case of sample return missions, protecting Earth from potential hazards posed by extraterrestrial material.

NASA's planetary protection policies address missions involving samples returned from various solar system bodies as detailed in NASA Policy Directive 8700.1F, *NASA Policy for Safety and Mission Success.* NASA's policies are guided by the planetary protection policies published by the international Committee on Space Research, which are informed by the United Nations Outer Space Treaty. NASA Procedural Requirement 8715.24, *Planetary Protection Provisions for Robotic Extraterrestrial Missions,* provides guidelines for categorizing missions according to their destination and proposed activities. NASA Procedural Requirement 8715.24 also provides specific procedural requirements for certain mission categories. All missions returning samples are designated as Category V. Under Category V, there are two subcategories: (1) Unrestricted Earth Return—sample return missions from solar system bodies deemed by scientific consensus to have no extraterrestrial life (*e.g.,* Earth's Moon and Venus), and (2) Restricted Earth Return (RER)—sample return missions from solar system bodies deemed by scientific opinion to have a possibility of harboring indigenous life forms (*e.g.,* Mars or Europa). RER missions have requirements to break the chain of physical contact with the target body as

well as isolate and robustly contain restricted samples during all mission phases through safe receipt and transport to a containment facility on Earth. Due to the potential for ancient life forms on Mars, the sample return portion of the proposed MSR Campaign is expected to be classified as a Category V RER activity, which requires preparation of an Environmental Impact Statement.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–24065 Filed 11–3–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Standard Application Process (SAP) Portal

AGENCY: National Center for Science and Engineering Statistics, National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and one comment was received. NCSES is forwarding the proposed SAP Portal information collection as a Common Form to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

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.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

SUPPLEMENTARY INFORMATION:

Comment: As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through the publication of a 60-Day Notice in the **Federal Register** at 87 FR 53793. NCSES received one comment requesting clarity on the scope of the SAP Portal effort and responded to the comment by mentioning that the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA). In addition, NCSES mentioned that other agencies and organizational units within the Executive branch may, over time, benefit from the adoption of the SAP to accept applications for access to confidential data assets.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Standard Application Process (SAP) Portal.

OMB Control Number: 3145–NEW.

Summary of Collection: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (hereafter the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA), it is recognized that other agencies and organizational units within the Executive Branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is to be a single web-based common application designed to collect information from individuals requesting access to confidential data assets from federal statistical agencies and units.

This information collection request is on behalf of the following federal statistical agencies and units, which may use the Common Form:

- Bureau of Economic Analysis (Department of Commerce)
- Bureau of Justice Statistics (Department of Justice)
- Bureau of Labor Statistics (Department of Labor)
- Bureau of Transportation Statistics (Department of Transportation)
- Census Bureau (Department of Commerce)
- Economic Research Service (Department of Agriculture)
- Energy Information Administration (Department of Energy)
- National Agricultural Statistics Service (Department of Agriculture)
- National Center for Education Statistics (Department of Education)
- National Center for Health Statistics (Department of Health and Human Services)
- National Center for Science and Engineering Statistics (National Science Foundation)
- Office of Research, Evaluation, and Statistics (Social Security Administration)
- Statistics of Income Division (Internal Revenue Service)
- Microeconomic Surveys Unit (Federal Reserve Board)

- Center for Behavioral Health Statistics and Quality (Department of Health and Human Services)
- National Animal Health Monitoring System (Department of Agriculture)

The objective of the SAP Portal is to broaden access to confidential data for the purposes of evidence building and reduce the burden of applying for confidential data, which currently involves separate processes with each of the federal statistical agencies and units. The new process will be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by law.

The following bullets outline the major components and processes in and around the SAP Portal.

- *SAP Policy:* At the recommendation of the ICSP, the SAP Policy establishes the SAP to be implemented by statistical agencies and units and incorporates directives from the Evidence Act. The SAP Policy was submitted to the public for comment in January 2022 (87 FR 2459). The policy is currently under review and has not yet been finalized.
- *The SAP Portal:* The SAP Portal is an application interface connecting applicants seeking data with a catalog of metadata for data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential data assets will continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal will provide a streamlined application process across agencies, reducing redundancies in the application process. This single SAP Portal will improve the process for applicants, tracking and communicating the application process throughout its lifecycle. This reduces redundancies and burden on applicants who request access to data from multiple agencies. The SAP Portal will automate key tasks to save resources and time and will bring agencies into compliance with the Evidence Act statutory requirements.
- *Data Discovery:* Individuals begin the process of accessing restricted use data by discovering confidential data assets through the SAP metadata catalog, maintained by federal statistical agencies at *www.researchdatagov.org.*
- *SAP Portal Application Process:* Individuals who have identified and wish to access confidential data assets will be able to apply for access through the SAP Portal when it is released to the public in late 2022. Applicants must create an account and follow all steps to complete the application. Applicants begin by entering their personal, contact, and institutional information, as well as the personal, contact, and institutional information of all individuals on their research team. Applicants provide summary information about their proposed project to include project title, duration, funding, and timeline. Other details provided by applicants include the data asset(s) they are requesting and any proposed linkages to data not listed in the SAP metadata catalog, including non-federal data sources. Applicants then enter detailed information regarding their proposed project, including a project abstract, research question(s),
- *Submission for Review:* Agencies approve or reject an application within a prompt timeframe. Agencies may also request applicants to revise and resubmit their application.
- *Appeals Process:* Applicants receiving an adverse determination have the option to submit an appeal for reconsideration by the data-owning agency or agencies. Applicants may also file an appeal for noncompliance with the SAP Policy.
- *Access to Restricted Use Data:* Approved applicants are notified through the SAP Portal that their proposal has been accepted. This concludes the SAP Portal process. Agencies will contact approved applicants to initiate completion of their security documents. The completion and submission of the agency's security requirements will take place outside of the SAP Portal and is therefore not included in the estimate of burden below.

Estimate of Burden: The amount of time to complete an application within the SAP Portal may vary depending on the number of individuals on the application, the topic of the proposal, and the data assets being requested. To request access to NCSES data assets, it is estimated that the average time to complete and submit an application within the SAP Portal is 60 minutes. This estimate includes the time needed to complete the SAP Portal application fields (applicant information and research proposal); it does not include an estimate of the time needed to develop a research proposal itself. The research proposal is developed outside of the SAP Portal and may be written for multiple audiences (*e.g.,* to solicit funding); therefore, it is not included in the estimate of burden for the SAP Portal.

The expected number of applications submitted to NCSES in a given year may vary. Overall, NCSES estimates it may receive 20 application submissions within the SAP Portal per year. NCSES estimates that the total burden for the SAP Portal over the course of the three-year OMB clearance will be about 60 hours and, as a result, an average annual burden of 20 hours.

Dated: November 1, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–24099 Filed 11–3–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1051; NRC–2018–0052]

Holtec International HI-STORE Consolidated Interim Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental impact statement, Supplement 1; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Supplement 1 to a final Environmental Impact Statement (FEIS), NUREG–2237, ''Environmental Impact Statement for the Holtec International's License Application for a Consolidated Interim Storage Facility for Spent Nuclear Fuel in Lea County, New Mexico.'' Supplement 1 to NUREG–2237 updates the responses to public comments by adding responses to certain comments that were inadvertently not included in the FEIS. Supplement 1 does not include any changes to impact analysis or determinations. Holtec International (Holtec) has requested a license to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) and Greater-Than-Class C (GTCC) waste, along with a small quantity of mixed oxide (MOX) fuel. The proposed CISF would be located in southeast New Mexico at a site located approximately halfway between the cities of Carlsbad and Hobbs. The proposed action is the issuance of an NRC license authorizing a CISF to store up to 8,680 metric tons of uranium (MTUs) [9,568 short tons] of SNF in 500 canisters for a license period of 40 years.

DATES: The FEIS Supplement 1 referenced in this document is available on October 27, 2022.

ADDRESSES: Please refer to Docket ID NRC–2018–0052 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0052. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The FEIS is available in ADAMS under Accession No. ML22299A238.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

• *Project Web page:* Information related to the Holtec CISF project can be accessed on the NRC's project web page at *https://www.nrc.gov/waste/spent-fuel-storage/cis/holtec-international.html.* Scroll down to the Section ''Environmental Impact Statement—Supplement 1.''

• *Public Libraries:* A copy of the FEIS will be made available at the following public libraries:

Carlsbad Public Library, 101 S Halaqueno Street, Carlsbad, NM 88220

Roswell Public Library, 301 N Pennsylvania, Roswell, NM 88201

Hobbs Public Library, 509 N Shipp Street, Hobbs, NM 88240

FOR FURTHER INFORMATION CONTACT: Jill S. Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7674, email: *Jill.Caverly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR) ''Final environmental impact statement—notice of availability,'' the NRC is making available NUREG–2237 Supplement 1, which concerns the NRC's FEIS for the license application submitted by Holtec to construct and operate a CISF for SNF and GTCC waste, along with a small quantity of MOX fuel, which are collectively referred to in the EIS as SNF and composed primarily of spent uranium-based fuel. The NRC published the FEIS (NUREG–2237) in the **Federal Register** on July 22, 2022 (87 FR 43905), and the U.S. Environmental Protection Agency noticed the availability of the FEIS on July 22, 2022 (87 FR 43848). Supplement 1 to NUREG–2237 updates the responses to public comments by adding responses to certain comments that were inadvertently not included in the FEIS.

II. Discussion

The NRC issued the FEIS for an application from Holtec requesting a license to authorize construction and operation of a CISF for SNF at a site located halfway between Carlsbad and Hobbs, New Mexico. The proposed CISF project would be built and operated on approximately 421 hectares (ha) [1,040 acres (ac)] of land in Lea County, New Mexico. The storage and operations area, which is a smaller land area within the full property boundary, would include 134 ha [330 ac] of disturbed land. The proposed project area is approximately 51 kilometers (km) [32 miles (mi)] east of Carlsbad, New Mexico, and 54 km [34 mi] west of Hobbs, New Mexico. The proposed action is the issuance of an NRC license authorizing a CISF to store up to 8,680 MTUs [9,568 short tons] in 500 canisters of SNF for a license period of 40 years.

After publication of the FEIS, the staff identified that two comment letters, which were submitted to the NRC during the draft EIS comment period, were inadvertently not included in Appendix D to the final EIS. The comment letters were discovered after the publication of the final EIS in July 2022. The Supplement 1 to the final EIS responds to these two comment letters and documents the NRC's evaluation of each of these comment letters that were not included in the final EIS. While the comments do not provide new and significant information regarding the project or its environmental impacts, the NRC staff is of the opinion that, in view of the circumstances described in this notice, and in accordance with 10 CFR 51.92(c), preparation of Supplement 1 to the final EIS will further the purposes of the National Environmental Policy Act of 1969, as amended. Supplement 1 does not include any changes to impact analysis or determinations; therefore, the recommendation in the FEIS remains the same.

Dated: October 28, 2022.

For the Nuclear Regulatory Commission.

John M. Moses,

Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2022–23847 Filed 11–3–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 7, 14, 21, 28, December 5, 12, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of November 7, 2022

Tuesday, November 8, 2022

9:00 a.m. Briefing on Regulatory Approaches for Fusion Energy Devices (Public Meeting). (Contact: Samantha Lav: 301–415–3487)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via

webcast at the Web address—*https://video.nrc.gov/.*

Thursday, November 10, 2022

10:00 a.m. Briefing on NRC International Activities (Public Meeting). (Contact: Jen Holzman, 301–287–9090)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of November 14, 2022—Tentative

There are no meetings scheduled for the week of November 14, 2022.

Week of November 21, 2022—Tentative

There are no meetings scheduled for the week of November 21, 2022.

Week of November 28, 2022—Tentative

There are no meetings scheduled for the week of November 28, 2022.

Week of December 5, 2022—Tentative

Tuesday, December 6, 2022

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting). (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, December 8, 2022

9:00 a.m. Overview of Advanced Reactor Fuel Activities (Public Meeting). (Contact: Stephanie Devlin-Gill, 301–415–5301)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of December 12, 2022—Tentative

Wednesday, December 14, 2022

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting). (Contact: Larniece McKoy Moore: 301–415–1942)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: November 2, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–24175 Filed 11–2–22; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320; NRC–2022–0193]

TMI–2 Solutions, LLC; Three Mile Island Station, Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing partial exemptions, with a conforming amendment, from several of the record keeping requirements in its regulations in response to a request from TMI–2 Solutions, LLC. Specifically, the licensee requested partial exemptions for certain NRC regulations which require certain records to be retained for the period specified by the appropriate regulation, license condition, or technical specifications (TS), or until termination of the license if not otherwise specified. In response to the licensee's requests, the NRC also issued a conforming amendment that revised the license to reflect the specific exemptions and associated changes in the TS.

DATES: The exemption was issued on and was effective on September 16, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0193 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0193. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy M. Snyder, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6822, email: *Amy.Snyder@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: October 31, 2022.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50–320

TMI–2 Solutions, LLC

Three Mile Island Nuclear Station, Unit No. 2

Partial Exemptions and Conforming Amendment

I. Background

TMl-2 Solutions, LLC, (TMI–2 Solutions or the licensee) is the holder of Possession Only License (POL) No. DPR–73 for Three Mile Island Nuclear Station, Unit No. 2 (TMI–2). The license

provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

On March 28, 1979, the unit experienced an accident initiated by interruption of secondary feedwater flow. This led to a core heat up that caused fuel damage. Most of the fuel material travelled down through the region of the southeastern assemblies and into the core bypass region. A portion of the fuel material passed around the bypass region and migrated down into the lower internals and lower head region, but overall reactor vessel integrity was maintained throughout the accident. As a result of this accident, small quantities of spent nuclear fuel, damaged core material, and high-level waste (collectively referred to as ''Debris Material'') were transported through the reactor coolant system and the Reactor Building. In addition, a small quantity of Debris Material was transported to the auxiliary and fuel handling buildings (AFHB). Further spread of the Debris also occurred as part of the post-accident water processing cleanup activities.

The quantity of fuel remaining at TMI–2 is a small fraction of the initial fuel load; approximately 99 percent was successfully removed in the defueling. Additionally, large quantities of radioactive fission products that were released into various systems and structures were removed as part of the waste processing activities during the TMI–2 Cleanup Program. The cleanup to meet the NRC post-accident safe storage criteria was completed and accepted by the NRC with TMI–2 entering into Postdefueling Monitored Storage (PDMS) in 1993.

In a letter dated February 13, 2013, (Agencywide Documents and Access Management System Accession No. ML12349A291), the NRC stated that September 14, 1993, is considered the date of TMI–2's cessation of operations. The September 14, 1993, date coincides with the issuance of License Amendment No. 45, which converted the TMI–2 operating license into a POL (ML20029E532).

Approximately 99 percent of the fuel was removed and shipped to the Idaho National Engineering and Environmental Laboratory (INEEL) under the responsibility of the U.S. Department of Energy. The reactor coolant system was decontaminated to the extent practical to reduce radiation levels to as low as is reasonably achievable. As part of the decontamination effort, water was removed to the extent practical from the reactor coolant system and the fuel transfer canal, and the fuel transfer tubes were isolated. Radioactive wastes from the major cleanup activities have been shipped off-site or have been packaged and staged for shipment off-site. Following the decontamination activities, only the Reactor Building and a few areas in the AFHB continued to have general area radiation levels higher than those of an undamaged reactor facility nearing the end of its operating life.

With the accident cleanup completed and the spent fuel moved to INEEL, there is no facility function related to the safe storage and management of irradiated fuel.

II. Request/Action

By letter dated October 5, 2021 (ML21279A278), as supplemented on December 15, 2021 (ML21354A027), TMI–2 Solutions submitted an exemption request asking for permanent partial exemptions from: (1) Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix B, Criterion XVII, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' which requires certain records to be retained consistent with applicable regulatory requirements for a duration established by the licensee; (2) 10 CFR 50.59(d)(3), ''Changes, tests, and experiments,'' which requires certain records to be maintained until ''termination of an operating license issued under this part;'' and (3) 10 CFR 50.71(c), ''Maintenance of records, making of reports,'' which requires certain records to be retained for the period specified by the appropriate regulation, license condition, or Technical Specifications (TS), or until termination of the license if not otherwise specified.

The licensee also submitted a license amendment request, which would revise the license to reflect the specific exemptions and associated changes in the TS, should the NRC approve the partial exemption request.

The licensee requests these exemptions to eliminate the requirement to maintain records that are no longer necessary or applicable due to the permanently defueled condition and decommissioning status of the station. Specifically, TMI–2 Solutions states that the following records would no longer be retained: Records associated with structures, systems, and components (SSCs), and activities that were applicable to the nuclear unit, which are no longer required by the Part 50 licensing basis (*e.g.,* removed from the Decommissioning Final Safety Analysis Report and/or Technical Specifications by appropriate change mechanisms). Such partial exemptions would eliminate the associated, unnecessary regulatory and economic burdens of retaining records for SSCs and activities that are no longer part of the TMI–2 licensing basis.

TMI–2 Solutions, in its December 15, 2021, supplement, committed to preserve all records pertaining to the 1979 Records Preservation Order, published in the **Federal Register** (FR) on May 29, 1979, ((44 FR 30788, and Attachment 1 of December 15, 2021 submittal (ML21354A027)). TMI–2 Solutions notes that an inventory of such records for the period from March 27, 1979, through May 1, 1979, was submitted to the NRC on November 18, 2021, to assist the NRC Historian in determining if the NRC document collection for the TMI–2 accident was missing any needed documents.

In the exemption request, TMI–2 Solutions cites record retention partial exemptions granted consistent with similar exemption requests that have been approved recently by the NRC for other nuclear power reactor facilities beginning decommissioning. Specifically, TMI–2 Solutions notes that the NRC granted similar partial exemptions to Three Mile Island, Unit No. 1 (ML20107J648), Oyster Creek Nuclear Generating Station (ML18122A306), Millstone Power Station, Unit No. 1, (ML070110567); Zion Nuclear Power Station, Unit Nos. 1 and 2 (ML111260277); Vermont Yankee Nuclear Power Station (ML15344A243), San Onofre Nuclear Generating Station, Unit Nos. 1, 2, and 3 (ML15355A055); Kewaunee Power Station (ML17069A394); and Fort Calhoun Station (ML17172A730).

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security and quality assurance, are not affected by the exemption request because they will be retained as decommissioning records, as required by 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' until the termination of the TMI–2 license. No exemption was requested from the decommissioning records retention requirements of 10 CFR 50.75, ''Reporting and recordkeeping for decommissioning planning,'' or any other requirements of 10 CFR part 50 applicable to decommissioning and dismantlement.

III. Discussion

Pursuant to 10 CFR 50.12, ''Specific exemptions,'' the Commission may,

upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are described in 10 CFR 50.12(a)(2).

TMI–2 Solutions states in its application that decommissioning of the TMl-2 and the nuclear reactor and essentially all associated SSCs in the nuclear steam supply system and balance of plant that supported the generation of power have been retired in place and are being prepared for removal. SSCs that remain operable are associated with the Reactor Building and effluent monitoring, are needed to meet other regulatory requirements, or are needed to support other site facilities (*e.g.,* radwaste handling, heating, ventilation, and air conditioning). There are no SSCs classified as safety-related. SSCs related to safe storage of the remaining Debris Material are designated as Important to Safety by the current licensing basis. The licensee also states in its application that TMI–2 Solutions is progressively removing these SSCs related to safe storage of the remaining Debris Material from the licensing basis where necessary through appropriate change mechanisms (*e.g.,* 10 CFR 50.59 or NRC approved TS changes, as applicable); revising the Final Safety Analysis Report (FSAR) for PDMS, as necessary; and, then proceeding with an orderly dismantlement.

In its October 5, 2021, exemption request, the TMI–2 Solutions indicates that the basis for eliminating records associated with reactor facility SSCs and activities is that these SSCs have been (or will be) removed from service per regulatory change processes, dismantled or demolished, and no longer have any function regulated by the NRC.

The licensee recognizes that some records related to the nuclear unit will continue to be under NRC regulation primarily due to residual radioactivity. The radiological and other necessary programmatic controls (such as security, quality assurance, etc.) for the facility and the implementation of controls for the defueled condition and the decommissioning activities are and will continue to be appropriately addressed through the license and current plant documents such as the FSAR for PDMS and the TS. Through a license application request dated February 19, 2021 (ML21057A046), TMI–2 Solutions requested that certain Technical Specification records requirements be relocated to the Decommissioning Quality Assurance Plan. This action is currently under review. TMI–2 Solutions indicated in its exemption request that future changes to the Technical Specifications will be made through the applicable change processes defined in the regulations (*e.g.,* 10 CFR 50.48(f), ''Fire protection,'' 10 CFR 50.59, 10 CFR 50.54(a), ''Conditions of licenses,'' 10 CFR 50.54(p), 10 CFR 50.54(q)). The NRC staff notes that except for future changes made through the applicable change process defined in the regulations (*e.g.,* 10 CFR 50.48(f), 10 CFR 50.59, 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit,'' 10 CFR 50.54(a), 10 CFR 50.54(p), 10 CFR 50.54(q)), these programmatic elements and their associated records are unaffected by the requested exemptions.

TMI–2 Solutions justifies the elimination of records associated with TMI–2 SSCs for retired equipment that have been removed from service and have been or will be physically removed, dismantled, or demolished, because it believes these SSCs now and will not in the future serve any TMI–2 functions regulated by the NRC. For example, the primarily coolant system is currently not in service and will never be in service again nor are there any vital areas that will be used for their intended purposes. Maintaining decommissioning records on the SSC associated with the primarily coolant system will not serve any TMI–2 function regulated by the NRC. TMI–2 Solutions decommissioning plans for TMI–2 are described in the Post-Shutdown Decommissioning Activities Report dated March 17, 2021 (ML21084A229). The licensee's decommissioning process involves evaluating SSCs with respect to the current facility safety analysis; progressively removing them from the licensing basis where necessary through appropriate change mechanisms (*e.g.,* 10 CFR 50.59 or by NRC approved TS changes, as applicable); revising the FSAR, as necessary; and then proceeding with an orderly dismantlement.

TMI–2 Solutions intends to retain the records required by its license as the state of the facility transitions through decommissioning. However, equipment abandonment will obviate the regulatory and business needs for maintenance of most records. As the SSCs are removed from the licensing basis, TMI–2 Solutions asserts that the need for its records is, on a practical basis, eliminated. Therefore, TMI–2 Solutions is requesting partial exemptions from the associated records retention requirements for SSCs for retired equipment that have been removed from service and have been or will be physically removed and historical activities that are no longer relevant, except it has committed to preserve all records pertaining to the 1979 Records Preservation Order ((44 FR 30788, dated May 29, 1979 and Attachment 1 of December 15, 2021 submittal (ML21354A027)).

A. The Exemption Is Authorized by Law

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from 10 CFR part 50 requirements if it makes certain findings. As described here and in the sections below, the NRC staff has determined that special circumstances exist to grant the partial exemptions. In addition, granting the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended; other laws; or the Commission's regulations. Therefore, the granting of the exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

As SSCs are prepared for safe storage and eventual decommissioning and dismantlement, they will be removed from NRC licensing basis documents through appropriate change mechanisms, such as through the 10 CFR 50.59 process or through a license amendment request approved by the NRC. These change processes involve either a determination by the licensee or an approval from the NRC that the affected SSCs no longer serve any safety purpose regulated by the NRC. Therefore, the removal of the SSCs would not present an undue risk to public health and safety. In turn, elimination of records associated with these removed SSCs would not cause any additional impact to public health and safety.

The granting of the exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the records described is administrative in nature and will have no impact on any remaining decommissioning activities or on radiological effluents. The granting of the exemption request will only advance the schedule for disposition of the specified records. Because these

records contain information about SSCs associated with reactor operation and contain no information needed to maintain the facility in a safe condition when the facility is eventually decommissioned through approved NRC licensing proceedings and the SSCs are dismantled, the elimination of these records on an advanced timetable will have no reasonable possibility of presenting any undue risk to the public health and safety. TMI–2 Solutions is not requesting any exemption associated with retention of spent fuel debris related records required by 10 CFR part 50 and 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.''

C. The Exemption is Consistent With the Common Defense and Security

The elimination of the recordkeeping requirements does not involve information or activities that could potentially impact the common defense and security of the United States. Upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear security.

Rather, the exemptions requested are administrative in nature and would only advance the current schedule for disposition of the specified records. Therefore, the exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the types of records described is consistent with the common defense and security.

D. Special Circumstances

Paragraph 50.12(a)(2) of 10 CFR states, in part:

> The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—. . .
>
> (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or
>
> (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted . . .

Criterion XVII of Appendix B to 10 CFR part 50 states, in part: ''Sufficient records shall be maintained to furnish evidence of activities affecting quality.''

Paragraph 50.59(d)(3) of 10 CFR states, in part: ''The records of changes in the facility must be maintained until the termination of an operating license issued under this part . . .''

Paragraph 50.71(c) of 10 CFR, states, in part:

> Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by Technical Specifications must be retained for the period specified by the appropriate regulation, license condition, or Technical Specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license. . . .

In the statement of considerations for the final rulemaking, ''Retention Periods for Records'' (53 FR 19240*, dated May 27, 1988*), in response to public comments received during the rulemaking process, the NRC stated that records must be retained ''for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety.'' In the statement of considerations, the Commission also explained that requiring licensees to maintain adequate records assists the NRC ''in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident.''

These regulations apply to licensees in decommissioning. During the decommissioning process, safety-related SSCs are retired or disabled and subsequently removed from NRC licensing basis documents by appropriate change mechanisms. Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval from the NRC that the SSC no longer has the potential to cause an accident, event, or other problem that would adversely impact public health and safety.

The records subject to removal under this exemption request are associated with SSCs that had been important to safety during power operation or operation of the spent fuel pool, but are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, as evidenced by their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then it is reasonable to conclude that the records associated with these SSCs would not reasonably be necessary to assist the NRC in determining compliance and noncompliance, taking action on possible noncompliance, or examining facts following an incident. Therefore, their retention would not serve the underlying purpose of the rule.

In addition, once removed from the licensing basis documents (*e.g.,* FSAR or TS), SSCs are no longer governed by the NRC's regulations, and therefore, are not subject to compliance with the safety and health aspects of the nuclear environment. As such, retention of records associated with SSCs that are or will no longer be part of the facility serves no safety or regulatory purpose, nor does it serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment in order to accomplish the NRC's mission. Therefore, special circumstances are present that the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(ii), to grant the exemption request.

Records that continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety in support of the NRC's mission, will continue to be retained pursuant to other regulations in 10 CFR part 50 and 10 CFR part 72. Retained records that are not subject to the proposed exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, security, and quality assurance, as well as records associated with the ISFSI and spent fuel debris.

The retention of records required by 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rule results in a considerable cost to the licensee. Retention of the volume of records associated with the SSCs during the operational phase is appropriate to serve the underlying purpose of determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident, as discussed.

However, the cost effect of retaining operational phase records beyond the operations phase until the termination of the license was not fully considered or understood when the records retention rule was put in place. For example, existing records storage facilities are eliminated as decommissioning progresses. Retaining records associated with SSCs and activities that no longer serve a safety or regulatory purpose would, therefore, result in an unnecessary financial and administrative burden. As such,

compliance with the rule would result in an undue cost in excess of that contemplated when the rule was adopted. Therefore, special circumstances are present that the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(iii), to grant the exemption request. The licensee has committed to preserve all records pertaining to the 1979 Records Preservation Order ((44 FR 30788, dated May 29, 1979 and Attachment 1 of December 15, 2021 submittal (ML21354A027)). TMI–2 Solutions is not requesting any exemption associated with retention of spent fuel debris related records required by 10 CFR part 50 and 10 CFR part 72.

E. Environmental Considerations

Pursuant to 10 CFR 51.22(b) and (c)(25), ''Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,'' the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR part 50 meets the eligibility criteria for categorical exclusion provided that: (1) there is no significant hazards consideration; (2) there is no significant change in the types or significant increase in the amounts of any effluents that may be released off-site; (3) there is no significant increase in individual or cumulative public or occupational radiation exposure; (4) there is no significant construction impact; (5) there is no significant increase in the potential for or consequences from radiological accidents; and (6) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The exemption request is administrative in nature. The exemption request has no effect on SSCs and no effect on the capability of any plant SSC to perform its design function. The exemption request would not increase the likelihood of the malfunction of any plant SSC.

The probability of occurrence of previously evaluated accidents is not increased since most previously analyzed accidents will no longer be able to occur, and the probability and consequences of the remaining fuel handling accident are unaffected by the exemption request. Therefore, the exemption request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The exemption request does not involve a physical alteration of the plant. No new or different types of equipment will be installed, and there are no physical modifications to existing equipment associated with the exemption request. Similarly, the exemption request will not physically change any SSCs involved in the mitigation of any accidents. Thus, no new initiators or precursors of a new or different kind of accident are created. Furthermore, the exemption request does not create the possibility of a new accident as a result of new failure modes associated with any equipment or personnel failures. No changes are being made to parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions, and no new failure modes are being introduced. Therefore, the exemption request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The exemption request does not alter the design basis or any safety limits for the plant. The exemption request does not impact station operation or any plant SSC that is relied upon for accident mitigation. Therefore, the exemption request does not involve a significant reduction in a margin of safety.

For these reasons, the NRC staff has determined that approval of the exemption request involves no significant hazards consideration because granting the licensee's exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) at TMI–2 does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety (10 CFR 50.92(c), ''Issuance of Amendment.'') Likewise, there is no significant change in the types or significant increase in the amounts of any effluents that may be released off-site and no significant increase in individual or cumulative public or occupational radiation exposure.

The exempted regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (*i.e.,* potential amount of radiation involved for an accident) or accident mitigation; therefore, there is no significant increase in the potential for, or consequences from, radiological accidents. Allowing the licensee exemption from the record retention requirements for which the partial exemption is sought involves recordkeeping requirements, as well as reporting requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b), 10 CFR 51.22(c)(25), and 10 CFR 51.22(c)(ii), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request or conforming amendment.

IV. Conclusions

The NRC staff has determined that the granting of the exemption request from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) will not present an undue risk to the public health and safety. The destruction of the identified records related to SSCs that have been removed from service and have been or will be physically removed will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security. The NRC staff has determined that the destruction of the identified records at that time is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States.

The purpose for the recordkeeping regulations is to assist the NRC in carrying out its mission to protect the public health and safety by ensuring that the licensing and design basis of the facility are understood, documented, preserved, and retrievable in such a way that will aid the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Since the TMI–2 SSCs for retired equipment have been removed from service and have been or will be physically removed, the NRC staff has determined that the records identified in the exemption request will no longer be required to achieve the underlying purpose of the records retention rule. TMI–2 Solutions has committed to preserve all records pertaining to the 1979 Records Preservation Order ((44 FR 30788, dated May 29, 1979 and Attachment 1 of December 15, 2021 submittal (ML21354A027)).

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the partial exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the

common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants TMI–2 Solutions partial exemptions from the recordkeeping requirements of 10 CFR 50.71(c); 10 CFR part 50, Appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for TMI–2 only to the extent necessary to allow the licensee to advance the schedule to remove records associated with retired SSCs that have been removed from service and have been or will be physically removed by appropriate change mechanisms (*e.g.,* 10 CFR 50.59 or by NRC approved license amendment request, as applicable). Again, the licensee has committed to preserve all records pertaining to the 1979 Records Preservation Order ((44 FR 30788, dated May 29, 1979 and Attachment 1 of December 15, 2021 submittal (ML21354A027)).TMI–2 Solutions is not requesting any exemption associated with retention of spent fuel debris related records required by 10 CFR part 50 and 10 CFR part 72.

These exemptions are effective upon issuance.

Dated: September 16, 2022.

For the Nuclear Regulatory Commission.

/RA September 16, 2022/

Jane E. Marshall,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–23975 Filed 11–3–22; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Annual Reporting (Form 5500 Series)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, with modifications, under the Paperwork Reduction Act, of a collection of information for Annual Reporting under OMB control number 1212–0057, which expires on June 30, 2025. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before December 5, 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/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulation/federal-registernotices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 445 12th Street SW, Washington, DC 20024–2101; or, calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–3559. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Annual reporting to the Internal Revenue Service (IRS), the Employee Benefits Security Administration (EBSA), and the Pension Benefit Guaranty Corporation (PBGC) is required by law for most employee benefit plans. For example, section 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) requires annual reporting to PBGC for pension plans covered by title IV of ERISA. To accommodate these filing requirements, IRS, EBSA, and PBGC have jointly promulgated the Form 5500 Series, which includes the Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan.

The existing collection of information was approved by the Office of Management and Budget (OMB) under OMB control number 1212–0057 (expires June 30, 2025). On August 29, 2022, PBGC published in the **Federal Register** (at 87 FR 52821), a notice informing the public of its intent to request an extension of this collection of information, as modified. PBGC received one comment in support of the collection of information. PBGC is requesting that OMB extend approval of the collection, with modifications, for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC is proposing modifications to the 2023 Schedule R (Retirement Plan Information) and to the 2023 Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), and to their related instructions, as described below.

Schedule R

PBGC is proposing modifications to line 19 of Schedule R and its instructions, a line that applies to all defined benefit plans (except DFEs) that have 1,000 or more participants at the beginning of the plan year. Currently, such plans must provide a breakdown of plan assets in line 19a by reporting the percent of assets held in five categories of investments. PBGC is proposing to reconfigure the categories as shown below:

Current	Proposed
Stock	Public Equity.
Investment-Grade Debt	Private Equity.
High-Yield Debt	Investment-Grade Debt and Interest Rate Hedging Assets.
Real Estate	High-Yield Debt.
Other	Real Assets.
	Cash or Cash Equivalents.
	Other.

In addition, for certain investments, PBGC is proposing to modify the instructions to clarify how certain atypical investments should be categorized for this purpose. For example, as currently drafted, it is not clear whether cash equivalents should be included in ''Investment-Grade Debt'' or in ''Other.'' Similarly, it is not clear whether infrastructure investments should be included in the ''Real Estate'' or the ''Other'' category. By expanding the list of categories and modifying the instructions, the more detailed information should be reported consistently which will enable PBGC to better model important characteristics of plan portfolios.

PBGC is also proposing to modify the instructions for line 19a so that the percentages reported reflect the asset allocation as of the end of the plan year instead of the beginning of the plan year. Having more recent information will lead to better projections and more accurate analysis by PBGC, and because the Form 5500 isn't due until several months after the end of the plan year, this change should not create any timing issues for filers.

In addition, PBGC is proposing changes to line 19b (average duration for certain investments) and its instructions and to eliminate line 19c (method used

to determine the duration reported in line 19b). Under modified line 19b, PBGC is proposing that applicable filers would be required to check a box to indicate the average duration of the plan's combined Investment-Grade Debt and Interest Rate Hedging Assets portfolio, thereby replacing the current requirement to check the box that shows the average duration of the plan's combined Investment-Grade and High Yield Debt portfolio. PBGG is also proposing to change the average duration ranges to choose from 3-year periods to multiple 5-year periods, with the last choice being a period of 15 or more years.

Line 19c currently asks for the duration measure used to calculate line 19b. Because the alternative duration measures do not provide meaningfully different results, eliminating line 19c will not hinder PBGC's modeling results.

Schedule SB

PBGC is proposing a minor modification to Schedule SB, line 6 (Target Normal Cost) and its instructions, to address a possible, albeit unlikely, situation in which line 6c (Target Normal Cost) reported on Schedule SB would not be consistent with IRS regulation and statute if lines 6a and 6b were determined in accordance with the current line 6 instructions. This situation would arise only if (1) a plan requires mandatory employee contributions and (2) the mandatory employee contributions for the plan year exceeded the present value of benefits accruing during the plan year. PBGC's proposed changes to lines 6a and 6c of the instructions, and to line 6c of the Form (which has changed from ''Total (line 6a + line 6b)'' to Total (Target Normal Cost)) will rectify this situation by clarifying the amount to be reported in line 6a is the present value of expected accruals and by detailing that line 6c requires the sum of lines 6a and 6b, ''reduced (but not below zero) by any mandatory employee contributions expected to be made during the plan year.''

In addition, PBGC is proposing to change the current instructions for the Schedule SB, line 26b attachment (Schedule of Projection of Expected Benefit Payments), to provide that for a plan that has 1,000 or more participants as of the valuation date, in situations where a plan assumes some, or all, benefits are paid in a lump sum but uses the annuity substitution rule (26 CFR 1.430(d)–1(f)(4)(iii)(B)) to determine the funding target, the attachment may show projected benefits payable in the annuity form instead of in the form assumed for valuation purposes, as indicated in the current instructions. PBGC notes that the instructions for the current line 26b attachment, which was added for the 2022 plan year, suggest that for such plans, the benefit projection would be based on a different form of payment than what was used to determine the funding target.

In addition, the current instructions for line 26a of Schedule SB provide that a plan reporting 1,000 or more active participants on line 3d, column (1), must also provide average compensation data. This instruction is incorrect because line 3d is where the total participant count is reported. PBGC is correcting this instruction to instead reference line 3c, column (1)), the active participant count.

PBGC estimates that it will receive approximately 25,000 Form 5500 and Form 5500–SF filings per year under this collection of information for the 2023 Form 5500 Series. PBGC further estimates that the total annual burden of this collection of information for the Form 5500 Series, attributable to PBGC, will be 15,089 hours and that there will be no cost burden.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–24094 Filed 11–3–22; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–030, OMB Control No. 3235–0290]

Proposed Collection; Comment Request; Extension: Rule 17f–1(g)

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 17f–1(g) (17 CFR 240.17f–1(g)), 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.

Paragraph (g) of Rule 17f–1 requires that all reporting institutions (*i.e.,* every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database; (b) to confirm inquiry of the database; and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are approximately 10,018 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (a total of 33 minutes or 0.5511 hours per respondent per year). Thus, the total estimated annual time burden for all respondents is 5,521 hours ($10{,}018 \times 0.5511$ hours = 5,521). Assuming an average hourly cost for clerical work of $50.00, the average total yearly record retention internal cost of compliance for each respondent would be $27.56 ($\$50 \times 0.5511$ hours). Based on these estimates, the total annual internal compliance cost for the estimated 10,018 reporting institutions would be approximately $276,096 ($10{,}018 \times \$27.56$).

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 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 by January 3, 2023.

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: November 1, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–24109 Filed 11–3–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96187; File No. SR–IEX–2022–08]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 11.190(e) To Expand the Availability of the Exchange's Existing Anti-Internalization Functionality to More Members

October 31, 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 October 24, 2022, the Investors Exchange LLC (''IEX'' 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 the Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 11.190(e) to expand the availability of the Exchange's existing anti-internalization functionality to more Members. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[5] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[6]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rule 11.190(e) to expand the availability of the Exchange's existing anti-internalization group identifier (''AIQ'') functionality to more Members.[7] Specifically, the Exchange is proposing to allow Members to apply AIQ to orders submitted by an Affiliate[8] that is also an IEX Member (a ''Member Affiliate''), if so desired.

IEX offers optional anti-internalization functionality to Users[9] that enables a User to prevent two of its orders from executing against each other. Currently, Users can set the anti-internalization functionality to apply at the market participant identifier (''MPID'') or User level. To utilize IEX's optional anti-internalization functionality, a User adds a unique identifier of its choosing designating the order as subject to anti-internalization (the ''AIQ identifier'').[10] Orders that have the same AIQ identifier and originate from the same MPID or User, as specified by the User,[11] are part of the same ''AIQ group.''[12] And any active order that is part of the same AIQ group is prevented from executing against a resting opposite side order that is part of the same AIQ group.

Users seeking to apply AIQ to their orders also include one of five modifiers to their orders, which determines the interaction between two orders within the same AIQ group that would otherwise execute against each other (''AIQ modifier'').[13] The AIQ modifier on the order with the newer timestamp controls the interaction between the two orders in an AIQ group.[14] The five possible interactions for two orders with AIQ instructions that would otherwise match are: cancel the older of the two orders; cancel the newer of the two orders; cancel both orders; cancel the smaller of the two orders; or cancel the smaller of the two orders and decrement the size of the smaller order from the larger order.[15]

Proposal

IEX understands that some Members would like to apply AIQ to orders submitted by their Affiliates who are also Members. For example, if Member A is under common control with Member B, the two Members would like the option of applying AIQ to orders submitted by the two Member Affiliates. Therefore, the Exchange proposes to expand the availability of the anti-internalization functionality it offers by allowing AIQ groups to be set at the Member Affiliate level in addition to the current options of setting AIQ groups at the User or MPID level. This proposal is designed to offer AIQ functionality to Member Affiliates that have divided their business activities between separate corporate entities without disadvantaging them when compared to Members that operate those business activities within a single corporate entity. This proposal would expand the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

[7] *See* IEX Rule 1.160(s) (defining the term ''Member'').

[8] An ''Affiliate'' is a person (including an entity) that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. *See* 17 CFR 240.12b–2.

[9] Pursuant to IEX Rule 1.160(qq), a User means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to IEX Rule 11.130. Sponsored Participant is defined in IEX Rule 1.160(ll).

[10] *See* IEX Rule 11.190(e)(1)(A).

[11] Users may elect to enable anti-internalization functionality on an IEX Port Request Form, designating whether such functionality should be applied on an MPID or User basis.

[12] *See* IEX Rule 11.190(e)(1)(B).

[13] *See* IEX Rule 11.190(e)(1)(B).

[14] *See* IEX Rule 11.190(e).

[15] *See* IEX Rule 11.190(e)(2).

levels at which AIQ groups can be set by a Member, but nothing in this proposal would change the manner in which two orders in the same AIQ group interact.

Specifically, IEX proposes to amend IEX Rule 11.190(e)(1)(B) to include ''Member Affiliates'' as one of the possible levels for AIQ groups (in addition to the current options of MPID or User). And the Exchange proposes to add subparagraph (i) to IEX Rule 11.190(e)(1)(B) to specify that for purposes of subparagraph (e)(1)(B), the term ''Member Affiliates'' shall mean Members that are affiliated with each other pursuant to Rule 12b–2 under the Act.[16] If Members choose to have AIQ applied across Member Affiliates, the anti-internalization functionality would prevent quotes and orders from such Member Affiliates from trading against one another.

Under this proposal if Member A submits an order to buy 100 shares of security ABC for $10.00 with a user-supplied AIQ identifier, and Member B, an Affiliate of Member A, submits an order to sell 100 shares of security ABC for $10.00 with the same User-supplied AIQ identifier (meaning the two orders are in the same AIQ group), the two otherwise executable orders will not match, but will instead interact based upon the User-supplied AIQ modifier on the newer order.

Members will be responsible for having proper internal documentation in their books and records substantiating that two or more Members using AIQ are Affiliates of one another. IEX notes that this grouping of Member Affiliates is already a common practice for exchanges that offer rebates, in order to not penalize two affiliated members when calculating rebate tiers.[17]

This proposed rule change is designed to provide additional flexibility to Members in how they implement self-trade prevention provided by the Exchange, and thereby better manage their order flow and prevent undesirable executions or the potential for ''wash sales'' that may occur as a result of the speed of trading in today's marketplace. Based on informal discussions with Members, the Exchange believes that the proposed additional types of anti-internalization functionality will be useful to Members in implementing their own compliance controls. And the additional AIQ functionality may assist Members in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

The Exchange notes that, as with the current anti-internalization functionality offered by IEX, use of the proposed new Member Affiliate AIQ grouping will not alleviate, or otherwise exempt, Members from their best execution obligations. As such, Members and their Affiliates using AIQ will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-internalization.[18] Further, as with current rule provisions, Market Makers and other Users may not use AIQ functionality to evade the firm quote obligation, as specified in IEX Rule 11.151(b), and the AIQ functionality must be used in a manner consistent with just and equitable principles of trade.[19] For these reasons, the Exchange believes the proposed new Member Affiliate level of AIQ grouping offers Members enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5),[21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because allowing Member Affiliates to be part of the same AIQ group will provide Members with additional flexibility with respect to how they implement self-trade protections provided by IEX that may better support their trading strategies and compliance controls. Members that prefer the current anti-internalization groupings offered by the Exchange can continue to use them without any modification (*i.e.,* if two Member Affiliates do not wish to have orders from the two Members be in the same AIQ group, the Members will not have to make any changes to the manner in which they submit orders to the Exchange).

As noted in the Purpose section, IEX believes that providing Members with more flexibility and control over the interactions of their orders will better prevent undesirable executions or the potential for ''wash sales'' that may occur as a result of the speed of trading in today's marketplace. And the Member Affiliate level AIQ grouping may better assist Members in complying with certain ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

Additionally, as discussed in the Purpose section, allowing Members to apply AIQ to trades submitted by their Affiliates that are also Members 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. Accordingly, the Exchange believes that this proposed rule change is fair and equitable, and not unreasonably discriminatory.

Further, the Exchange believes that providing expanded AIQ grouping options may streamline certain regulatory functions by reducing false positive results that may occur on wash trading surveillance reports when two orders in the same AIQ group are executed, notwithstanding that the transaction may not constitute a wash trade.

Finally, as discussed in the Purpose section, the Exchange notes that exchanges allowing Members to combine their trading activity with Affiliates is already a common practice at several other national securities exchanges.[22] Consequently, the Exchange does not believe that the proposed rule change raises any new or

[16] *See supra* note 9.

[17] *See, e.g.,* the Nasdaq Stock Market LLC Equity 7, Section 127 (''Aggregation of Activity of Affiliated Members''); Nasdaq BX, Inc. Equity 7, Section 127 (''Aggregation of Activity of Affiliated Members''); New York Stock Exchange LLC Price List, General II (''Aggregate Billing of Affiliated Member Organizations'') at 24, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[18] *See* Supplementary Material .01 to IEX Rule 11.190(e).

[19] *See* Supplementary Materials .02 and .03 to IEX Rule 11.190(e).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *See supra* note 18.

novel issues not already considered by the Commission.

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. To the contrary, the proposal is designed to enhance IEX's competitiveness by providing additional flexibility over the level at which orders are grouped, thereby incentivizing Members to send orders to IEX and increase the liquidity available on the Exchange. Additionally, the proposed rule change is designed to assist Members with compliance with the securities laws that prohibit wash trading as well as ERISA requirements. The Exchange also notes that the proposed new AIQ grouping option, like the Exchange's current anti-internalization functionality, is completely optional and Members can determine on an order-by-order, MPID, User, or Member Affiliate basis whether to apply anti-internalization protections to orders submitted to the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Moreover, there is no barrier to other national securities exchanges adopting similar anti-internalization grouping at the Member Affiliate level.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Members will continue to be eligible to use the Exchange's anti-internalization functionality. While not every Member engages in a business that might involve risks of self-matching against an Affiliate's orders, for the Members that do face that risk, the proposed additional anti-internalization grouping is designed to help such Members with their compliance with the securities laws and ERISA. Further, implementation of anti-internalization functionality impacts only a Member's orders (and the orders of the Member Affiliates), and not the orders of other, unaffiliated Members. And, as discussed in the Purpose and Statutory Basis sections, allowing Members to apply AIQ to trades submitted by their Affiliates that are also Members 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[23] of the Act and Rule 19b–4(f)(6)[24] thereunder. 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 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 and Rule 19b–4(f)(6) thereunder. In addition, the Exchange provided the Commission with 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.[25]

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b–4[26] because, as discussed above, this rule change does not modify any of its existing AIQ functionality, but simply offers an additional level of optional AIQ grouping to Members with Affiliates that are also Members. As discussed above, several other exchanges currently allow Members to group their orders with those of their Affiliates for fee purposes.[27] Thus, IEX does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission in connection with the existing anti-internalization functionality offered by IEX.

Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[28] and paragraph (f)(6) of Rule 19b–4 thereunder.[29] The Exchange will implement the proposed rule change within 90 days of filing, subject to the 30-day operative delay, and provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

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)[30] 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–IEX–2022–08 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–IEX–2022–08. 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

[23] 15 U.S.C. 78s(b)(3)(A).
[24] 17 CFR 240.19b–4(f)(6).
[25] 17 CFR 240.19b–4(f)(6)(iii).
[26] 17 CFR 240.19b–4(f)(6).
[27] *See supra* note 18.
[28] 15 U.S.C. 78s(b)(3)(A).
[29] 17 CFR 240.19b–4(f)(6).
[30] 15 U.S.C. 78s(b)(2)(B).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–IEX–2022–08, and should be submitted on or before November 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24008 Filed 11–3–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96183; File No. SR–MRX–2022–14]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 7 To Add Market Data Fees

October 31, 2022.

On August 25, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess market data fees. The proposed rule change was published for comment in the **Federal Register** on September 14, 2022.[3]

On October 14, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24031 Filed 11–3–22; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95708 (September 8, 2022), 87 FR 56457.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96182; File No. SR–MRX–2022–13]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 5 To Add Membership and Trading Rights Fees

October 31, 2022.

On August 25, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess membership and trading rights fees. The proposed rule change was published for comment in the **Federal Register** on September 14, 2022.[3]

On October 5, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24006 Filed 11–3–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96180; File No. SR–MRX–2022–12]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 6 To Add Port Fees

October 31, 2022.

On August 25, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess port fees. The proposed rule change was published for comment in the **Federal Register** on September 14, 2022.[3]

On October 11, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95709 (September 8, 2022), 87 FR 56449.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95710 (September 8, 2022), 87 FR 56464.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24005 Filed 11–3–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96191; File No. SR–FINRA–2022–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt Supplementary Material .19 (Residential Supervisory Location) Under FINRA Rule 3110

October 31, 2022.

I. Introduction

On July 15, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change SR–FINRA–2022–019 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to adopt new Supplementary Material .19 (Residential Supervisory Location) under FINRA Rule 3110 (Supervision) that would treat a private residence at which an associated person engages in specified supervisory activities as a non-branch location, subject to safeguards and limitations.[3] The proposed rule change was published for public comment in the **Federal Register** on August 2, 2022.[4] On September 14, 2022, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to October 31, 2022.[5] On October 31, 2022, FINRA responded to the comment

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 4.

[4] Exchange Act Release No. 95379 (July 27, 2022), 87 FR 47248 (August 2, 2022) (File No. SR–FINRA–2022–019 (''Notice'').

[5] *See* letter from Sarah Kwak, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated September 14, 2022.

letters received in response to the Notice.[6]

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act [7] to solicit comments on the proposed rule change and to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

The COVID–19 pandemic prompted FINRA to provide temporary relief to member firms from certain regulatory requirements.[8] For example, FINRA temporarily suspended the requirement for member firms to submit branch office applications on Form BR (Uniform Branch Office Registration Form) for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic (the ''Form BR Temporary Suspension'').[9]

In the Notice, FINRA stated that as jurisdictions scale back pandemic-related restrictions, many member firms are moving towards a ''blended workforce model'' where employees work both on-site and in alternative locations, such as a private residence.[10] Currently, a private residence at which certain supervisory functions occur would need to be registered and designated as a branch office or office of supervisory jurisdiction (''OSJ'') under Rule 3110(a)(3), and inspected at least annually under Rule 3110(c)(1)(A). Consequently, FINRA stated that absent futher regulatory action, once the Form BR Temporary Suspension is lifted, FINRA rules would require member firms to ''either curtail activities at residential locations or register large numbers of residential locations as OSJs or supervisory branch offices.'' [11] Under the proposed rule change, a new location designation, Residential Supervisory Location, would be treated as a non-branch location, subject to inspections on a regular periodic schedule under Rule 3110(c)(1)(C), presumed to be every three years.[12]

B. Proposed Rule Change

FINRA is proposing to adopt new Supplementary Material .19 under Rule 3110 to establish a Residential Supervisory Location designation that would be treated as a non-branch location (*i.e.,* an unregistered office), subject to specified limitations. Specifically, under proposed Rule 3110.19(a), a Residential Supervisory Location would be considered a non-branch location (and thus excluded from branch office registration), provided that: (1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location; (2) the location is not held out to the public as an office; (3) the associated person does not meet with customers or prospective customers at the location; (4) any sales activity that takes place at the location complies with the conditions set forth under Rule 3110(f)(2)(A)(ii) or (iii); (5) neither customer funds nor securities are handled at that location; (6) the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person; (7) the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3110; (8) all electronic communications by the associated person at that location are made through the member's electronic system; (9) a list of the residence locations is maintained by the member; and (10) all books or records required to be made and preserved by the member under the federal securities laws or FINRA rules are maintained by the member other than at the location.

Furthermore, under proposed Rule 3110.19(b), some members would be ineligible to designate any location as a Residential Supervisory Location, and some locations of otherwise eligible members would be ineligible to be designated as a Residential Supervisory Location. Specifically, all of a member's locations would be ineligible if: (1) the member is designated as a ''Restricted Firm'' under Rule 4111 (Restricted Firm Obligations); (2) the member is designated as a ''Taping Firm'' under Rule 3170 (Tape Recording of Registered Persons by Certain Firms); or (3) the member is currently undergoing, or is required to undergo, a review under Rule 1017(a)(7) as a result of one or more associated persons at such location. A specific location of an otherwise eligible member would be ineligible if: (1) one or more associated persons at such location is a designated supervisor who has less than one year of direct supervisory experience with the member; (2) one or more associated persons at such location is functioning as a principal for a limited period in accordance with Rule 1210.04; (3) one or more associated persons at such location is subject to a mandatory heightened supervisory plan under the rules of the Commission, FINRA or state regulatory agency; (4) one or more associated persons at such location is statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under paragraph (b)(6) of this Supplementary Material or otherwise as a condition to approval or permission for such association; (5) one or more associated persons at such location has an event in the prior three years that required a ''yes'' response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4; [13] or (6) one or more associated persons at a location is currently subject to, or has been notified in writing that it will be subject to, any investigation, proceeding, complaint or other action by the member, the Commission, a self-regulatory organization, including FINRA, or state securities commission (or agency or office performing like functions) alleging they have failed to reasonably supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Exchange Act, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such acts, or any of the rules of the Municipal Securities Rulemaking Board.

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2022–019 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.[14] Institution of proceedings is appropriate at this time

[6] *See* letter from Kosha Dalal, Vice President, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 31, 2022 (''FINRA Response'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice at 47249.

[9] *See* FINRA *Regulatory Notice* 20–08 (March 2020) (''Regulaotry *Notice* 20–08''); *see also* Notice at note 5.

[10] *See* Notice at 47249.

[11] Notice at 47256.

[12] *See* FINRA Rules 3110(c)(1)(C) and 3110.13.

[13] Form U4's Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a) elicit reporting of criminal convictions, and Questions 14C, 14D, and 14E pertain to regulatory action disclosures. *See* Notice at note 79.

[14] 15 U.S.C. 78s(b)(2)(B).

in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[16]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by November 25, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 9, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–FINRA–2022–019 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 No. SR–FINRA–2022–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2022–019 and should be submitted on or before November 25, 2022. If comments are received, any rebuttal comments should be submitted on or before December 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–24007 Filed 11–3–22; 8:45 am]

BILLING CODE 8011–01–P

[15] *Id.*

[16] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[17] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

DEPARTMENT OF STATE

[Public Notice: 11910]

Department of State Performance Review Board Members

ACTION: Notice of members for the Performance Review Board.

SUMMARY: The Department of State (DOS) announces the persons who will service on the Senior Executive Service 2022 Performance Review Board.

DATES: This appointment is effective October 19, 2022.

ADDRESSES: This action is being taken in accordance with Title 5, U.S.C., section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Wai, Deputy Director Bureau of Global Talent Management, Division of Civil Service Talent Management, Department of State, 2401 E Street NW, Washington, DC 20037 202–663–2147.

SUPPLEMENTARY INFORMATION: The membership of the Department of State Performance Review Board is as follows:

Erin M. Barclay—Chair
Kerry Neal
Hilary Batjer Johnson
Anne Joyce
Sherry Hannah
Jeremy Bernton
Jane Rhee
Suzanne George

Kim R. Bruner,

Director, Bureau of Global Talent Management, Civil Service Talent Management, Department of State.

[FR Doc. 2022–23979 Filed 11–3–22; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0093]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Commercial Driver's License Drug and Alcohol Clearinghouse

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget for its review and approval and invites public comment. The FMCSA requests to renew an ICR titled, ''Commercial Driver's License Drug and Alcohol Clearinghouse.'' The Agency's final rule, published December 5, 2016, titled ''Commercial Driver's License Drug and Alcohol Clearinghouse'' (81 FR 87686) (Clearinghouse) established the regulatory requirements for the Clearinghouse. The compliance date of the final rule was January 6, 2020. The FMCSA began collecting data as authorized users began registering in the Clearinghouse in September 2019. This ICR is needed to ensure that querying and reporting requirements are met to diminish the problem of commercial driver's license (CDL) and commercial learner's permit (CLP) holders who test positive for drugs or alcohol and then continue to perform safety sensitive functions, including driving a commercial motor vehicle (CMV), without participating in the required return-to-duty (RTD) process.

DATES: Comments on this notice must be received on or before January 3, 2023

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2022–0093 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Bryan Price, Chief, Drug and Alcohol Programs Division, FMCSA, DOT, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–2995; email: *clearinghouse@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Agency regulations at 49 CFR part 382 apply to persons and employers of such persons who operate CMVs in commerce in the United States and who are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers (49 CFR 382.103(a)). Part 382 requires that employers conduct pre-employment drug testing, post-accident testing, random drug and alcohol testing, and reasonable suspicion testing, as well as RTD testing and follow-up testing for those drivers who test positive or otherwise violate DOT drug and alcohol program requirements. Motor carrier employers are prohibited from allowing an employee to perform safety-sensitive functions, which include operating a CMV, if the employee tests positive on a DOT drug or alcohol test, refuses to take a required test, or otherwise violates the DOT or FMCSA drug and alcohol testing regulations.

Section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) requires that the Secretary of Transportation establish, operate, and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of CMV operators to improve compliance with the DOT's alcohol and controlled substances testing program and to enhance the safety of our roadways by reducing crashes and injuries involving the misuse of alcohol or use of controlled substances by operators of CMVs. As noted above, FMCSA published a final rule on December 5, 2016, with an effective date of January 4, 2017, and a compliance date of January 6, 2020, to implement the requirements of the Clearinghouse. The FMCSA first began collecting data in September 2019 relating to authorized users' registration in the Clearinghouse. On January 6, 2020, FMCSA began collecting data related to drivers' drug and alcohol program violations and associated return to duty process as well and queries conducted by employers on CDL or CLP holders.

The Clearinghouse functions as a repository for records relating to the positive test results and test refusals of CMV operators and violations by such operators of prohibitions set forth in Part 382, Subpart B, of title 49, Code of Federal Regulations. An employer utilizes the Clearinghouse to determine whether current and prospective employees have incurred a drug or alcohol program violation that would prohibit them from performing safety-sensitive functions, including operating a CMV.

The Clearinghouse provides FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV and ensure that such drivers receive the required evaluation and treatment before resuming safety-sensitive functions. Specifically, information maintained in the Clearinghouse will ensure that drivers who commit a drug or alcohol program violation while working for one employer and attempt to find work with another employer, can no longer conceal their drug and alcohol violations merely by moving on to the next job or the next state. Drug and alcohol violation records maintained in the Clearinghouse will follow the driver regardless of how many times he or she changes employers, seeks employment, or applies for a CDL in a different State.

The information in the Clearinghouse is used by FMCSA and its State partners for enforcement purposes:

- Ensure employers are meeting their pre-employment investigation and reporting requirements.

• Place drivers out of service if drivers are found to be operating a CMV without completing the RTD process.

• Ensure medical review officers (MROs) and substance abuse professionals (SAPs) meet their reporting requirements.

Only authorized users, including employers and their service agents, and Federal and State enforcement personnel and State Driver Licensing Agencies (SDLAs) may register and access the Clearinghouse for designated purposes. State enforcement personnel may also receive the driver's eligibility status to operate a CMV, based on Clearinghouse information, when they check Query Central, the Commercial Driver's License Information System, or The National Law Enforcement Telecommunications System (NLets) for driver information. The FMCSA will share a driver's drug and alcohol violation information with the National Transportation Safety Board when it is investigating a crash involving that driver.

Drivers may access their own information, but not information of other drivers. The Clearinghouse meets all relevant federal security standards and FMCSA continuously monitors compliance with applicable security regulations.

Title: Commercial Driver's License Drug and Alcohol Clearinghouse.

OMB Control Number: 2126–0057.

Type of Request: Renewal of a currently approved information collection.

Respondents: Motor carriers (employers), drivers, MROs, SAPs, consortia/third-party administrators (C/TPAs), and SDLAs.

Estimated Number of Respondents: 10,289,839.

Estimated Time per Response: Varies; 10 to 20 minutes.

Expiration Date: February 28, 2023.

Frequency of Response: On occasion.

A user's role will determine the frequency of the response in the Clearinghouse.

• Employers, or C/TPAs acting on behalf of an employer: at a minimum, employers are required to query the Clearinghouse for each driver they currently employ at least once a year. Employers must query the Clearinghouse for all prospective employees, as needed. In addition, employers report to the Clearinghouse alcohol confirmation tests with a concentration of 0.04 or higher, refusal to test (alcohol), refusal to test (drug) that is not determined by an MRO, and actual knowledge of violations, negative RTD testing, and completion of the follow-up testing plan. Employer reporting must be completed by the close of the third business day following the date they obtained the information on a driver.

• *MROs:* verified positive, adulterated or substituted drug test result and refusals to tests (drug) must be entered to the Clearinghouse on occasion, but no later than two business days after making a determination or verification.

• *SAPs:* must enter the initial assessment date and the date the driver successfully complied with RTD requirements. SAPs are required to enter this information on occasion by the close of business day following the date of the initial assessment or completion of the RTD process.

• SDLAs may query the Clearinghouse prior to specified licensing transactions to determine if there are existing drug or alcohol program violations.

• Drivers must provide their specific consent to pre-employment queries electronically through the Clearinghouse.

Estimated Total Annual Burden: 1,761,149.

Estimated Total Number Respondents: 10,289,839.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on:

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–23981 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2022–0011]

Agency Information Collection Activities; Notice and Request for Comment; Record Retention

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: This is a reinstatement of a previous approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and approval. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 20, 2022. No comments were received.

DATES: Comments must be submitted on or before December 5, 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 Paul Simmons, Office of Defect Investigation (NEF–110), (202) 366–2315, National Highway Traffic Safety Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, email *paul.simmons@dot.gov.* Please identify the relevant collection of information by referring to its OMB Control Number 2121–0042.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

Title of Collection: Record Retention—49 CFR part 576.

OMB Control Number: 2127–0042.

Form Numbers(s): N/A.

Type of Request: This is a reinstatement of a previous approved Information Collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years.

Summary of the Collection of Information

Under 49 U.S.C. 30166(e), NHTSA ''reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor or dealer to make reports, to enable [NHTSA] to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed under this chapter.''

To ensure that NHTSA will have access to this type of information, the agency exercised the authority granted in 49 U.S.C. 30166(e) and promulgated 49 CFR part 576 Record Retention, initially published on August 20, 1974 and most recently amended on July 10, 2002 (67 FR 45873), requiring manufacturers to retain one copy of all records that contain information concerning malfunctions that may be related to motor vehicle safety for a period of five calendar years after the record is generated or acquired by the manufacturer. Manufacturers are also required to retain for five years the underlying records related to early warning reporting (EWR) information submitted under 49 CFR part 579. The information collections support NHTSA's mission by increasing the effectiveness of NHTSA's investigations into potential safety related defects.

Description of the Need for the Information and Proposed Use of the Information

The records that are required to be retained per 49 CFR part 576 are used to promptly identify potential safety-related defects in motor vehicles and motor vehicle equipment in the United States. When a trend in incidents arising from a potentially safety-related defect is discovered, NHTSA relies on this information, along with other agency data, to determine whether or not to open a formal defect investigation (as authorized by Title 49 U.S.C. chapter 301—Motor Vehicle Safety). NHTSA normally becomes aware of possible safety-related defects because it receives consumer complaints.

Agency experience has shown that manufacturers receive significantly more consumer complaints than does the agency. This is because the consumer with the product does not know whether their particular vehicle or equipment has a problem that is common with an entire group of vehicles or equipment. Whereas consumers know the manufacturer of their vehicle or equipment, relatively few know how to file a complaint with the National Highway Traffic Safety Administration's Auto Safety Hotline. The complaints filed with the manufacturer give the agency a fair indication of how widespread the potential problem may be.

If the manufacturer did not retain its records, NHTSA would be unable to enforce the statutory requirements that the manufacturer notify the agency and other persons of a safety-related defect when the manufacturer ''learns'' of the defect, and notify the agency and other persons of a noncompliance when it ''decides in good faith'' that the noncompliance exists. Without access to the manufacturer's records, it would be impossible for anyone other than the manufacturer to show when or if that manufacturer had obtained knowledge of a potential defect or had determined in good faith that the noncompliance did or did not exist. Without access to manufacturers' records, NHTSA's examinations of potential defects and non-compliances would be seriously handicapped. NHTSA could conduct surveys of vehicle owners or use other means to learn of problems with vehicles and equipment, but any of these other methods would require significantly more information collections by the agency and necessitate a larger staff of the agency's Office of Defect Investigations.

60-Day Notice: A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on July 20, 2022. No comments were received.

Affected Public: Manufacturers of motor vehicles and motor vehicle equipment.

Estimated Number of Respondents: 1,030.

NHTSA estimates that approximately 1,030 manufacturers of vehicles and equipment (including tires, child restraint systems and trailers) are required to maintain records under Part 576.

Frequency: As needed.

Number of Responses: 1,030.

Estimated Total Annual Burden Hours: 40,225.

NHTSA estimates the total annual burden for each vehicle, tire, and child restraint manufacturer to be 40 hours for a subtotal of 40,200 hours (1,005 respondents × 40 hours). In addition, there are approximately 23,660 equipment manufacturers (excluding tires, child seat restraint systems and trailer manufacturers) whose record retention requirements under part 576 are limited to the documents underlying their part 579 reporting requirements. Their part 579 requirements include only the reporting of incidents involving deaths. Therefore, based on the number of death reports submitted to date by these equipment manufacturers, we estimate that an additional 25 equipment manufacturers have record retention requirements imposed by part 576. We estimate that it will take one hour each to maintain the necessary records each year for a subtotal burden of 25 hours (25 respondents × one hour). Accordingly, NHTSA estimates that the total annual burden hours is 40,225 hours ((1,005 respondents × 40 hours) + (25 respondents × 1 hour)).

To calculate the labor cost associated with maintaining, NHTSA looked at wage estimates for the type of personnel involved with compiling and submitting the documents. NHTSA estimates the total labor costs associated with these burden hours by looking at the average wage for clerical workers. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for office clerks (BLS Occupation code 43–9061) in the Motor Vehicle Manufacturing Industry is $20.98.[1] The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.2% of total labor compensation costs.[2] Therefore, NHTSA estimates the hourly labor costs to be $29.89 and NHTSA estimates the total labor cost associated with the 40,225 burden hours to be $1,202,325.25. Table 1 provides a summary of the estimated burden hours and labor costs associated with those submissions.

[1] May 2020 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100—Motor Vehicle Manufacturing, available at *https://www.bls.gov/oes/2020/may/naics4_336100.htm#43-0000* (accessed March 25, 2022).

[2] *See* Table 1. Employer Costs for Employee Compensation by ownership (Mar. 2020), available at *https://www.bls.gov/news.release/archives/ecec_06182020.pdf* (accessed March 25, 2022).

TABLE 1—BURDEN ESTIMATES

Annual responses	Estimated burden per response (hours)	Average hourly labor cost	Labor cost per response	Total burden hours	Total labor costs
1,030	39.05	$29.89	$1,167.31	40,225	$1,202,325.25

Estimated Total Annual Burden Cost: $0.

NHTSA estimates that there are no costs resulting from this collection of information other than labor costs associated with the burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, *as amended;* 49 CFR 1.49; and DOT Order 1351.29A.

Stephen A. Ridella,

Director, Office of Defects Investigation.

[FR Doc. 2022–24032 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–2022–0131; Notice No. 2022–16]

Hazardous Materials: Public Meeting Notice for the Research, Development & Technology Virtual Forum

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety (OHMS) will hold a public Research, Development & Technology Forum on December 1, 2022, virtually on Microsoft Teams (MS Teams) to present the results of recently completed projects, brief new project plans, and obtain stakeholder input on the direction of current and future research projects on topics including mitigation of climate change, risk management and mitigation, packaging integrity, emerging technology, and technical analysis to aid risk assessment.

DATES: December 1, 2022, from 9 a.m. to 4 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held virtually on MS Teams.

Registration: DOT requests that attendees pre-register for these meetings by completing the form, at: *https://forms.office.com/g/NPs7v18VmL.*

Conference call-in and ''live meeting'' capability will be provided.

Specific information about conference call-in and live meeting access will be posted at: *https://www.phmsa.dot.gov/research-and-development/hazmat/rd-meetings-and-events* under ''Upcoming Events.''

FOR FURTHER INFORMATION CONTACT: Andrew Leyder, Research, Development & Technology, *Andrew.Leyder@dot.gov,* (202) 360–0664, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC.

SUPPLEMENTARY INFORMATION: During the meeting, OHMS will solicit comments related to new research topics that may be considered for inclusion in its future work. OHMS is particularly interested in the research gaps associated with the characterization and transportation of energetic materials (explosives), safe transportation of energy products (*e.g.,* crude oil), safe containment and transportation of compressed gases, and safe packaging and transportation of charge storage devices (*e.g.,* lithium ion batteries), and how these might aid in mitigation of climate change. The forum will also include an opportunity for stakeholder input that identifies other research gaps related to the transportation of hazardous materials.

Issued in Washington, DC, on October 31, 2022.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2022–23980 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No: PHMSA–2022–0009]

Pipeline Safety: Information Collection Activities: Natural Gas Distribution Infrastructure Safety and Modernization Grant Program

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the information collection request abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** notice with a 60-day comment period soliciting comments on the information collections was published on June 16, 2022.

DATES: Interested persons are invited to submit comments on or before December 5, 2022.

ADDRESSES: The public is invited to submit comments regarding these information collection requests, including suggestions for reducing the burden, to Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments can also be submitted electronically at *www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–680–2034 or by email at *angela.hill@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 5, Code of Federal Regulations (CFR) section 1320.8(d), requires the Pipeline and Hazardous Materials Safety Administration (PHMSA) to provide interested members of the public and

affected agencies the opportunity to comment on information collection and recordkeeping requests before they are submitted to OMB for approval. In accordance with this regulation, on June 16, 2022, PHMSA published a **Federal Register** notice (87 FR 36374) with a 60-day comment period soliciting comments on its intent to request OMB's three-year approval of an information collection titled: ''The Natural Gas Distribution Infrastructure Safety and Modernization Grant Program'' under OMB Control No. 2137–0641.

During the 60-day comment period, PHMSA received comments from the American Public Gas Association (APGA), the Distribution Contractors Association (DCA), and the Plastics Pipe Institute (PPI). Both DCA and PPI submitted comments in general support of the information collection. APGA likewise expressed support for this information collection request in that it facilitates the distribution of allocated grant dollars. APGA also provided comments on various aspects of the information collection request. The comments, organized by topic, are summarized and addressed below.

II. Comment Summary

A summary of comments and PHMSA responses are detailed below.

A. Estimated Burden

APGA commented that due to the highly technical and granular data required to complete the grant application, the actual burden hours exceeded PHMSA's 82-hours' estimate. Specifically, APGA stated ''[d]ue to the quantity of highly technical and granular data required in this application, it has been the experience of APGA members that the application takes more than 82 hours to complete. This is especially true during the first iteration of the application. The application expands beyond routine pipeline safety, design, construction, and integrity management questions to include areas of less familiarity with the average applicant. Many have had to rely upon subject matter experts in the areas of grant writing, environmental mitigation strategies, and cyber security guidelines.'' APGA estimated that the average initial application required nearly 200 hours to complete. PHMSA agrees that the application requires a variety of meticulous details that may take additional time to collect in order to properly prepare an application that complies with the Notice of Funding Opportunity (NOFO). PHMSA also believes that future rounds of NGDISM NOFOs will require less time given the number of frequently asked questions (FAQs) that are now available as well as PHMSA's intention to incorporate many of APGA's suggested edits in future NOFO iterations. As such, PHMSA has agreed to increase the estimated burden to 32,000 hours, for an average of 160 hours per applicant.

B. Technical Issues With Unique Entity Identifier and Grants.gov

APGA commented that their members experienced frustration during the process of obtaining a Unique Entity Identifier through *SAM.gov* and with changing the settings in *Grants.gov* to complete the application. APGA acknowledged that these areas are outside of PHMSA's control. PHMSA acknowledges that many applicants experienced technical issues with these two government sites and recommends applicants utilize the *Grants.gov* and *SAM.gov* helpdesks to resolve any future technical issues. For issues with *Grants.gov*, applicants can call 1–800–518–4726 or email *support@grants.gov.* For issues with *SAM.gov*, applicants can call 866–606–8220 or create an incident ticket with the Federal Service Desk at the following website: *www.fsd.gov.* Although PHMSA stands ready to provide any assistance it can, all applicants are ultimately responsible for working directly with both *SAM.gov* and *Grants.gov* to resolve technical issues.

C. Suggestions To Enhance the Quality, Utility, and Clarity of the Collected Information

APGA provided PHMSA with specific comments on various aspects of the NOFO's Project Narrative requirements. In response to APGA, PHMSA will take their comments into consideration when drafting future NOFOs for this grant program. Summaries of the APGA comments, per section of the NOFO, are detailed below.

1. Explanation of Evaluation and Select Criteria Equivalence

APGA suggested that Section 8 of the Project Narrative either be removed or modified as it is largely duplicative of other sections, adds unnecessary burden on applicants, and further constrains applicants' ability to provide complete answers given the page requirements. APGA suggested if PHMSA chooses to keep this section, PHMSA should clarify whether applicants are expected to go through each of the 23 elements in Section E.1 and reiterate their responses, or whether other content is being requested.

2. Project Narrative Cover Letter

APGA commented that the ''Organization Name'' section of the cover letter section requested information that is confusing given the goal of the NGDISM Grant Program. APGA suggested PHMSA modify the language for clarity.

3. Project Location

APGA commented that not all projects are geospatially specific and that this element should be broadened to include the replacement of assets throughout a service area or the purchase of equipment.

4. Project Schedule

APGA commented that many applicants were in the early stages of project design when applying for a grant and exact project schedules and milestones may not have been available at the time of application. APGA suggested that PHMSA edit the language in this section for clarity. APGA also suggested generally referring to the period-of-performance to ensure consistency during future application years should the period-of-performance change.

5. Environmental Outputs and Objectives

APGA commented that applicants may find it helpful for PHMSA to provide examples of how applicants should describe methane mitigation for their projects, whether in the form of application instructions or in an FAQ document.

6. Buy America

APGA commented that there are many commonly used materials throughout natural gas distribution systems that are known to be non-compliant with the Buy America requirements in Section 70914 of the Infrastructure Investment and Jobs Act, such as large steel fittings and piping. APGA encourages PHMSA to explore creating a specific waiver for those materials for all NGDISM grant recipients.[1]

7. Critical Infrastructure Security and Resilience

APGA suggested referencing the Transportation Security Administration's Pipeline Security Guidelines in lieu of the Presidential Policy Directive. APGA believes these guidelines are more specific to the

[1] While the IIJA's Buy America requirements apply to this program, the Buy American Act (41 U.S.C. 8301, *et seq.*) does not apply to this program.

pipeline industry and are more practical for implementation.

8. Environmental Analysis

APGA commented that it is unclear if PHMSA is requesting applicants provide information concerning the nine sections of the Tier 2 Questionnaire in their initial applications. The information appears to be provided for information and planning purposes only. Therefore, for clarity, APGA recommended that it is moved to a separate section of the instructions.

III. Summary of Impacted Collections

The following information is provided for the information collection request: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a three-year term of approval for this information collection. PHMSA requests comments on the following information:

Title: Natural Gas Distribution Infrastructure Safety and Modernization Grant Program.

OMB Control Number: 2137–0641.

Current Expiration Date: 11/30/2022.

Type of Request: Extension of an approved information collection.

Abstract: This information collection covers the collection of applicant data from municipality- and community-owned utilities that are interested in applying to receive funds from the NGDISM Grant Program. Solicitation for grants under the NGDISM Grant Program is voluntary. No eligible entity is required to apply. To be eligible, however, municipality- and community-owned utilities must meet all the requirements set forth in the law. Therefore, PHMSA must collect certain information from applicants to determine eligibility and evaluate applications. PHMSA must also verify the accuracy of grant requests from approved applicants, in accordance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and other laws and regulations governing Federal financial assistance programs, including (but not limited to) the Anti-Deficiency Act, the Federal Funding Accountability and Transparency Act (FFATA), the Payment Integrity Information Act of 2019, and 2 CFR part 200, among others. This information collection also covers the collection of data from grant recipients. PHMSA expects to receive approximately 200 applications from potential grantees annually over the next four years. PHMSA estimates that it will take the 200 applicants approximately 160 hours per applicant to compile and submit the forms required to complete the application process for an annual burden of 32,000 hours. PHMSA estimates that 100 grant recipients will, on eight occasions over the course of one year, spend 2.5 hours, or 20 hours annually, submitting post-award reports for an annual burden of 2,000 hours. Therefore, PHMSA estimates that there will be a total of 1,000 responses (200 applications plus 800 post-award reports) for an aggregate total annual burden for the information collection of 34,000 hours (32,000 hours for applications plus 2,000 hours for post-award reports).

Affected Public: Municipality- and Community-owned Utilities.

Annual Burden:

Estimated number of responses: 1,000.

Estimated annual burden hours: 34,000.

Frequency of Collection: One-time application, grant reports no more than quarterly, to be followed by disbursement requests and closeout.

Comments are invited on:

(a) The need for this information collection 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;

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques; and,

(e) Additional information that would be appropriate to collect to inform the reduction in risk to people, property, and the environment due to excavation damages.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Issued in Washington, DC, on October 31, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–24068 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2019–0028]

Notice of Request for Clearance of a Revision of a Currently Approved Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), DOT.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for new iterations of an on-going biennial information collection related to the nation's ferry operations. The information collected from each Census will be used to produce a descriptive database of existing ferry operations. A summary report of census findings will also be published by BTS on the BTS web page: *www.bts.gov/ncfo.*

DATES: Comments must be submitted on or before December 5, 2022.

FOR FURTHER INFORMATION CONTACT: Clara Reschovsky, (202) 768–4994, NCFO Program Manager, BTS, OST–R, Department of Transportation, 1200 New Jersey Ave. SE, Room E36–324, Washington, DC 20590. Office hours are from 8:00 a.m. to 5:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Census of Ferry Operators (NCFO).

Type of Request: Approval modifications to an existing information collection.

Affected Public: There are approximately 250 ferry operators nationwide.

Abstract: In 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions; and (4)

potential for use of high speed ferry services and alternative-fueled ferry services. In 2005, the Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Public Law 109–59, section 1801(e)) required that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful. In 2012, MAP–21 legislation [Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141),] continued the BTS mandate to conduct the NCFO and also required that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds. The funding allocations were based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served. In 2015, the FAST Act legislation [Fixing America's Surface Transportation Act (Pub. L. 114–94, sec. 1112)] continues the BTS mandate to conduct the NCFO on a biennial basis, and extended the requirement that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds as required in MAP–21.

BTS conducted the first National Census of Ferry Operators in 2006. The Census was conducted again in 2008, 2010, 2014, 2016, 2018, and 2020. Preparations are already underway for the next census in 2023. The 2022 NCFO was delayed by one year since ferry operations were disrupted by the pandemic and the census data should collect typical data. The overall length of the revised questionnaire for the 2022 NCFO will remain consistent with that of previous years. These information collections were originally approved by OMB under Control Number 2139–0009. The overall length of the questionnaire for the 2022 NCFO will remain consistent with that of previous years.

The census will be administered to the entire population of ferry operators (estimate 250 or less). The census will request the respondents to provide information such as: the points served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), federal, state and local funding sources, and intermodal connectivity. All data collected in 2020 will be added to the existing NCFO database.

Data Confidentiality Provisions: The National Census of Ferry Operators may collect confidential business information. The confidentiality of these data will be protected under 49 CFR 7.29. In accordance with this regulation, only statistical and non-sensitive business information will be made available through publications and public use data files. The statistical public use data are intended to provide an aggregated source of information on ferry boat operations nationwide. Business sensitive information may be shared with FHWA to support FAST Act funding allocations.

Frequency: This census will be updated every other year.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 30 minutes. This average is based on an estimate of 20 minutes to answer questions that require answers specific to that year and an additional 10 minutes to review (and revise as needed) previously submitted data that will be pre-populated for each ferry operation.

Estimated Total Annual Burden: The total annual burden (in the year that the census is conducted) is estimated to be 125 hours (that is 30 minutes per respondent for 250 respondents equals 7,500 minutes).

Response to Comments: A 60-day notice requesting public comment was issued in the **Federal Register** on September 1, 2022. No comments were received.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW, Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC, on this 1st day of November, 2022.

Cha-Chi Fan,

Director, Office of Data Development and Standards, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2022–24034 Filed 11–3–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request: Renewal Without Change of Information Collection Requirements in Connection With the Imposition of a Special Measure Concerning North Korea as a Jurisdiction of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of a continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, to information collection requirements finalized on November 9, 2016, imposing a special measure with respect to North Korea as a jurisdiction of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before January 3, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2022–0009 and the specific Office of Management and Budget (OMB) control number 1506–0071.
- *Mail:* Global Investigations Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2022–0009 and OMB control number 1506–0071.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 (PRA) and applicable OMB regulations and guidance. Comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 1–800–767–2825 or electronically at *https://www.fincen.gov/contact*.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and

Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act).[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and it includes notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[2] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[3]

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take one or more ''special measures.''

Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to impose prohibitions or conditions on the opening or maintenance of certain correspondent accounts. Special measures are safeguards that protect the U.S. financial system from money laundering and terrorist financing.

FinCEN issued the final rule imposing the fifth special measure to prohibit U.S. financial institutions from opening or maintaining correspondent accounts for, or on behalf of, North Korean banking institutions.[4] The rule requires that U.S. financial institutions take reasonable steps to not process transactions through the correspondent account of a foreign bank in the United States, if such transactions involve a North Korean financial institution, and requires institutions to apply special due diligence to guard against the use of correspondent accounts by North Korean financial institutions. See 31 CFR 1010.659.

U.S. financial institutions are required under 31 CFR 1010.659(b)(3)(i)(A) to notify holders of their foreign correspondent accounts that they may not provide North Korean financial institutions with access to such accounts. The requirement is intended to ensure cooperation from correspondent account holders in denying North Korea access to the U.S. financial system. U.S. financial institutions are required under 31 CFR 1010.659(b)(4)(i) to document compliance with the notification requirement. The information is used by federal agencies and certain self-regulatory organizations to verify compliance with 31 CFR 1010.659.

II. Paperwork Reduction Act (PRA)[5]

Title: Information Collection Requirements in Connection With the Imposition of a Special Measure Concerning North Korea as a Jurisdiction of Primary Money Laundering Concern.

OMB Control Number: 1506–0071.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the imposition of a special measure against North Korea as a jurisdiction of primary money laundering concern pursuant to the authority contained in 31 U.S.C. 5318A. See 31 CFR 1010.659.

Type of Review: Renewal without change of a currently approved collection.

Affected Public: Businesses or other for-profit institutions, and not-for-profit institutions.

Frequency: One time notification and recordkeeping associated with the notification. See 31 CFR 1010.659(b)(3)(i)(A) and 1010.659(b)(4)(i).

Estimated Number of Respondents: 16,588.

Respondent Financial Institutions by Category

Type of Institution	Count
Banks, savings associations, thrifts, trust companies[1]	5,264
Credit Unions[2]	5,157
Broker-dealers[3]	3,527
Mutual funds[4]	1,591
Futures commission merchants and introducing brokers in commodities[5]	1,049
Total	16,588

[1] All counts are from the Financial Institution Data Retrieval System (FINDRS) (accessed Aug. 25, 2022) for Q2 2022. These counts include entities without a Federal functional regulator.

[2] All counts are from the Financial Institution Data Retrieval System (FINDRS) (accessed Aug. 25, 2022) for Q2 2022. These counts include entities without a Federal functional regulator.

[3] According to numbers provided by the SEC, there are 3,526 brokers or dealers in securities as of the end of fiscal year 2021 (*see* SEC, *Fiscal Year 2023 Congressional Budget Justification,* p. 33, *https://www.sec.gov/files/FY%202023%20Congressional%20Budget%20Justification%20Annual%20Performance%20Plan_FINAL.pdf*).

[4] This is consistent with estimates in the 2018 notice to renew OMB control number 1506–0033 (83 FR 46011 (Sept. 11, 2018)).

[5] As of September 30, 2022, the Commodity Futures Trading Commission stated there are 60 futures commission merchants and 989 introducing brokers in commodities, totaling 1,049.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden: 16,588 hours.

When the final rule was published in November 2016, the number of U.S. financial institutions affected by the rule was estimated at 5,000. FinCEN has since revised the estimated number of affected U.S. financial institutions upward to account for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks. There are approximately 16,588 such financial institutions doing business in the United States.

Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

[1] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat 3388 (2021).

[2] Section 358 of the USA PATRIOT Act expanded the purpose of the BSA, by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act added language that expanded the purpose of the BSA even further, to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing.

[3] Treasury Order 180–01 (reaffirmed Jan. 14, 2020). Therefore, references to the authority of the Secretary of the Treasury under Section 311 of the USA PATRIOT Act apply equally to the Director of FinCEN.

[4] FinCEN, *Final Rule—Imposition of Special Measures Against North Korea as a Jurisdiction of Primary Money Laundering Concern,* 81 FR 78715, (Nov. 9, 2016).

[5] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

Request for Comments

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments submitted in response to this notice will be summarized and/or included in a request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs, cost of operation and maintenance, and cost involved in purchasing services.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2022–24050 Filed 11–3–22; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On November 1, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ADEN, Mahad Isse (a.k.a. AADAN, Mahad Ciise; a.k.a. ADAN, Mahad Isse; a.k.a. MUHAMMAD, Mahad Cise; a.k.a. ''LABOBALLE''), Bosaso, Somalia; Qandala, Somalia; DOB 1949; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ISIS–SOMALIA).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS–SOMALIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. ISSE MOHAMUD, Abdirahman Fahiye (a.k.a. 'ISA, Abd-al-Rahman Fahiye; a.k.a. ''ADEN, Ahmed''; a.k.a. ''AL–SHARQAWI, Shaykh Abu-Mus'ab''; a.k.a. ''FAHIYE, Abdirahman''), Somalia; DOB 1985; POB Bosaso, Somalia; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ISIS–SOMALIA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS–SOMALIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. MOHAMED, Liibaan Yousuf (a.k.a. MOHAMED, Liban Yusuf; a.k.a. ''DHEERE, Liban''), Puntland, Somalia; Yaqshid District, Mogadishu, Somalia; DOB 1978; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ISIS–SOMALIA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS–SOMALIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. OMAR, Abdirahman Mohamed (a.k.a. CUMAR, Cabdi Maxamed; a.k.a. CUMAR, Cabdiraxman Maxamed; a.k.a. DHUFAAYE, Cabdi Muhammad; a.k.a. ''DHOFAYE''; a.k.a. ''DHOOFAYE''; a.k.a. ''OMAR, Abdi Mohamed''), Bosaso, Somalia; DOB 1962; POB Bosaso, Somalia; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ISIS–SOMALIA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS–SOMALIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. OMAR, Ahmed Haji Ali Haji (a.k.a. ''ALI, Ahmed Omar''; a.k.a. ''ALI, Ahmed Omer Haji''; a.k.a. ''BEERDHAGAX''; a.k.a. ''BEERDHEGHAX''; a.k.a. ''BERDAGAX''; a.k.a. ''BEER DHAGAH''), Bosaso, Bari, Somalia; DOB Jun 1974; POB Alula District, Bari, Puntland, Somalia; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ISIS–SOMALIA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS–SOMALIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

6. QAHIYE, Mohamed Ahmed, Mozambique; Puntland, Somalia; DOB 1989; alt. DOB 1990; alt. DOB 1991; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ISIS–SOMALIA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIS–SOMALIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. YUSUF, Isse Mohamoud (a.k.a. YUSUF, Isse Mohamed; a.k.a. ''YULLUX''; a.k.a. ''YULUH, Issa''; a.k.a. ''YULUH, Isse''; a.k.a. ''YULUX, Isse''), Timirshe, Bari, Puntland, Somalia; Qandala, Somalia; DOB 1966; POB Timirshe, Bari, Puntland, Somalia; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ISIS–SOMALIA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided

financial, material, or technological support for, or goods or services to or in support of, ISIS–SOMALIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

8. BAKR, Osama Abdelmongy Abdalla (a.k.a. BAKR, Osama Abd Elmongy Abdalla; a.k.a. BAKR, Osama Abdelmongy Abdallah; a.k.a. BAKR, Osama Ebdelmongy Abdalla), Rua Joaquim Nabuco 15, Alto Parana, Parana 87750–000, Brazil; DOB 08 Sep 1968; POB Port Said, Egypt; nationality Egypt; alt. nationality Brazil; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number V356783–K (Brazil); alt. Identification Number 83423818034 (Brazil); alt. Identification Number 07229181914 (Brazil); alt. Identification Number 154564654 (Brazil) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

OFAC also published the following revised information for the entry on the SDN List for the following entity, whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

Entity

1. LIIBAAN GENERAL TRADING CO. (a.k.a. AL–LIIBAAN GENERAL TRADING CO.; a.k.a. LIBAN TRADING; a.k.a. LIIBAAN TRADING; a.k.a. LIIBAN TRADING), Bosaso, Somalia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 14(RV. NO: 103100149) (Somalia) [SDGT] (Linked To: YUSUF, Mohamed Mire Ali; Linked To: MOHAMED, Liibaan Yousuf). Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Liibaan Yousuf MOHAMED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: November 1, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–24052 Filed 11–3–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 26, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals:

1. PLAHOTNIUC, Vladimir, Cyprus; DOB 01 Jan 1966; POB Moldova; nationality Moldova; alt. nationality Romania; Gender Male; Passport AA1203658 (Moldova); alt. Passport 054038242 (Romania); National Foreign ID Number 0962706018030 (Moldova) (individual) [GLOMAG].

   Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. GONIN, Leonid Mikhailovich (Cyrillic: ГОНИН, Леонид Михайлович), Izhevsk, Russia; DOB 06 Aug 1963; POB Payzal, Udmurt Republic, Russia; nationality Russia; Gender Male; Passport 71 1600237 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(ii)(B) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in interference in a United States or other foreign government election for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

3. GRAK, Olga Yurievna (Cyrillic: ГРАК, Ольга Юрьевна), Kaliningrad, Russia; DOB 13 May 1973; POB Kaliningrad, Russia; nationality Russia; Gender Female; Passport 71 9823288 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(ii)(B) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in interference in a United States or other foreign government election for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

4. GUDILIN, Yuriy Igorevich (Cyrillic: ГУДИЛИН, Юрий Игоревич), Moscow, Russia; DOB 18 Jun 1983; POB Lviv, Ukraine; nationality Russia; citizen Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(ii)(B) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in interference in a United States or other foreign government election for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

5. SHOR, Ilan Mironovich, Israel; DOB 06 Mar 1987; POB Tel Aviv, Israel; nationality Moldova; alt. nationality Israel; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(ii)(B) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in interference in a United States or other foreign government election for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

6. SHOR, Sara Lvovna (a.k.a. MANAKHIMOVA, Sara Lvovna; a.k.a. SHORE, Jasmine; a.k.a. "ZHASMIN" (Cyrillic: "ЖАСМИН")), Russia; DOB 12 Oct 1977; POB Russia; nationality Russia; Gender Female; Passport 752329813 (Russia); National ID No. 4611519895 (Russia) (individual) [RUSSIA-EO14024] (Linked To: SHOR, Ilan Mironovich).

   Designated pursuant to section 1(a)(v) of E.O. 14024 for being the spouse or adult child of Ilan Mironovich Shor, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. CHAYKA, Igor Yuryevich (Cyrillic: ЧАЙКА, Игорь Юрьевич) (a.k.a. CHAIKA, Igor Yuryevich; a.k.a. "IFYAU9" (Cyrillic: "ЙФЯАУ9")), Russia; DOB 13 Dec 1988; nationality Russia; citizen Russia; Gender Male; Tax ID No. 770302172306 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(v) of E.O. 14024 for being the spouse or adult child of Yury Yakovlevich Chaika, a person whose property and interests in property are blocked pursuant to E.O. 14024.

   Also designated pursuant to section 1(a)(ii)(B) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in interference in a United States or other foreign government election for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

8. TROSHIN, Aleksei Valeryevich (Cyrillic: ТРОШИН, Алексей Валерьевич), Russia; DOB 09 Dec 1980; nationality Russia; citizen Russia; Gender Male; Passport 720397581 (Russia); Tax ID No. 781712817387 (Russia) (individual) [RUSSIA-EO14024] (Linked

To: AKTSIONERNOE OBSHCHESTVO NATSIONALNAYA INZHINIRINGOVAYA KORPORATSIYA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Aktsionernoe Obshchestvo Natsionalnaya Inzhiniringovaya Korporatsiya, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

9. ZAVOROTNYI, Ivan Aleksandrovich (Cyrillic: ЗАВОРОТНЫЙ, Иван Александрович), Russia; DOB 22 Oct 1979; nationality Russia; Gender Male; Tax ID No. 772205260688 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of OOO Innovatsii Sveta, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

Entities:

1. SHOR PARTY (a.k.a. PARTIDUL SOR; f.k.a. RAVNOPRAVIE), 36 Vasile Lupu Street, OF 326, Orhei, Moldova; Organization Established Date Jun 1998; Organization Type: Activities of political organizations [RUSSIA-EO14024] (Linked To: SHOR, Ilan Mironovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, Ilan Mironovich Shor, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. AKTSIONERNOE OBSHCHESTVO NATSIONALNAYA INZHINIRINGOVAYA KORPORATSIYA (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО НАЦИОНАЛЬНАЯ ИНЖИНИРИНГОВАЯ КОМПАНИЯ) (a.k.a. JOINT STOCK COMPANY NATIONAL ENGINEERING CORPORATION; a.k.a. "AO NIK" (Cyrillic: "АО НИК"); a.k.a. "JSC NEC"), d. 3 korp. 2 pom, 71-N, pl. Konstitutsii, St. Petersburg 196247, Russia; Organization Established Date 01 Oct 2014; Tax ID No. 7810942838 (Russia); Government Gazette Number 72473566 (Russia); Registration Number 1147847338902 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

3. OOO AGRO-REGION (Cyrillic: ООО АГРО-РЕГИОН) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU AGRO-REGION (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АГРО-РЕГИОН)), Ul. Babkina D. 5-A, Pom. 405, Khimki 141407, Russia; Organization Established Date 11 Mar 2016; Tax ID No. 5047181827 (Russia); Government Gazette Number 00568203

(Russia); Registration Number 1165047052752 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Ivan Aleksandrovich Zavorotnyi, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. OOO AQUA SOLID (Cyrillic: ООО АКВА СОЛИД) (a.k.a. OBSHSCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU AQUA SOLID (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АКВА СОЛИД); a.k.a. "AKVA SOLID"), d. 12 str. 1 pom. IV, kom. 9, ul. Rochdelskaya, Moscow 123022, Russia; Organization Established Date 07 May 2013; Tax ID No. 7703789367 (Russia); Registration Number 1137746403563 (Russia) [RUSSIA-EO14024] (Linked To: CHAYKA, Igor Yuryevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Igor Yuryevich Chayka, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. OOO BM PROEKT-EKOLOGIYA (Cyrillic: ООО БМ ПРОЕКТ-ЭКОЛОГИЯ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU BM PROEKT-EKOLOGIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БМ ПРОЕКТ-ЕКОЛОГИЯ)), d. 38A str. 23 etazh 3 pomeshch./kom. XIV/30, ul. Khutorskaya 2-Ya, Moscow 127287, Russia; Organization Established Date 05 Mar 2012; Tax ID No. 7715906903 (Russia); Government Gazette Number 38395627 (Russia); Registration Number 1127746150003 (Russia) [RUSSIA-EO14024] (Linked To: OOO KHARTIYA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, OOO Khartiya, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. OOO EKOGRUPP (Cyrillic: ООО ЭКОГРУПП) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSVENNOSTYU EKOGRUPP (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЭКОГРУПП)), Per. Novopresnenskii D. 3, Floor 1 Komn 9, Moscow 123577, Russia; Organization Established Date 18 Jun 2017; Tax ID No. 7703428593 (Russia); Government Gazette Number 15945657 (Russia); Registration Number 1177746569615 (Russia) [RUSSIA-EO14024] (Linked To: CHAYKA, Igor Yuryevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Igor

Yuryevich Chayka, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. OOO INNOVATSII SVETA (Cyrillic: ООО ИННОВАЦИИ СВЕТА) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU INOVATSII SVETA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИННОВАЦИИ СВЕТА); a.k.a. "LIGHT INNOVATIONS"), Ul. Rochdelskaya D. 12, Str. 1, Moscow 123022, Russia; Organization Established Date 27 May 2010; Tax ID No. 9709058222 (Russia); Government Gazette Number 66823252 (Russia); Registration Number 1107746435290 (Russia) [RUSSIA-EO14024] (Linked To: CHAYKA, Igor Yuryevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Igor Yuryevich Chayka, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. OOO INZHINIRING.RF (Cyrillic: ООО ИНЖИНИРИНГ.РФ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU INZHINIRING.RF (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ИНЖИНИРИНГ.РФ)), Per. Lyalin D. 19, K. 1 Et 2 Pom. XXIV Kom 11, Moscow 101000, Russia; Organization Established Date 27 Dec 2019; Tax ID No. 9709058222 (Russia); Government Gazette Number 42895614 (Russia); Registration Number 1197746755359 (Russia) [RUSSIA-EO14024] (Linked To: CHAYKA, Igor Yuryevich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Igor Yuryevich Chayka, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. OOO KHARTIYA (Cyrillic: ООО ХАРТИЯ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHARTIYA (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ХАРТИЯ)), Proezd Novoladykinskii D. 8B, Moscow 127106, Russia; Organization Established Date 13 Jun 2012; Tax ID No. 7703770101 (Russia); Government Gazette Number 09873971 (Russia); Registration Number 1127746462250 (Russia) [RUSSIA-EO14024] (Linked To: OOO EKOGRUPP).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, OOO Ekogrupp, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. OOO KOMPANIYA ZOLOTOI VEK (Cyrillic: ООО КОМПАНИЯ ЗОЛОТОЙ ВЕК) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTENNOSTYU KOMPANIYA ZOLOTOI VEK (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ

ОТВЕТСТВЕННОСТЬЮ КОМПАНИЯ ЗОЛОТОЙ ВЕК)), d. 15 str. 4 etazh 2 ofis 205, ul. Antonova-Ovseenko, Moscow 123317, Russia; Organization Established Date 11 Jul 2006; Tax ID No. 7704606859 (Russia); Government Gazette Number 96463331 (Russia); Registration Number 1067746801605 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Ivan Aleksandrovich Zavorotnyi, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. OOO MEZHMUNITSIPALNOE ATP (Cyrillic: ООО МЕЖМУНИЦИПАЛЬНОЕ АТП) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU MEZHMUNITSIPALNOE AVTOTRANSPORTNOE PREDPRIYATIE (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ МЕЖМУНИЦИПАЛЬНОЕ АВТОТРАНСПОРТНОЕ ПРЕДПРИЯТИЕ)), Ul. Melioratorov D. 10A, Udachny 152730, Russia; Organization Established Date 28 Mar 2017; Tax ID No. 7620006742 (Russia); Government Gazette Number 12982936 (Russia); Registration Number 1177627009801 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, OOO Khartiya, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. OOO REGION-COMFORT (Cyrillic: ООО РЕГИОН-КОМФОРТ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU REGION-COMFORT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РЕГИОН-КОМФОРТ)), Ul. Lenina D. 22A, Pomeshch. 2, Krasnogorsk 143409, Russia; Organization Established Date 09 Jul 2013; Tax ID No. 5024137677 (Russia); Government Gazette Number 50189050 (Russia); Registration Number 1135024004741 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, OOO Khartiya, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: October 26, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–24073 Filed 11–3–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Debt Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule and Third-Party Network Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning information reporting for debt instruments with original issue discount; contingent payments; anti-abuse rule.

DATES: Written comments should be received on or before January 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–1450—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Debt Instruments with OID; Contingent Payments; Anti-Abuse Rule.

OMB Number: 1545–1450.

Regulation Project Number: TD 8674.

Abstract: This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and state, local, or tribal governments.

Estimated Number of Respondents: 180,000.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 89,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 31, 2022.

Ronald J. Durbala,

IRS Tax Analyst

[FR Doc. 2022–23988 Filed 11–3–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; CDFI Certification Application

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 5, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

CDFI Fund

Title: CDFI Certification Application.

OMB Control Number: 1559–0028.

Type of Review: Revision of a currently approved collection.

Description: A Certified Community Development Financial Institution (CDFI) is a specialized financial institution that works in markets that are underserved by traditional financial institutions and provide a range of Financial Products and Financial Services in economically distressed Target Markets. CDFIs include regulated institutions such as community development banks and credit unions, and non-regulated institutions such as loan and venture capital funds. CDFI Certification is a designation conferred by the CDFI Fund and is a requirement for accessing various CDFI Fund programs. A financial institution seeking to become a Certified CDFI and qualify to apply for assistance from the

CDFI Fund must complete the CDFI Certification Application.

The CDFI Fund is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*) (the Act). The regulations governing CDFI Certification are found at 12 CFR. 1805.201 (the Regulations). The significance of CDFI Certification has increased over the years, as the CDFI Certification status has come to serve as a qualifier for other federal government and private sector resources and benefits. Beginning in January 2017, through the issuance of a Request for Information, the CDFI Fund sought to review and update the CDFI Certification policies and procedures to ensure they continue to meet the statutory and regulatory requirements, are responsive to the evolving nature of the CDFI industry, and protect government resources. In May 2020, the CDFI Fund requested public comment on proposed revisions to the Application and reporting requirements for Certified CDFIs. As a result of comments received during that public comment period, the CDFI Fund made additional revisions to the proposed Certification Application.

The revised certification policies and Application attempts both to provide the flexibility necessary for CDFIs to grow and to serve the hardest to reach distressed communities, and to maintain the integrity of what it means to be a certified CDFI from a mission perspective. In addition, where existing policy warranted changes, revisions were made to the Application and guidance to provide greater transparency and clarity around the criteria that entities must meet to obtain and maintain CDFI Certification.

Form: CDFI Certification Application.

Affected Public: Financial institutions.

Estimated Number of Respondents: 1,532.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 1,532.

Estimated Time per Response: 40 hours.

Estimated Total Annual Burden Hours: 61,280.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2022–24082 Filed 11–3–22; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

[TREAS–DO–2022–0011]

Agency Information Collection Activities; Proposed Collection; Comment Request; Capital Projects Fund Compliance Reporting

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before January 3, 2023.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by either of the following methods:

- Electronically through *https://www.regulations.gov* (preferred method): Search for Docket ID# TREAS–DO–2022–0011 and follow the instructions for submitting comments. Comments submitted electronically, including attachments will be posted to the docket unchanged.
- *Email: PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Coronavirus Capital Projects Fund.

OMB Control Number: 1505–0277.

Type of Review: Revision of a currently approved collection.

Description: Section 604 of the Social Security Act (the ''Act''), as added by section 9901 of the American Rescue Plan Act of 2021, Public Law 117–2 (Mar. 11, 2021) established the Coronavirus Capital Projects Fund (''CPF''). The CPF provides $10 billion in funding for the U.S. Department of the Treasury (''Treasury'') to make payments according to a statutory formula to States (defined to include each of the 50 states, the District of Columbia, and Puerto Rico), seven territories and freely associated states (the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), and Tribal governments [1] to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19).

The current information collection is being used to solicit information related to quarterly project and expenditure reports and annual performance reports submitted by CPF recipients that are states, territories, or freely associated states. For these recipients, the information collection is being renewed without changes.

Treasury is adding to this information collection Compliance and Reporting Guidance that will be used to solicit information related to annual project, expenditure and performance reports submitted by CPF recipients that are Tribal governments.

The Compliance and Reporting Guidance provides recipients with information needed to fulfill their reporting requirements and compliance obligations. Data is submitted to Treasury using a web-based portal and in accordance with specific data requirements.

Project and expenditure reports must be submitted quarterly for the duration of the period of performance for States, territories, and freely associated states, and annually for the duration of the period of performance for Tribal governments. The project and expenditure report contains a set of standardized questions to ascertain the recipient's use of funds received as of the date of reporting, as well as the status of individual projects. Treasury will make the data submitted by recipients publicly available.

Performance reports must be submitted annually for all recipients for the duration of the period of performance. For states, territories, and freely associated states, the performance report will contain detailed performance data corresponding to the ''Programs'' specified previously in a recipient's Grant Plan. This will include information on efforts to improve equity

[1] An eligible Tribal government is the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131). The State of Hawaii, for exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs to assist Native Hawaiians, is also eligible to apply for funding under this funding category.

and engage communities. The performance report is largely freely written text, and while there are certain data and topics that recipients must cover in the performance report, it is mostly free-form written content. Recipients are required to publish the performance report on their website and provide the reports to Treasury. Treasury will make the performance reports and associated data submitted by recipients publicly available. For Tribal governments, the performance report will also be free-form written content, but is shorter and less detailed.

Form: Compliance and Reporting Guidance for States, Territories, and Freely Associated States; Compliance and Reporting Guidance for Tribal Governments.

Affected Public: State, Territorial, Freely Associated State, and Tribal governments receiving CPF grant funds.

Estimated Number of Respondents: 609.

Frequency of Response: States, territories, and freely associated states: 4 times per year for project and expenditure reports, and 1 time per year for performance reports; Tribal governments: 1 time per year.

Estimated Total Number of Annual Responses: 845.

Estimated Time per Response: 62 hours for State project and expenditure reports. 80 hours for State performance reports. 50 hours for Tribal annual reports.

Estimated Total Annual Burden Hours: 46,852.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2022–24083 Filed 11–3–22; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 484

Medicare Program; Calendar Year (CY) 2023 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Program Requirements; Home Health Value-Based Purchasing Expanded Model Requirements; and Home Infusion Therapy Services Requirements; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1766–F]

RIN 0938–AU77

Medicare Program; Calendar Year (CY) 2023 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Program Requirements; Home Health Value-Based Purchasing Expanded Model Requirements; and Home Infusion Therapy Services Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule sets forth routine updates to the Medicare home health payment rates for calendar year (CY) 2023 in accordance with existing statutory and regulatory requirements. This final rule also finalizes a methodology for determining the impact of the difference between assumed versus actual behavior change on estimated aggregate expenditures for home health payments as result of the change in the unit of payment to 30 days and the implementation of the Patient Driven Groupings Model (PDGM) case-mix adjustment methodology and finalizes a corresponding permanent prospective adjustment to the CY 2023 home health payment rate. This rule finalizes the reassignment of certain diagnosis codes under the PDGM case-mix groups, and establishes a permanent mitigation policy to smooth the impact of year-to-year changes in home health payments related to changes in the home health wage index. This rule also finalizes recalibration of the PDGM case-mix weights and updates the low utilization payment adjustment (LUPA) thresholds, functional impairment levels, comorbidity adjustment subgroups for CY 2023, and the fixed-dollar loss ratio (FDL) used for outlier payments. Additionally, this rule discusses comments received on the future collection of data regarding the use of telecommunications technology during a 30-day home health period of care on home health claims.

This rule also finalizes changes to the Home Health Quality Reporting Program (HH QRP) requirements; changes to the expanded Home Health Value-Based Purchasing (HHVBP) Model; and updates to the home infusion therapy services payment rates for CY 2023.

DATES: These regulations are effective on January 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Brian Slater, (410) 786–5229, for home health and home infusion therapy payment inquiries.

For general information about home infusion payment, send your inquiry via email to *HomeInfusionPolicy@cms.hhs.gov.*

For general information about the Home Health Prospective Payment System (HH PPS), send your inquiry via email to *HomeHealthPolicy@cms.hhs.gov.*

For information about the Home Health Quality Reporting Program (HH QRP), send your inquiry via email to *HHQRPquestions@cms.hhs.gov.*

For more information about the expanded Home Health Value-Based Purchasing Model, please visit the Expanded HHVBP Model web page at *https://innovation.cms.gov/innovation-models/expanded-home-health-value-based-purchasing-model.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary and Advancing Health Information Exchange

A. Executive Summary

1. Purpose and Legal Authority

a. Home Health Prospective Payment System (HH PPS)

As required under section 1895(b) of the Social Security Act (the Act), this final rule updates the payment rates for HHAs for CY 2023. In addition, the rule recalibrates the case-mix weights under section 1895(b)(4)(A)(i) and (b)(4)(B) of the Act for 30-day periods of care in CY 2023; finalizes a methodology to determine the impact of differences between assumed behavior changes and actual behavior changes on estimated aggregate Medicare home health expenditures, in accordance with section 1895(b)(3)(D)(i) of the Act; finalizes a permanent payment adjustment to the CY 2023 30-day period payment rate; updates the case-mix weights, LUPA thresholds, functional impairment levels, and comorbidity subgroups for CY 2023; and updates the CY 2023 fixed-dollar loss ratio (FDL) for outlier payments (so that outlier payments as a percentage of estimated total payments are not to exceed 2.5 percent, as required by section 1895(b)(5)(A) of the Act). This final rule also discusses the comments received on the collection of data on the use of telecommunications technology from home health claims.

b. Home Health (HH) Quality Reporting Program (QRP)

This final rule finalizes the end of the suspension of the collection of Outcome and Assessment Information Set (OASIS) data from non-Medicare/non-Medicaid patients pursuant to section 704 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and requires HHAs to report all-payer OASIS data for purposes of the

HH QRP. In response to concerns raised by commenters on the burden associated with the proposed new data collection, we are finalizing that the new OASIS data reporting for the HH QRP will begin with the CY 2027 program year, with two quarters of data required for that program year. We are finalizing a phase-in period is in place for January 1, 2025 through June 30, 2025 in which failure to submit the data will not result in a penalty. We are finalizing as proposed regulatory text change that consolidates the statutory references to data submission. We are also finalizing as proposed the codification of the measure removal factors we adopted in the CY 2019 HH PPS final rule. Finally, this rule summarizes the comments we received in response to our Request for Information regarding health equity in the HH QRP.

c. Expanded Home Health Value Based Purchasing (HHVBP) Model

In accordance with the statutory authority at section 1115A of the Act, we are finalizing proposed policy updates, new definitions and modifications of existing definitions, conforming regulation text changes for the expanded Home Health Value-Based Purchasing (HHVBP) expanded Model. We also summarize the comments received on our request for comment on a potential future approach to health equity in the expanded HHVBP Model included in the proposed rule.

d. Medicare Coverage of Home Infusion Therapy

This final rule discusses updates to the home infusion therapy services payment rates for CY 2023 under section 1834(u) of the Act.

2. Summary of the Provisions of This Rule

a. Home Health Prospective Payment System (HH PPS)

In section II.B.2. of this rule, we are finalizing our proposed behavioral adjustment methodology to reflect the impact of differences between assumed behavior changes and actual behavior changes on estimated aggregate payment expenditures under the HH PPS. We are also finalizing a –3.925 percent permanent payment adjustment for CY 2023 (half of the proposed –7.85 percent adjustment), as we recognize the potential hardship of implementing the proposed full permanent adjustment in a single year. In section II.B.3 of this rule, we are finalizing the proposed reassignment of certain ICD–10–CM codes related to the PDGM clinical groups and comorbidity subgroups.

In section II.B.4. of this rule, we are finalizing the proposed recalibration of the PDGM case-mix weights, LUPA thresholds, functional levels, and comorbidity adjustment subgroups for CY 2023.

In section II.B.5. of this rule, we are finalizing our proposals to update the home health wage index, the CY 2023 national, standardized 30-day period payment rates, and the CY 2023 national per-visit payment amounts by the home health payment update percentage. The final home health payment update percentage for CY 2023 will be 4.0 percent. This rule also finalizes a permanent 5-percent cap on wage index reductions in order to smooth the impact of year-to-year changes in home health payments related to changes in the home health wage index. Additionally, this rule finalizes the FDL ratio to ensure that aggregate outlier payments do not exceed 2.5 percent of the total aggregate payments, as required by section 1895(b)(5)(A) of the Act.

In section II.B.6. of this final rule, we respond to the comment solicitation on the collection of data on the use of telecommunications technology from home health claims.

b. HH QRP

In section III.D. of this final rule, we are finalizing our proposal to end the temporary suspension on our collection of non-Medicare/non-Medicaid data, in accordance with section 704 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and, in accordance with section 1895(b)(3)(B)(v) of the Act, to require HHAs to submit all-payer OASIS data for purposes of the HH QRP. In response to concerns raised by commenters on the burden associated with the proposed new data collection, we are finalizing that the new OASIS data reporting for the HH QRP will begin January 1, 2025 with a phase-in period for January 1, 2025 through June 30, 2025 in which failure to submit the data will not result in a penalty. In section III.E. of this rule, we are finalizing technical changes to § 484.245(b)(1). In section III.F. of this rule, we are finalizing codification of the factors we adopted in the CY 2019 HH PPS final rule as the factors we will consider when determining whether to remove measures from the HH QRP measure set. Lastly, in section III.G. of this rule, we are summarizing the comments we received on our Request for Information regarding health equity in the HH QRP.

c. Expanded Home Health Value Based Purchasing (HHVBP) Model

In section IV. of this final rule, we are finalizing as proposed changes the HHA baseline year to CY 2022 for all HHAs that were certified prior to January 1, 2022 starting in the CY 2023 performance year. We are also making conforming regulation text changes at § 484.350(b) and (c). In addition, we are finalizing proposed amendments to the Model baseline year from CY 2019 to CY 2022 starting in the CY 2023 performance year to enable CMS to measure competing HHAs performance on benchmarks and achievement thresholds that are more current. We are finalizing conforming amendments to definitions in § 484.345. In section IV.C. of this final rule, we have included a discussion of comments received in response to the RFI related to a potential future approach to health equity in the expanded HHVBP Model that was included in the proposed rule.

d. Medicare Coverage of Home Infusion Therapy

In section V. of this final rule, we discuss updates to the home infusion therapy services payment rates for CY 2023, under section 1834(u) of the Act.

3. Summary of Costs, Transfers, and Benefits

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Table 1—Summary of Costs, Transfers, and Benefits

Provision Description	Costs and Cost Savings	Transfers	Benefits
CY 2023 HH PPS Payment Rate Update		The overall economic impact related to the changes in payments under the HH PPS for CY 2023 is estimated to be $125 million (0.7 percent). The $125 million increase in estimated payments for CY 2023 reflects the effects of the CY 2023 home health payment update percentage of 4.0 percent ($725 million increase), an estimated 3.5 percent decrease that reflects the effects of the permanent behavioral adjustment (-$635 million) and an estimated 0.2 percent increase that reflects the effects of an updated FDL ($35 million increase).	To ensure that home health payments are consistent with statutory payment authority for CY 2023.
HH QRP	The total costs beginning in CY 2025 is an estimated $267,157,680 based upon the collection of OASIS data on all patients, regardless of payer.		
Expanded HHVBP Model		The overall economic impact of the expanded HHVBP Model for CYs 2023 through 2027 is an estimated $3.376 billion in total savings to FFS Medicare from a reduction in unnecessary hospitalizations and SNF usage as a result of greater quality improvements in the HH industry. As for payments to HHAs, there are no aggregate increases or decreases expected to be applied to the HHAs competing in the expanded Model.	
Medicare Coverage of Home Infusion Therapy		The overall economic impact of the statutorily-required HIT payment rate updates is an estimated increase in payments to HIT suppliers of 8.7 percent ($600,000) for CY 2023 based on the CPI–U for the 12-month period ending in June of 2022 of 9.1 percent and the corresponding productivity adjustment is 0.4 percent.	To ensure that payment for home infusion therapy services are consistent with statutory authority for CY 2023.

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B. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their digital health information.

To further the goal of data interoperability in post-acute care settings, CMS and the Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with industry stakeholders to develop Health Level Seven International® (HL7) Fast Healthcare Interoperability Resources® (FHIR) standards.[1] These standards could support the exchange and reuse of patient assessment data derived from the Minimum Data Set (MDS), Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI), LTCH Continuity Assessment Record and Evaluation (CARE) Data Set (LCDS), Outcome and Assessment Information Set (OASIS), and other sources. The PACIO Project has focused on HL7 FHIR implementation guides for functional status, cognitive status and new use cases on advance directives, re-assessment timepoints, and Speech, Language, Swallowing, Cognitive communication and Hearing (SPLASCH) pathology. We encourage PAC provider and health IT vendor participation as the efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as a resource for PAC assessment data elements and their associated mappings to health IT standards, such as Logical Observation Identifiers Names and Codes (LOINC) and Systematized Nomenclature of Medicine Clinical Terms (SNOMED). The DEL furthers CMS' goal of data standardization and interoperability. Standards in the DEL (*https://del.cms.gov/DELWeb/pubHome*) can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2022 ISA is available at *https://www.healthit.gov/isa.*

The 21st Century Cures Act (Cures Act) (*Pub. L. 114–255,* enacted December 13, 2016) required HHS and ONC to take steps to further interoperability for providers in settings across the care continuum. Section 4003(b) of the Cures Act required ONC to take steps to advance interoperability through the development of a trusted exchange framework and common agreement aimed at establishing a universal floor of interoperability across the country. On January 18, 2022, ONC announced a significant milestone by releasing the Trusted Exchange Framework[2] and Common Agreement

[1] *http://pacioproject.org/.*

[2] The Trusted Exchange Framework (TEF): Principles for Trusted Exchange (Jan. 2022), *https://*

(TEFCA) Version 1.[3] The Trusted Exchange Framework is a set of non-binding principles for health information exchange, and the Common Agreement is a contract that advances those principles. The Common Agreement and the Qualified Health Information Network Technical Framework Version 1 [4] (incorporated by reference into the Common Agreement) establish the technical infrastructure model and governing approach for different health information networks and their users to securely share clinical information with each other—all under commonly agreed to terms. The technical and policy architecture of how exchange occurs under the Trusted Exchange Framework and the Common Agreement follows a network-of-networks structure, which allows for connections at different levels and is inclusive of many different types of entities at those different levels, such as health information networks, healthcare practices, hospitals, public health agencies, and Individual Access Services (IAS) Providers.[5] For more information, we refer readers to *https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement.*

We invite readers to learn more about these important developments and how they are likely to affect HHAs.

II. Home Health Prospective Payment System

A. Overview of the Home Health Prospective Payment System

1. Statutory Background

Section 1895(b)(1) of the Act requires the Secretary to establish a Home Health Prospective Payment System (HH PPS) for all costs of home health services paid under Medicare. Section 1895(b)(2) of the Act requires that, in defining a prospective payment amount, the Secretary will consider an appropriate unit of service and the number, type, and duration of visits provided within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services. In accordance with the statute, as amended by the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted August 5, 1997), we published a final rule in the July 3, 2000 **Federal Register** (65 FR 41128) to implement the HH PPS legislation.

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring home health agencies (HHAs) to submit data for purposes of measuring health care quality, and linking the quality data submission to the annual applicable payment percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase is reduced by 2 percentage points. In the November 9, 2006 **Federal Register** (71 FR 65935), we published a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute. The pay-for-reporting requirement was implemented on January 1, 2007.

Section 51001(a)(1)(B) of the Bipartisan Budget Act of 2018 (BBA of 2018) (Pub. L. 115–123) amended section 1895(b) of the Act to require a change to the home health unit of payment to 30-day periods beginning January 1, 2020. Section 51001(a)(2)(A) of the BBA of 2018 added a new subclause (iv) under section 1895(b)(3)(A) of the Act, requiring the Secretary to calculate a standard prospective payment amount (or amounts) for 30-day units of service furnished that end during the 12-month period beginning January 1, 2020, in a budget neutral manner, such that estimated aggregate expenditures under the HH PPS during CY 2020 are equal to the estimated aggregate expenditures that otherwise would have been made under the HH PPS during CY 2020 in the absence of the change to a 30-day unit of service. Section 1895(b)(3)(A)(iv) of the Act requires that the calculation of the standard prospective payment amount (or amounts) for CY 2020 be made before the application of the annual update to the standard prospective payment amount as required by section 1895(b)(3)(B) of the Act.

Additionally, section 1895(b)(3)(A)(iv) of the Act requires that in calculating the standard prospective payment amount (or amounts), the Secretary must make assumptions about behavior changes that could occur as a result of the implementation of the 30-day unit of service under section 1895(b)(2)(B) of the Act and case-mix adjustment factors established under section 1895(b)(4)(B) of the Act. Section 1895(b)(3)(A)(iv) of the Act further requires the Secretary to provide a description of the behavior assumptions made in notice and comment rulemaking. CMS finalized these behavior assumptions in the CY 2019 HH PPS final rule with comment period (83 FR 56461).

Section 51001(a)(2)(B) of the BBA of 2018 also added a new subparagraph (D) to section 1895(b)(3) of the Act. Section 1895(b)(3)(D)(i) of the Act requires the Secretary to annually determine the impact of differences between assumed behavior changes, as described in section 1895(b)(3)(A)(iv) of the Act, and actual behavior changes on estimated aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Section 1895(b)(3)(D)(ii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more permanent increases or decreases to the standard prospective payment amount (or amounts) for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Additionally, 1895(b)(3)(D)(iii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more temporary increases or decreases to the payment amount for a unit of home health services for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Such a temporary increase or decrease shall apply only with respect to the year for which such temporary increase or decrease is made, and the Secretary shall not take into account such a temporary increase or decrease in computing the payment amount for a unit of home health services for a subsequent year. Finally, section

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www.healthit.gov/sites/default/files/page/2022-01/Trusted_Exchange_Framework_0122.pdf.

[3] Common Agreement for Nationwide Health Information Interoperability Version 1 (Jan. 2022), *https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.*

[4] Qualified Health Information Network (QHIN) Technical Framework (QTF) Version 1.0 (Jan. 2022), *https://rce.sequoiaproject.org/wp-content/uploads/2022/01/QTF_0122.pdf.*

[5] The Common Agreement defines Individual Access Services (IAS) as ''with respect to the Exchange Purposes definition, the services provided utilizing the Connectivity Services, to the extent consistent with Applicable Law, to an Individual with whom the QHIN, Participant, or Subparticipant has a Direct Relationship to satisfy that Individual's ability to access, inspect, or obtain a copy of that Individual's Required Information that is then maintained by or for any QHIN, Participant, or Subparticipant.'' The Common Agreement defines ''IAS Provider'' as: ''Each QHIN, Participant, and Subparticipant that offers Individual Access Services.'' *See* Common Agreement for Nationwide Health Information Interoperability Version 1, at 7 (Jan. 2022), *https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.*

51001(a)(3) of the BBA of 2018 amends section 1895(b)(4)(B) of the Act by adding a new clause (ii) to require the Secretary to eliminate the use of therapy thresholds in the case-mix system for CY 2020 and subsequent years.

2. Current System for Payment of Home Health Services

For home health periods of care beginning on or after January 1, 2020, Medicare makes payment under the HH PPS on the basis of a national, standardized 30-day period payment rate that is adjusted for case-mix and area wage differences in accordance with section 51001(a)(1)(B) of the BBA of 2018. The national, standardized 30-day period payment rate includes payment for the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine supplies (NRS) is also part of the national, standardized 30-day period rate. Durable medical equipment (DME) provided as a home health service, as defined in section 1861(m) of the Act, is paid the fee schedule amount or is paid through the competitive bidding program and such payment is not included in the national, standardized 30-day period payment amount. Additionally, the 30-day period payment rate does not include payment for certain injectable osteoporosis drugs and negative pressure wound therapy (NPWT) using a disposable device, but such drug and services must be billed separately by the HHA and paid under Part B, while a patient is under a home health plan of care, as the law requires consolidated billing of osteoporosis drugs and NPWT using a disposable device.

To better align payment with patient care needs and to better ensure that clinically complex and ill beneficiaries have adequate access to home health care, in the CY 2019 HH PPS final rule with comment period (83 FR 56406), we finalized case-mix methodology refinements through the Patient-Driven Groupings Model (PDGM) for home health periods of care beginning on or after January 1, 2020. The PDGM did not change eligibility or coverage criteria for Medicare home health services, and as long as the individual meets the criteria for home health services as described at 42 CFR 409.42, the individual can receive Medicare home health services, including therapy services. For more information about the role of therapy services under the PDGM, we refer readers to the Medicare Learning Network (MLN) Matters article SE2000 available at *https://www.cms.gov/regulations-and-guidanceguidancetransmittals2020-transmittals/se20005.* To adjust for case-mix for 30-day periods of care beginning on and after January 1, 2020, the HH PPS uses a 432-category case-mix classification system to assign patients to a home health resource group (HHRG) using patient characteristics and other clinical information from Medicare claims and the Outcome and Assessment Information Set (OASIS) assessment instrument. These 432 HHRGs represent the different payment groups based on five main case-mix categories under the PDGM, as shown in Figure 1. Each HHRG has an associated case-mix weight that is used in calculating the payment for a 30-day period of care. For periods of care with visits less than the low-utilization payment adjustment (LUPA) threshold for the HHRG, Medicare pays national per-visit rates based on the discipline(s) providing the services. Medicare also adjusts the national standardized 30-day period payment rate for certain intervening events that are subject to a partial payment adjustment (PEP). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

Under this case-mix methodology, case-mix weights are generated for each of the different PDGM payment groups by regressing resource use for each of the five categories (admission source, timing, clinical grouping, functional impairment level, and comorbidity adjustment) using a fixed effects model. A detailed description of each of the case-mix variables under the PDGM have been described previously, and we refer readers to the CY 2021 HH PPS final rule (85 FR 70303 through 70305).

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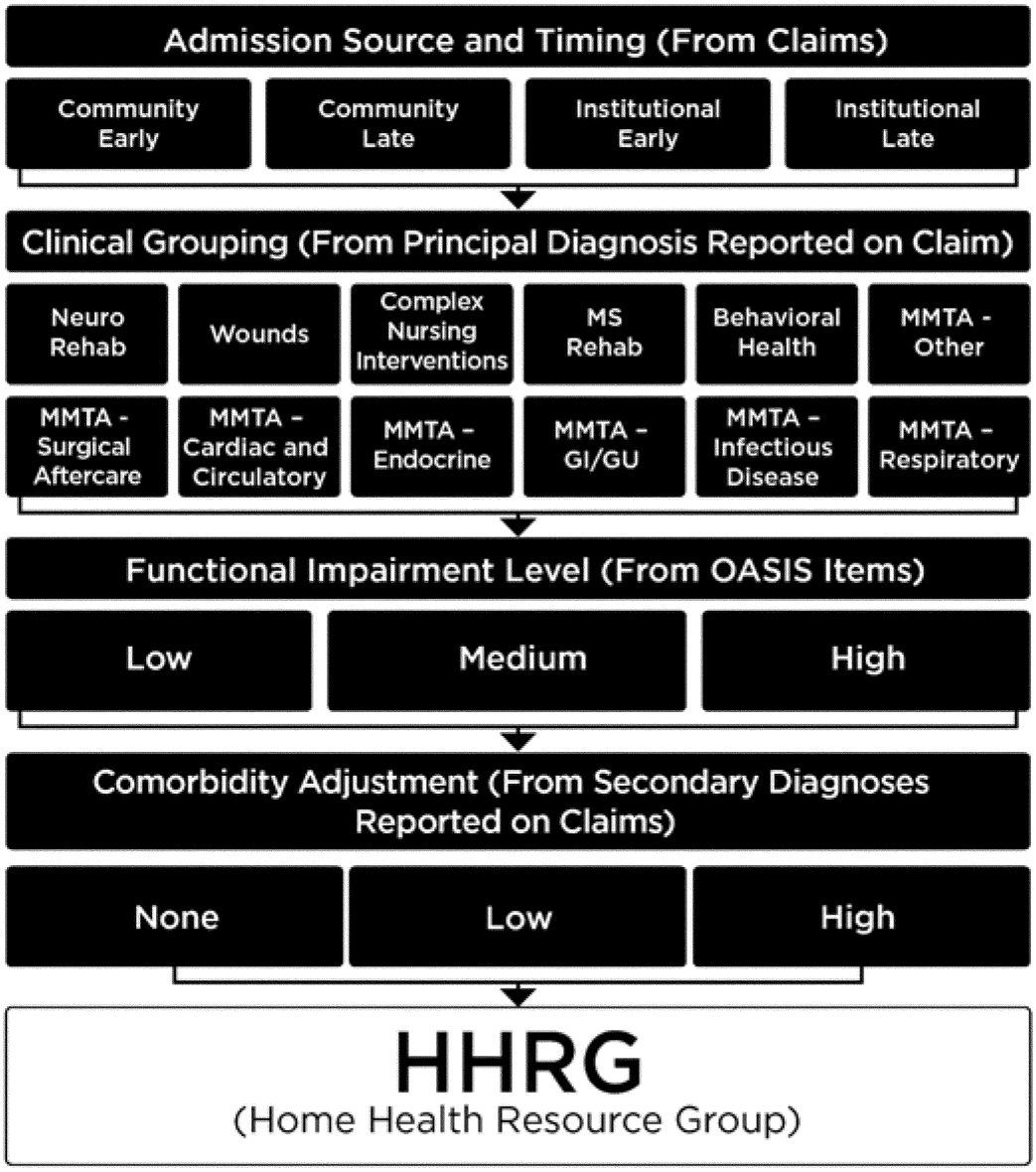
FIGURE 1: CASE-MIX VARIABLES IN THE PDGM



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B. Provisions for CY 2023 Payment Under the HH PPS

1. Monitoring the Effects of the Implementation of PDGM

In the CY 2023 HH PPS proposed rule (87 FR 37605), CMS provided data analysis on Medicare home health benefit utilization, including overall total 30-day periods of care and average periods of care per HHA user; distribution of the type of visits in a 30-day period of care for all Medicare fee-for-service (FFS) claims; the percentage of periods that receive the LUPA; estimated costs for 30-day periods of care; the distribution, by percentage, of 30-day periods of care, using the five clinical variables (clinical group, comorbidity adjustment, admission source, timing, and functional impairment level); the OASIS ''GG'' functional items by response type; and the proportion of 30-day periods of care with and without any therapy visits, nursing visits, and/or aide/social worker visits.

We will continue to monitor and analyze home health trends and vulnerabilities within the home health payment system.

2. PDGM Behavioral Assumptions and Adjustments Under the HH PPS

a. Background

As discussed in section II.A.1. of this rule, the Secretary was statutorily required to change the unit of payment under the HH PPS from a 60-day episode of care to a 30-day period of care, starting with payments for services made on and after January 1, 2020. In determining the CY 2020 standard prospective 30-day payment amount, CMS was also required to make assumptions about behavior changes that could occur as a result of the implementation of the 30-day unit of payment and changes in case-mix adjustment factors, including the elimination of therapy thresholds as a factor in determining case-mix adjustments. In the CY 2019 HH PPS final rule with comment period (83 FR 56455), we finalized the following three behavior assumptions:

• *Clinical Group Coding:* The clinical group is determined by the principal diagnosis code for the patient as

reported by the HHA on the home health claim. This behavior assumption assumes that HHAs will change their documentation and coding practices and put the highest paying diagnosis code as the principal diagnosis code in order to have a 30-day period be placed into a higher-paying clinical group.

- *Comorbidity Coding:* The PDGM further adjusts payments based on patients' secondary diagnoses as reported by the HHA on the home health claim. The OASIS only allows HHAs to designate 1 principal diagnosis and 5 secondary diagnoses while the home health claim allows HHAs to designate 1 principal diagnosis and up to 24 secondary diagnoses. This behavior assumption assumes that by considering additional ICD–10–CM diagnosis codes listed on the home health claim (beyond the 6 allowed on the OASIS), more 30-day periods of care will receive a comorbidity adjustment.
- *LUPA Threshold:* This behavior assumption assumes that for one-third of LUPAs that are 1 to 2 visits away from the LUPA threshold HHAs will provide 1 to 2 extra visits to receive a full 30-day payment.

As described in the CY 2020 HH PPS final rule with comment period (84 FR 60512), in order to calculate the CY 2020 30-day base payment rates both with and without behavior assumptions, we first calculated the total, aggregate amount of expenditures that would occur under the pre-PDGM case-mix adjustment methodology (60-day episodes under 153 case-mix groups). We then calculated what the 30-day payment amount would need to be set at in order for CMS to pay the estimated aggregate expenditures in CY 2020 with the application of a 30-day unit of payment under the PDGM.

We initially determined a –8.389 percent behavior change adjustment to the base payment rate would be needed in order to ensure that the payment rate in CY 2020 would be budget neutral, as required by law. However, based on the comments received and reconsideration as to the frequency of the assumed behaviors during the first year of the transition to a new unit of payment and case-mix adjustment methodology, we believed it was reasonable to apply the three behavior change assumptions to only half of the 30-day periods in our analytic file (randomly selected). Therefore, we finalized in the CY 2020 HH PPS final rule with comment period (84 FR 60519), a –4.36 percent behavior change assumption adjustment (''assumed behaviors'') in order to calculate the 30-day payment rate in a budget-neutral manner for CY 2020. After applying the wage index budget neutrality factor and the home health payment update, the CY 2020 30-day payment rate was set at $1,864.03.

Our data analysis in section II.B.1. of the CY 2023 HH PPS proposed rule compares the CY 2018 and CY 2019 simulated 30-day periods of care with behavior assumptions applied and actual CY 2020 and CY 2021 30-day periods of care. Specifically, Tables B4, B6, and B7 (87 FR 37607 through 37609) indicate that the three assumed behavior changes did occur as a result of the implementation of the PDGM. Additionally, this monitoring shows that other behaviors, such as changes in the provision of therapy, also occurred. Overall, the CYs 2020 and 2021 actual 30-day periods are similar to the simulated CYs 2018 and 2019 30-day periods with the behavior assumptions applied, which is supporting evidence that HHAs did make behavior changes. We reminded readers that, by law, we are required to ensure that estimated aggregate expenditures under the HH PPS are equal to our determination of estimated aggregate expenditures that otherwise would have been made under the HH PPS in the absence of the change to a 30-day unit of payment and changes in case-mix adjustment factors. Regardless of the magnitude and frequency of individual behavior change (for example, LUPAs, therapy, etc.), the occurrence of any behavior change is captured by the methodology to determine the impact on aggregate expenditures.

We also reminded readers that in the CY 2020 HH PPS final rule with comment period (84 FR 60513), we stated that we interpret actual behavior changes to encompass both the assumed behavior changes that were previously identified by CMS, as well as other behavior changes not identified at the time the budget-neutral 30-day payment rate for CY 2020 was established. Subsequently, as noted previously, our analysis resulted in the identification of other behavior changes that occurred after the implementation of the PDGM. Although not originally one of the three finalized behavior assumptions, a decline in therapy utilization is indicative of an additional behavior change. For example, Table B10 and Figure B3 in section II.B.1. of the CY 2023 HH PPS proposed rule (87 FR 37612 through 37613) indicates the number of therapy visits declined in CYs 2020 and 2021. However, the data, as depicted in Figure B3, also indicates a slight decline in therapy visits began in CY 2019 after the finalization of the removal of therapy thresholds and the PDGM, but prior to implementation. This suggests HHAs were already beginning to decrease their therapy provision in anticipation of the new payment system.

Each Health Insurance Prospective Payment System (HIPPS) code is assigned a case-mix weight which determines the base payment of non-LUPA claims prior to any other adjustments (for example, outlier payment adjustments). Prior to the PDGM, the first position of the HIPPS code was a numeric value that represented the interaction of episode timing and number of therapy visits (grouping step). The second, third, and fourth positions of the pre-PDGM HIPPS code reflected clinical severity, functional severity, and service utilization respectively. Therefore, to evaluate how the decrease in therapy visits related to payments, we compared the average case-mix weights of CY 2018 actual 60-day episodes and updated CY 2021 simulated 60-day episodes. Prior to the PDGM, the average case-mix weight for CY 2018 actual 60-day episodes was 1.0176 and the average case-mix weight for CY 2021 simulated 60-day episodes was 0.9682. Using the updated CY 2021 simulated 60-day episodes, we set therapy levels at the pre-PDGM (that is, CY 2018) levels and kept the clinical and functional levels at the PDGM levels (that is, CY 2021). This resulted in an average case-mix weight of 1.0389, slightly higher than the actual CY 2018 60-day episodes. Next, we kept therapy levels at the PDGM (that is, CY 2021) levels and set the clinical and functional levels at the pre-PDGM levels (that is, CY 2018) and found the average case-mix weight was 0.9383, much lower than the CY 2018 actual 60-day episodes. By controlling for therapy levels, we were able to determine the change in 60-day episode case-mix weights was largely driven by therapy utilization. The decrease in therapy visits led to a decrease in case-mix weight, and therefore, a decrease in aggregate expenditures under the pre-PDGM HH PPS.

b. Method To Annually Determine the Impact of Differences Between Assumed Behavior Changes and Actual Behavior Changes on Estimated Aggregate Expenditures

To evaluate if the national, standardized 30-day payment rate and resulting estimated aggregate expenditures maintained budget neutrality after the implementation of the PDGM, we used actual 30-day period claims data to simulate 60-day episodes and estimate what aggregate expenditures would have been under the 153-group case-mix system and 60-day unit of payment. Using the

estimated aggregate expenditures under the 153-group case-mix system (simulated 60-day episodes from 30-day periods) we are able to calculate permanent and temporary adjustments as discussed in section II.B.2.c of this final rule. We used the following steps:

The first step in repricing PDGM claims was to calculate estimated aggregate expenditures under the pre-PDGM, 153-group case-mix system and 60-day unit of payment, by determining which PDGM 30-day periods of care could be grouped together to form simulated 60-day episodes of care. To facilitate grouping, we made some exclusions and assumptions as described later in this section prior to pricing out the simulated 60-day episodes of care. We note in the early months of CY 2020, there were 60-day episodes which started in 2019 and ended in 2020 and therefore, some of these exclusions and assumptions may be specific to the first year of the PDGM. We identify, through footnotes, if an exclusion or assumption is specific to CY 2020 only. The following describes the steps in determining the annual estimated aggregate expenditures including the exclusions and assumptions made when simulating 60-day episodes from actual 30-day periods.

(1) Exclusions

- Claims where the claim occurrence code 50 date (OASIS assessment date) occurred on or after October 31 of that year. This exclusion was applied to ensure the simulated 60-day episodes contained both 30-day periods from the same year and would not overlap into the following year (for example, 2021, 2022, 2023). This is done because any 30-day periods with an OASIS assessment date in November or December might be part of a simulated 60-day episode that would continue into the following year and where payment would have been made based on the ''through'' date. For CYs 2021 through 2026, we also excluded claims with an OASIS assessment date before January 1 of that year.[6] Again, this is to ensure a simulated 60-day episode (simulated from two 30-day periods) does not overlap years.
- Beneficiaries and all of their claims if they have overlapping claims from the same provider (as identified by CMS Certification Number (CCN)). All of a beneficiary's claims are dropped so as not to create problems with assigning episode timing if only a subset of claims is dropped
- Beneficiaries and all of their claims if three or more claims from the same provider are linked to the same occurrence code 50 date. This is done because if three or more claims link to the same OASIS it would not be clear which claims should be joined to simulate a 60-day episode.

(2) Assumptions

- If two 30-day periods of care from the same provider reference the same OASIS assessment date (using occurrence code 50), then we assume those two 30-day periods of care would have been billed as a 60-day episode of care under the 153-group system.
- If two 30 day-periods of care reference different OASIS assessment dates and each of those assessment dates is referenced by a single 30-day period of care, and those two 30-day periods of care occur together close in time (that is, the ''from'' date of the later 30-day period of care is between 0 to 14 days after the ''through'' date of the earlier 30-day period of care), then we assume those two 30-day periods of care also would have been billed as a 60-day episode of care under the 153-group system.
- For all other 30-day periods of care, we assume that they would not be combined with another 30-day period of care and would have been billed as a single 30-day period.

(3) Calculating Estimated Aggregate Expenditures—Pricing Simulated 60-Day Episode Claims

After applying the exclusions and assumptions described previously, we have the simulated 60-day episode dataset for each year.

Starting with CY 2020 claims, we assign each simulated 60-day episode of care as a normal episode, PEP, LUPA, or outlier based on the payment parameters established in the CY 2020 HH PPS final rule with comment period (84 FR 60478) for 60-day episodes of care. Next, using the October 2019 3M Home Health Grouper (v8219)[7] we assign a HIPPS code to each simulated 60-day episode of care using the 153-group methodology. Finally, we price the CY 2020 simulated 60-day episodes of care using the payment parameters described in the CY 2020 HH PPS final rule with comment period (84 FR 60537) for 60-day episodes of care. For CYs 2021 through 2026, we would adjust the simulated 60-day base payment rate to align with current payments for the analysis year (that is, wage index budget neutrality factor, home health payment update). For example, to calculate the CY 2021 simulated 60-day episode base payment rate, we started with the final CY 2020 60-day base payment rate ($3,220.79) multiplied by the final CY 2021 wage index budget neutrality factor (0.9999) and the CY 2021 home health payment update (1.020) to get an adjusted 60-day base payment rate ($3,284.88) for CY 2021. We used the adjusted 60-day base payment rate ($3,284.88) to price the CY 2021 simulated 60-day claims under the pre-PDGM HH PPS (60-day episodes under 153 case-mix groups).

Once each simulated 60-day claim is priced under the pre-PDGM HH PPS, we calculate the estimated aggregate expenditures for all simulated 60-day episodes. That is, using actual behavior (using the most current year of PDGM claims) we determine what the aggregate expenditures would have been under the prior 153 group case-mix system. Next, to control for utilization, we calculate the PDGM aggregate expenditures using those specific 30-day periods that were used to create the simulated 60-day episodes. That is, both the actual PDGM aggregate expenditures and the simulated pre-PDGM aggregate expenditures are based on the same number of claims. We received 770 comments on the methodology and implementation of a permanent prospective behavior change adjustment on the CY 2023 home health payment rate.

Comment: A few commenters stated that CMS' proposal would violate three separate statutory requirements. The commenters stated that: (1) the proposal uses therapy thresholds to determine payment despite the statute's mandate to eliminate this practice; (2) ignores the statutory provision by failing to correct its assumptions about how home health agencies would change behaviors in response to the new payment system; and (3) violates the statute's budget-neutrality requirement by reducing overall aggregate expenditures.

Response: The BBA of 2018 tasked CMS with ensuring that Medicare spending under the new 30-day payment system is the same as the estimated spending under the old 60-day home health payment system. Section 1895(b)(3)(A)(iv) of the Act directed the Secretary to calculate a standard prospective payment amount for CY 2020, incorporating assumptions about behavior changes, that could occur as a result of the implementation of a 30-day unit of payment and changes in case-mix adjustment factors. In other

[6] There are no 30-day PDGM claims which started in CY 2019 and ended in CY 2020, and therefore this exclusion would not apply to the CY 2020 dataset.

[7] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/CaseMixGrouperSoftware.*

words, using the data available at the time of rulemaking, we were required to estimate a national, standardized payment rate so that estimated aggregate expenditures with assumed behavior changes (clinical group coding, comorbidity coding, and LUPA thresholds) for CY 2020 would be the same under the PDGM as they would have been under the prior payment system (153 group). In the CY 2020 HH PPS final rule with comment period (84 FR 60513), we estimated that this would mean a −8.389 percent payment adjustment to the base payment rate in order to avoid overestimating payments under the 30-day system. In response to commenter concerns that the pervasiveness of expected behavioral changes among HHAs was overestimated, we stated that given the scale of the payment system changes, we agree that it might take HHAs more time before they fully changed their behaviors in ways expected by CMS. Therefore, we finalized a policy that applied the three behavioral assumptions only to half (randomly selected) of the simulated 30-day periods of care. This reduction in the application of the assumptions resulted in a −4.36 percent behavior assumption adjustment. Therefore, we met the initial requirement of section 1895(b)(3)(A)(iv) by setting the CY 2020 national, standardized 30-day payment rate ($1,864.03) in a budget-neutral manner, based on available data (simulated 30-day periods) at the time of rulemaking.

Following the implementation of the new payment system, the BBA of 2018 tasks CMS with determining the impact of the difference between our assumed behavior changes and actual behavior changes on estimated aggregate expenditures beginning with CY 2020 through CY 2026, as set out in section 1895(b)(3)(D)(i) of the Act.

As the Act requires CMS to look at actual behavior, the methodology uses actual claims data for 30-day periods under the 432-group case-mix model (PDGM claims) to simulate 60-day episodes under the 153-group case-mix model (representing pre-PDGM HH PPS claims) in order to estimate what the aggregate expenditures would have been in the absence of the PDGM. In other words, CMS used the same claims (actual PDGM 30-day periods and simulated 60-day episodes from the 30-day periods) to compare estimated aggregate expenditures under both systems in order to determine the estimated aggregate impact of behavior change. This allows us to control for actual utilization, not predicted utilization, to determine the impact of differences between what we estimate aggregate expenditures would have been in the absence of the PDGM using actual data and what the expenditures actually were under the PDGM.

As stated previously, CMS is not required to correct each of its original assumptions regarding home health agency behavior changes or itemize each behavior change for which its methodology accounts, as commenters asserted. For example, while paragraph (3)(D)(i) clarifies that the ''assumed behavior changes'' CMS must use in its calculations are those ''described in paragraph (3)(A)(iv),'' it contains no such qualification for the ''actual behavior changes'' to which CMS compares the assumed behavior. CMS accordingly ensured that the payment rate accurately accounts for all ''actual behavior changes'', in the aggregate, that occurred in a given year.

Neither this provision, nor section 1895(b)(3)(A)(iv) of the Act, requires CMS to ensure that it actually spends the amount of the original estimated aggregate expenditures (that is, $16.2 billion) based on simulated 30-day periods for CY 2020. Rather, section 1895(b)(3)(D)(i) of the Act requires that CMS compare the estimated aggregate expenditures resulting from the 30-day payment rate with estimated assumed behavior changes (resulting in a $1,864.03 standardized rate) to the new estimated aggregate expenditures derived from actual data—incorporating actual behavior changes—that would have occurred under the prior 60-day system. In other words, we are not required to compare our original estimated aggregate expenditures (estimated at $16.2 billion) to actual expenditures (that is, $15.1 billion), and make up the difference. Rather, under the statute, we re-estimate aggregate expenditures under the pre-PDGM based on actual behavior changes, as derived from actual claims. This is because, the original estimated aggregate expenditures ($16.2 billion) were based on predicted utilization, not actual utilization.

With regard to therapy, CMS received comments in the CY 2022 HH PPS final rule (86 FR 62247) and in response to the CY 2023 HH PPS proposed rule that the decrease in therapy utilization, including termination of therapy staff, is related to the removal of the therapy payment incentive. In their comment letter, a leading industry association detailed how HHAs have responded to changes in the benefit structure and have altered their operations, affecting the level of care received by patients. For instance, prior to the PDGM, the industry notes that HHAs were incentivized to provide the highest volume of therapy visits possible, and a low volume of other services. The industry association goes on to note that under the PDGM, the elimination of the therapy volume adjustment as a case mix measure will likely lead to a reduction in therapy services to patients. In an article published in February 2020,[8] the National Association for Home Care and Hospice (NAHC) was quoted as saying ''categorically, across the board, we're going to reduce our therapy services'' as a result of the PDGM. More recently in an article in April 2022,[9] it was estimated that nearly half of HHAs had planned to decrease therapy utilization after the implementation of the PDGM. In that article, NAHC was quoted as saying ''There was a precipitous drop in therapy visits in January and February of 2020 before the pandemic hit.'' In addition, their consulting firm stated, ''Importantly, note that the reduction in therapy visits began before COVID–19 PHE started in March 2020—indicating that HHA providers were already experiencing significant declines in therapy visits as a result of PDGM, even before the onset of the pandemic. Thus, the PDGM effect on therapy is not a COVID effect, but rather a PDGM effect.'' These comments from interested parties confirm that the decrease in therapy is a concerted provider behavior change in response to a financial incentive rather than the COVID–19 PHE. Anecdotal evidence and the data presented in the CY 2023 HH PPS proposed rule (87 FR 37612 through 37613) supports the conclusion there has been a significant change (decline) in therapy visits due to the implementation of the PDGM.

If we were to artificially inflate aggregate expenditures in CYs 2020 and 2021 by including payments for therapy visits that may have occurred under the old thresholds, but that were in fact not provided under the new system (as shown by actual data), we would be setting payment based on how providers would have presumably behaved under the old system rather than actual behaviors under the new system, which we believe is not the best reading of the law. It would be inappropriate to manipulate the data so that old behaviors (in this case, inflated therapy visits to reach payment thresholds)

[8] Why Home Health Care Is Suddenly Harder to Come by For Medicare Patients. *https://khn.org/news/why-home-health-care-is-suddenly-harder-to-come-by-for-medicare-patients/.*

[9] Home Health Agencies Should Brace for PDGM Battle Later This Year. *https://homehealthcarenews.com/2022/04/home-health-agencies-should-brace-for-pdgm-battle-later-this-year/.*

would change the resulting payment adjustment for assumed versus actual behavior changes under the PDGM. It would be inappropriate for CMS to continue to pay for therapy as if HHAs were still inflating therapy provision based on the former therapy thresholds, when the number of therapy visits after the implementation of the PDGM has actually declined. Despite the commenters' argument that CMS cannot use the reduction in therapy to determine payment because the BBA of 2018 mandated the elimination of therapy thresholds, the law did not mandate a reduction in the provision of therapy or even decrease the payment rates for therapy disciplines. It simply removed a payment incentive structured around the quantity of therapy visits, which had resulted in provider behavior to maximize payment, exactly the type of actual behavior change that CMS is tasked to consider when setting the base payment rate.

We disagree with commenters who read sections 1895(b)(3)(A)(iv) and 1895(b)(3)(D) of the Act to require payments based on earlier, higher therapy utilization rates instead of permitting us to re-run the calculations we used to predict aggregated expenditures with actual 2020 data. Subparagraph (A)(iv) required CMS, in determining budget neutrality for 2020, to estimate a payment amount so that the ''estimated aggregate amount of expenditures'' under the new 30-day case-mix system—after including ''assumptions about behavior changes that could occur'' because of the changed methodology—was ''equal to the estimated aggregate amount of expenditures that otherwise would have been made'' if the new 30-day case-mix system ''had not been enacted.'' And subparagraph (D) requires CMS, for years 2020–2026, to adjust payments based on how differences between the ''assumed'' behavior changes that CMS originally predicted and the ''actual'' behavior changes CMS now observes impact original ''estimated aggregate expenditures.'' CMS followed subparagraph (A)(iv) by estimating aggregate expenditures for CY 2020 using simulated 30-day case-mix system claims (as this was the only data available at the time of CY 2020 rulemaking) to calculate a 30-day base payment rate as if the 30-day case-mix system ''had not been enacted''. CMS followed subparagraph (D) by determining the impact of assumed behavior changes to actual behavior changes by comparing the 30-day base payment rate and aggregate expenditures (based on assumed behaviors) to what the 30-day base payment rate and aggregate expenditures should have been (based on actual behaviors).

Some commenters read the requirement in subparagraph (A)(iv) to calculate estimated aggregate expenditures as if one of Congress' payment reforms ''had not been enacted'' to require payments based on pre-2020 therapy utilization rates—pointing also to subparagraph (A)(iv)'s title of ''budget neutrality for 2020.'' But that reading ignores the requirement in subparagraph (D) to adjust estimated aggregate expenditures based on ''actual behavior changes,'' as well as its instruction in subparagraph (A)(iv) to incorporate into CMS's estimated aggregate expenditures ''assumptions about behavior changes that could occur as a result of'' implementing these payment reforms. These provisions authorize CMS to account for how behavior changes, like therapy utilization, would have affected payments under the old 60-day system and do not require CMS to pay for therapy that never actually occurred. This ensures that HHAs were still paid the same amount they would have been under the old system for services they actually did provide—thus achieving budget neutrality.

We also disagree with the commenter who suggests that subparagraph (D) prohibits CMS from recalculating estimated aggregate expenditures and instead requires CMS to compare the aggregate expenditures CMS estimated in 2019 to actual expenditures CMS observed in 2020. Subparagraph (D) requires CMS to evaluate how using actual behavior changes rather than assumed behavior changes affects predicted expenditures.

Comment: Multiple commenters stated that CMS' proposed rule violates notice and comment rulemaking because ''an agency must provide the public with the relevant data and technical studies on which it relies to form decisions''. Commenters indicated that CMS did not disclose to the public both the data model and the post-manipulation data and they were therefore unable to replicate and test the CMS' findings and conclusions. Specifically, commenters requested the baseline payments at the claim level used by CMS to calculate the CY 2023 impacts, any additional adjustments to the CY 2021 data to roll it forward to CY 2022, home health agency level impacts, the dataset CMS used to determine budget neutrality and the adjustment factors for CYs 2020 and 2021, a spreadsheet analogue to the SNF parity-adjustment, and the input data supporting its calculations. In addition, a few commenters stated that the methodology was not clear and did not provide the specific claims to use in analysis. Some commenters stated that agency-level impacts should have been provided and that they could not fully analyze the methodology without such agency-level impacts.

Response: We disagree with commenters that we violated notice and comment rulemaking by not providing the public with relevant data and technical studies. We also remind commenters that this methodology, the corresponding data files and step-by-step instructions also were detailed in the CY 2022 HH PPS proposed rule (86 FR 35889) and CMS solicited comments on this methodology in that proposed rule. Interested parties did not state that the data and instructions provided at that time were insufficient to provide comments on the methodology. Moreover, in the CY 2023 HH PPS proposed rule, we made available sufficient data and methodological descriptions for interested commenters to replicate our calculations to provide comments on this rule. These are further described below.

First, in the CY 2023 HH PPS proposed rule (87 FR 37616 through 37620), CMS provided a detailed methodology and described the results of applying that methodology, citing the year and the source of the home health claims data obtained from the Chronic Conditions Warehouse (CCW) and the Home Health Claims—OASIS limited data set (LDS) file. The CY 2022 HH PPS proposed rule (86 FR 35889 through 35892) also included a comment solicitation on this same detailed methodology, citing the LDS file, a publicly-available claims database. The OASIS LDS includes the same data as the CCW, except de-identified for public release. CMS repeatedly states that at the HH PPS LDS web page [10] such raw data are available, and agency records reflect that multiple commenters in fact received the CY 2021 Home Health Claims—OASIS LDS data at issue in this rule. That file provides the variables and their descriptions for the CY 2023 HH PPS proposed rule as well as diagnostics that provide basic statistics for each variable CMS considered.

Second, CMS detailed each methodological step it took in the rules, including the exclusions and assumptions that CMS used to calculate estimated aggregate expenditures. As such, commenters had access to both

[10] *https://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/LimitedDataSets/Home_Health_PPS_LDS.*

the dataset (including baseline payments at the claim level, and the exact number of claims and the payment rates used in calculating the CY 2020 and CY 2021 proposed permanent and temporary adjustments) they requested, as well as how CMS used that data to calculate the adjustments. Interested parties were thus able to replicate CMS' calculations with the information that CMS made available to them.

Commenters' requests for additional information go beyond the critical factual material needed to comment on CMS' proposals. CMS did not adjust the data to ''roll'' the CY 2021 data to CY 2022, and so information about CY 2022 data is irrelevant to CMS's calculations. Nor did CMS need to generate an analog to the SNF parity adjustment spreadsheet, which was not part of the critical factual materials the agency considered when making the calculations in the rule. Similarly, commenters did not need home health agency level impacts data, because impacts estimate how the national payment rate may affect HHAs overall, which was not a metric CMS used to calculate the adjustments. Finally, CMS did not need to release the simulated 60-day episodes because CMS provided the detailed instructions on how commenters could simulate those claims themselves based on the data CMS provided. We are aware that some courts have read a procedural requirement into the Administrative Procedure Act (Pub. L. 89–554) mandating that agencies provide for public comment the critical factual materials on which they rely.[11] By releasing sufficient raw data files and methodological descriptions that allowed commenters to replicate CMS's process, CMS has more than satisfied any legal requirements to disclose factual materials.

Comment: Multiple commenters expressed concerns that the COVID–19 PHE may have impacted CY 2020 and 2021 data. Commenters stated the COVID–19 PHE required a shift in priorities, thereby changing utilization patterns.

Response: The proposed methodology controls for changes in utilization as a result of exogenous factors such as the COVID–19 PHE by using the same claims dataset, that is the same basket of services, under both payment systems. This ensures any difference in aggregate expenditures is not related to the COVID–19 PHE or other exogenous factors. It may be helpful to review the comments received from MedPAC on the proposed rule.[12] MedPAC stated in its comments that the methodology presented in the proposed rule was reasonable because applying the case-mix system in effect prior to 2020 reflects how Medicare would have paid in the absence of the BBA 2018 changes. MedPAC explained that any effect of the COVID–19 PHE is included in both estimated aggregate expenditures (that is, 60-day episodes and 30-day periods). Therefore, they noted that methodology presented ensures that any differences between the two calculated spending amounts would not be attributable to the COVID–19 PHE.

In addition, while the initial onset of the COVID–19 PHE in the early months of CY 2020 may have had an impact on home health utilization, the healthcare system has since begun to return to normal and stabilize. For example, studies have shown that elective surgeries and other medical treatments have resumed to pre-pandemic capacity.[13] As shown in the CY 2023 HH PPS proposed rule (87 FR 37605 through 37614), many aspects of home health utilization (volume, visits, clinical groups, comorbidity adjustment, admission source, timing, and functional impairment level) are similar throughout CYs 2020 and 2021. Furthermore, in the CY 2023 HH PPS proposed rule, we solicited data from interested parties showing how COVID–19 affected these aspects of home health utilization and we did not receive any empirical information on this issue specifically. Therefore, we find the CYs 2020 and 2021 data are sufficient and complete, for the purpose of this methodology, and we believe the data are not significantly impacted as a result of the COVID–19 PHE.

Comment: A commenter stated CMS' data shows that after implementation of the PDGM, HHAs continued to provide therapy, but the pattern of therapy provision changed. For example, they noted the most significant decline was for episodes with 13 or more therapy visits. In addition, several commenters stated there has been a decline in therapy visits since the implementation of the PDGM. However, several commenters stated that even if therapy visits were reduced in CYs 2020 and 2021, but outcomes (for example, hospitalizations, meeting goals of the plan of care) did not worsen, then payment reductions should not be made.

Response: We appreciate the commenters' recommendation. However, CMS does not have the authority to tie this payment adjustment to outcomes or other quality measures, or to modify this adjustment on an agency level.

Comment: A commenter suggested using Hierarchical Condition Categories (HCC) scores within the behavioral assumptions.

Response: We appreciate the commenter's recommendation; however, we note that the HCC scores are dependent on beneficiaries having a claims history (which may be limited for those newly enrolled in Medicare), and therefore, do not think they would be appropriate to use in this methodology as it may limit our ability to capture beneficiary characteristics needed for case-mix adjustment.

Comment: A few commenters questioned why CMS did not include therapy utilization as one of the original three behavior change assumptions when setting the CY 2020 payment rate.

Response: We have noted in past rules that we use the functional impairment level case-mix adjustment, developed as part of the PDGM case-mix, to provide the necessary payment adjustments to ensure that functional care needs necessitating therapy, are met based on actual patient characteristics (84 FR 60497). The functional impairment case-mix factor was not meant to be a direct proxy for the therapy thresholds; however, we expected that functional impairment along with other case-mix factors (for example, admission source), would appropriately compensate HHAs for therapy.

Likewise, we expected the functional impairment adjustment, along with other case-mix factors (for example, admission source), to not only alleviate concerns that removal of the therapy thresholds would dissuade providers from delivering needed therapy, but to assure providers that patients can and should still receive the necessary type and amount of therapy based on patient characteristics. In this respect, while we did note that we were aware of how payment may affect practice patterns and that visits vary in response to financial incentives, we also stated that the therapy thresholds promoted the provision of care based on increased payment associated with each of these

[11] *See, for example, Am. Radio Relay League, Inc.* v. *F.C.C.,* 524 F.3d 227, 236 (DC Cir. 2008); *but cf. id.* at 246 (Kavanaugh, J., concurring in the judgment in relevant part) (noting critical factual material doctrine ''stands on a shaky legal foundation'').

[12] *https://www.medpac.gov/wp-content/uploads/2022/08/08152022_HomeHealth_MedPAC_COMMENT_SEC.pdf.*

[13] Aviva S. Mattingly, BA; Liam Rose, Ph.D.; Hyrum S. Eddington, BS; Amber W. Trickey, Ph.D.; Mark R. Cullen, MD; Arden M. Morris, MD, MPH; Sherry M. Wren, MD. Trends in US Surgical Procedures and Health Care System Response to Policies Curtailing Elective Surgical Operations During the COVID–19. December 8, 2021. JAMA Network Open. 2021;4(12):e2138038. *doi:10.1001/jamanetworkopen.2021.38038.*

thresholds as opposed to actual patient needs (83 FR 56485). It was our belief, when setting the original behavior change assumptions, that the functional impairment adjustment would effectively offset reductions in therapy visits that could result from the elimination of the therapy thresholds, especially those patients requiring multiple therapy disciplines or patients with significant functional impairment. As a result, we did not initially contend that removal of the therapy thresholds would significantly alter provider behavior, as we were still compensating therapy through the functional impairment case-mix adjustment. Our expectation was that therapy utilization would reflect actual patient acuity.

Comment: Commenters stated they support the structure of the PDGM, but the budget neutrality adjustment methodology is inconsistent with other methodologies applied to other health care providers and would result in a loss of access to care.

Response: We thank interested parties for their comments. However, the commenters did not clarify what they meant by ''inconsistent with other methodologies applied to other health care providers''. We believe that the proposed methodology satisfies the budget neutrality requirements at section 1895(b)(3)(A)(iv) of the Act, as well as the requirements at section 1895(b)(3)(D)(i) of the Act, to determine the impact of differences between assumed behavior changes and actual behavior changes on estimated aggregate expenditures for home health periods of care. Furthermore, MedPAC stated in their March, 2022 report [14] that the Commission found positive access, quality, and financial indicators for the sector. As such, we do not believe that this methodology and its resulting payment adjustment would result in a loss of access to care.

Comment: Several commenters recommended CMS hold a Technical Expert Panel (TEP) to determine a methodology for calculating the budget neutrality adjustment.

Response: We thank commenters for their suggestion. However, CMS solicited comments on the CY 2022 HH PPS proposed rule (86 FR 35892) for alternative methodologies, and interested parties were able to submit comments on the CY 2023 HH PPS proposed rule. We received 75 comments on the CY 2022 proposed rule and 770 comments on the CY 2023 proposed rule. We also note that a TEP is not required by statute, and there is insufficient time to obtain such input.

Comment: Many commenters stated the proposed methodology was ''technically flawed'' because the methodology does not compare behaviors assumed by CMS in establishing the CY 2020 rate to actual behaviors observed on aggregate expenditures. A commenter stated the methodology was based on faulty data and that the methodology uses an outdated logic, therefore the behavioral adjustment is based on ''poor logic''.

Response: As stated previously, CMS is not required to correct or quantify each original assumption regarding home health agency behavior change, but rather, ensure that the payment rate is accurately accounting for all behaviors that actually occurred in a given year. As required by law, CMS determined the base payment rate for CY 2020 incorporating assumptions about behavior changes that could occur as a result of the PDGM. It is unclear why the commenter believes the data were faulty or how the methodology was outdated. The proposed methodology for adjusting for behavioral changes compares the payment rate and aggregate expenditures based on assumed behaviors to the what the payment rate and estimated aggregate expenditures would have been using actual behaviors. Therefore, CMS' proposed methodology is comparing assumed behaviors to actual behaviors on estimated aggregate expenditures, as required by law. Further, as stated in the CY 2023 HH PPS proposed rule (87 FR 37616), we continue to assert that the best reading of the law requires us to retrospectively determine if the 30-day payment amount in CY 2020 resulted in the same estimated aggregate expenditures that would have been made if the change in the unit of payment and the PDGM case-mix adjustment methodology had not been implemented. It does not require that our rates be retrospectively adjusted to mirror estimated aggregate spending.

Comment: Several commenters recommended including changes that affect other aspects of Medicare home health spending such as Medicare enrollment; modification/improvement of enforcement of coverage standards (for example, maintenance therapy, home infusion therapy); behavior changes in other PAC services that affect home health utilization; technological advances; and other factors that may contribute to Medicare spending changes not specifically related to the implementation of the PDGM. Some commenters suggesting adjusting for nominal versus real case-mix change. A commenter recommended replacing the proposed methodology, which they stated focused on a change in average case-mix weight, to a methodology which focuses on behavior changes.

Response: We thank the commenters for their suggestions. While we recognize other factors affect the utilization of home health services, we believe the statute is best read to instruct us to consider only changes related to provider behavior in response to the 30-day unit of payment and case-mix changes. As stated in the CY 2023 HH PPS proposed rule (87 FR 37616), while changes in nominal case-mix may be supplemental to our findings, the law requires CMS to determine the impact of differences between assumed versus actual behavioral changes on estimated aggregate expenditures, which are not factored into our calculations of case-mix adjustment authority. Section 1895(b)(3)(B)(iv) of the Act states that CMS has the authority to adjust for case-mix changes that are a result of changes in the coding or classification of different units of services that do not reflect real changes in case mix. Therefore, at this time we believe analyses of nominal case-mix change are provided under a separate authority than the statutory requirement to evaluate what aggregate expenditures would have been in absence of the PDGM and the elimination of therapy thresholds.

We disagree the methodology focuses on the change in average case-mix weight. Instead, the methodology compares assumed behavior to actual behavior and determines the impact of those differences on estimated aggregate expenditures, as required by law. Our discussion of case-mix in section II.B.2. of this final rule is only used as supporting evidence in the decrease of therapy utilization.

Comment: A commenter stated the proposed methodology fails to account for the reduction in average per-episode therapy services under the PDGM, which would have substantially reduced payments under the prior case-mix system. The commenter stated that this resulted in a behavioral offset in CY 2020 that was too high and would carry over into subsequent years.

Response: We recognize commenters are concerned that the methodology does not control for therapy. However, as stated previously, we believe it would be inappropriate to manipulate the data to assume that behaviors (that is, therapy provision) remain the same between both payment systems, when calculating the behavior change adjustment. The commenter is correct that the same methodology will be used

[14] *https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_v2_SEC.pdf.*

in subsequent years, meaning we will not control for therapy in subsequent years either; however, we remind commenters that the law requires we annually determine the impact of the assumed versus actual behavior changes on estimated aggregate expenditures for CY 2020 through CY 2026 and adjust the payment rate to offset for such increases or decreases in a time and manner determined appropriate. Keeping behaviors constant when they changed in between payment systems is inconsistent with this instruction.

It is unclear what the commenter suggested by a ''carry over'' effect. To clarify, the methodology analyzes each year of data independently and captures any behavior changes which occurred in that year, including any changes in therapy provision. As such, if any behaviors continue into subsequent years, these will be captured in the methodology. We also remind readers the permanent adjustment is based on the percent change between the actual 30-day base payment rate and the repriced 30-day base payment rate for the same year of data (for example, CY 2021).

Comment: Multiple commenters recommended modifying the proposed methodology to account for changes in therapy utilization and the onset of the COVID–19 PHE. Specifically, many commenters stated that the therapy provision under the prior 153-group payment system would be higher than seen under the PDGM and that CMS should control for the change in therapy utilization. Many commenters recommended that CMS adopt the methodology presented by a consulting firm hired by several interested parties. The consulting firm recommended applying the Patient Driven Payment Model (PDPM) parity adjustment methodology used in the CY 2023 Skilled Nursing Facility (SNF) PPS proposed [15] and final rule (87 FR 47502) [16] to CY 2020 PDGM data. The consulting firm stated ''based on this approach, we found that CY 2020 PDGM payments were approximately 2.5 percent below budget neutrality (with COVID–19 cases included) and 2.4 percent below budget neutrality with COVID–19 cases excluded.''

Response: We appreciate the commenters' recommendation to modify the proposed methodology to control for therapy utilization in alignment with the SNF parity adjustment methodology. However, the SNF PPS and HH PPS are fundamentally different; SNFs are paid a per-diem payment with different case-mix variables, and HHAs are paid under a bundled payment system. In addition, unlike the requirements of the SNF PPS parity adjustment, CMS is required, by law, to account for behavior changes related to the implementation of the PDGM, which CMS did by comparing actual PDGM claims to what the same utilization (for example, visits, OASIS responses, etc.) would look like under a 60-day unit of payment.

Section 1895(b)(4)(B)(ii) of the Act statutorily required the removal of therapy thresholds in establishing payment, but CMS stated multiple times (83 FR 56481, 84 FR 60497, 86 FR 62247, and 87 FR 37615) that therapy must be provided in accordance with the plan of care and that the PDGM is not limiting or prohibiting the provision of therapy services. As the data, as well as commenters, indicate that HHAs are decreasing therapy utilization in response to the removal of a payment incentive, and not the COVID–19 PHE, we disagree with commenters who suggest adjusting attributing decreased therapy to the COVID–19 PHE. Given CMS has not directed HHAs to modify the amount of services provided, but rather continue providing services in accordance with the plan of care, then any changes (operational or otherwise) by HHAs are actual behavior changes due to the implementation of the PDGM. As stated earlier, this type of response to a new payment system is what CMS is required by law to evaluate and account for with subsequent payment rate adjustments. If CMS were to implement the method presented by the consulting firm, we would need to artificially inflate the number of therapy visits in CYs 2020 and 2021. As noted above, doing so is inconsistent with how we read the statute. Instead, the methodology presented by the consulting firm would be comparing the payment rate and aggregate expenditures based on the previous assumed behavior assumptions to a payment rate and aggregate expenditures based on new assumed behavior assumptions. In other words, any method which controls for therapy provision (or other behaviors) would result in CMS comparing assumed versus assumed behavior, which would be inconsistent with what the statute requires.

Comment: Several commenters stated the proposed methodology does not compare the behaviors assumed by CMS in establishing the initial payment rate, but rather creates an artificial target amount to reduce payments as an attempt to rebase the 30-day payment amount. As such, many commenters also recommended the alternative methodology presented by the consulting firm. This methodology recommended comparing the average CY 2020 30-day episode payments to the estimated average CY 2020 payments with behavioral assumptions used by CMS to set CY 2020 payment rates (based on data from CY 2018 60-day episodes converted to 30-day episodes).

Response: We appreciate the commenters' recommendation; however, the law requires us to determine the difference between assumed versus actual behaviors on estimated aggregate expenditures. Therefore, we continue to believe that the best reading of the law requires us to retrospectively determine if the 30-day payment amount in CY 2020 and CY 2021 resulted in the same estimated aggregate expenditures if the change in the unit of payment and the PDGM case-mix adjustment had not been implemented and the visits and OASIS responses did not change. As stated previously, the proposed methodology compares the payment rate and aggregate expenditures based on assumed behaviors to what the payment rate and estimated aggregate expenditures would have been using actual behaviors, which we believe is what the law requires.

Comment: Several commenters stated the PDGM claims cannot be reasonably regrouped under an alternative payment system.

Response: We disagree with this comment, as both payment systems (153-group and PDGM) group claims into case-mix groups based on information available on the claim, the OASIS, and other accessible administrative data. While the PDGM removed the payment incentive for excess therapy, it is not only reasonable, but required by law, to compare the same claims under two different case-mix systems. Additionally, the proposed methodology is consistent with the original methodology used in establishing the PDGM. As stated in the CY 2020 HH PPS final rule with comment period (84 FR 60512), we divided actual 60-day episodes from the 153-group payment system into two 30-day periods in order to calculate the 30-day payment amounts. Specifically, we simulated 9,336,898 30-day periods from 5,471,454 60-day episodes and using estimated aggregate expenditures we calculated what we thought the CY 2020 payment rate would need to be, based on assumed behavior changes. We are replicating this method in reverse to

[15] *https://www.federalregister.gov/documents/2022/04/15/2022-07906/medicare-program-prospective-payment-system-and-consolidated-billing-for-skilled-nursing-facilities.*

[16] *https://www.govinfo.gov/content/pkg/FR-2022-08-03/pdf/2022-16457.pdf.*

evaluate what the CY 2020 base payment rate should have been based on actual behavior changes and actual utilization.

Comment: Several commenters indicated that CMS did not provide enough information, specifically the OASIS assessments, to replicate the methodology. In addition, a commenter stated certain OASIS items used to group the 60-day episodes are optional in CYs 2020 and 2021, which may impact the adjustment calculations.

Response: CMS provided a detailed explanation of the methodology in the CY 2023 HH PPS proposed rule (87 FR 37616) and data that can be used to carry out the methodology is made available via the Home Health Claims—OASIS LDS. The LDS file contains all necessary information, including OASIS, and the proposed rule described the necessary steps and the methodology used to allow interested parties the ability to replicate the 60-day simulated episodes. Those replicated 60-day simulated episodes and the actual 30-day periods would have resulted in the ability to calculate estimated aggregate expenditures, a repriced base payment rate, and the permanent and temporary adjustments. If a particular OASIS item did not have a response, then that item would not contribute to the functional or clinical score under the 153-group payment system. If there were certain OASIS items missing on claims, those items may not have affected the overall functional or clinical score and corresponding level. Additionally, based on the analysis shown in the CY 2023 HH PPS proposed rule (87 FR 37615), the data showed the difference in case-mix weights was largely driven by therapy utilization and not functional or clinical score. Therefore, if a small subset of claims had missing OASIS items, it would not significantly change the overall aggregate expenditures and resulting adjustments.

Comment: A commenter noted approximately 40 percent of diagnosis codes, which were previously allowed under the 153 case-mix group system, are no longer accepted as a principal diagnosis under the PDGM. This commenter stated that this systematic change may have impacted a provider's coding behavior and could have potentially led to the simulated 60-day episodes being inaccurately assigned a ''clinical domain.''

Response: We thank this commenter for their review of the diagnosis codes. While we acknowledge 41 percent (29,948) of all the diagnosis codes are not assigned a clinical group under the PDGM,[17] we disagree that those unassigned codes would have created any significant difference in assigning the clinical level in the 153-group case-mix system. For example, out of all the diagnosis codes available in the final grouper for the 153-group case mix system, only 22 percent (15,936) of the diagnosis codes could potentially contribute to the clinical score. Of those codes which could have contributed to the clinical score, only 6.99 percent (1,114) of the diagnosis codes are not accepted as a principal diagnosis under the PDGM. In addition, there are only three clinical dimensions (Diabetes, Skin 1, and Neuro 1) under the 153-group system which produced a different score when the diagnosis was counted as a principal diagnosis instead of a secondary diagnosis. The other clinical dimensions awarded the same points with either a primary or other diagnosis listed on the OASIS. Therefore, while approximately 7 percent of the diagnosis codes that contributed to the clinical score under the 153 case-mix group system are no longer accepted as principal under the PDGM, many of these codes could still be used as a secondary diagnosis code and counted towards the clinical score. Additionally, there were thresholds for the clinical level, and even if the diagnosis code was accepted as principal, it would not automatically increase the clinical score to the point where it would have triggered a new clinical level. In the CY 2023 HH PPS proposed rule (87 FR 37615), we described an analysis that shows the decline in the average case-mix weight for simulated 60-day episodes were largely driven by reductions in therapy utilization instead of the clinical score (which may be impacted by diagnoses). That means, even if all the diagnosis codes were accepted under the PDGM, we find it would be unlikely for the case-mix weight to have increased enough to counteract the reduction in therapy.

Comment: A few commenters detailed their interpretation of our proposed methodology for CY 2020 describing a calculation that uses the number of 30-day periods (7,618,061) multiplied by the 30-day base payment rate ($1.936.38) subtracted from actual expenditures ($14.2 million) multiplied by the number of 30-day periods. They stated that this calculation resulted in a different payment adjustment and expressed concern that CMS inaccurately calculated the adjustment or did not provide sufficient detail to allow commenters to accurately replicate the methodology.

Response: The calculations presented by commenters make several incorrect assumptions and do not accurately replicate the detailed methodology described in the CY 2023 HH PPS proposed rule. As stated in the CY 2023 HH PPS proposed rule (87 FR 37617), after all exclusions and assumptions were applied, we designated each 60-day episode of care as a normal episode, PEP, LUPA, or outlier based on the payment parameters established in the CY 2020 HH PPS final rule with comment period (84 FR 60478) for 60-day episodes of care. Next, using the October 2019 3M Home Health Grouper (v8219), we assigned a HIPPS code to each simulated 60-day episode of care using the 153-group methodology. Finally, we priced the CY 2020 simulated 60-day episodes of care using the payment parameters described in the CY 2020 HH PPS final rule with comment period (84 FR 60537) for 60-day episodes of care.[18] The CY 2023 HH PPS proposed rule states that each claim is paid based on the type of claim (that is, normal, PEP, LUPA, outlier) and assigned a HIPPS code, which would result in a specific case-mix weight for each claim. Next, each claim (determined by claim type, HIPPS) was priced based on the parameters previously described in the CY 2020 rule for 60-day episodes. CMS did not simply multiply each claim by the base payment rate, as the commenters suggested, as this would miscalculate aggregate expenditures. As stated earlier, the available Home Health Claims—OASIS LDS dataset included all information for interested parties to determine the claim type and the associated HIPPS code to accurately estimate aggregate expenditures.

In addition, the commenters referenced two unrelated numbers. As stated in the CY 2023 HH PPS proposed rule (87 FR 37618), the 7,618,061 claims were the actual 30-day periods after all exclusions and assumptions were applied to create the 4,463,549 simulated 60-day episodes. We then determined what the payment rate should have been to equal the aggregate expenditures that we calculated from the simulated CY 2020 60-day episodes. We stated to determine the difference in aggregate expenditures, we calculated the ''aggregate expenditures for all CY 2020 PDGM 30-day claims'' using both payment rates (87 FR 37618). In other

[17] Using V03.2.22 of the home health grouper.

[18] Note, we also performed similar calculations using CY2021 data. When doing this calculation for CY2021 data, we updated the C2020 payment rates by the payment parameters used to establish the CY2021 PDGM payment.

words, the $14.2 billion referenced by the commenter was determined using the $1,742.52 PDGM payment rate for all 8,423,688 30-day periods, rather than pricing the 7,618,061 claims at their adjusted (for example, wage index, case-mix) rate.

Comment: A few commenters stated it was unclear how episode timing and LUPA thresholds were assigned to the simulated 60-day episodes.

Response: As described in the CY 2023 HH PPS proposed rule, we used the October 2019 3M Home Health Grouper (v8219) to group 60-day episodes (87 FR 37617). Episode timing, early and late, were based on the number of 60-day episodes that occur within a sequence of 60-day episodes. Additionally, under the 153-group system, any 60-day episode with 4 or fewer visits was classified as a LUPA (84 FR 60519).

Comment: A commenter recommended recalibrating the regression coefficients for the 153-group payment model using the simulated 60-day episodes from the CY 2020 and 2021 data to create an equivalent approach to compare PDGM to the hypothetical pre-PDGM. The commenter stated that this would be consistent with CMS's policy to annually recalibrate and control for changes in home health resource use and changes in utilization patterns.

Response: Any change in the average case-mix weight is counteracted through a corresponding change in the payment rate so that aggregate expenditures are budget neutral regardless of whether recalibration is applied. Recalibration ensures that payment incentives for future utilization are aligned with the design of the payment system (for example, recalibration ensures roughly a third of periods and episodes are in a particular functional level). While we currently do not believe there would be any benefit in recalibrating the case-mix weights for the simulated 60-day episodes, we may consider it in future rulemaking.

Comment: A few commenters were concerned the exclusions of certain categories of claim used in the proposed methodology may have biased the results.

Response: As stated in the CY 2023 HH PPS proposed rule, exclusions were made to the CY 2020 and 2021 claims data in order to simulate 60-day episodes of care (87 FR 37617). These exclusions included overlapping claims, three or more claims linked to the same OASIS, and whether it was unclear if there would have been a prior or subsequent 30-day period that would have been a part of a simulated 60-day episode. All of these exclusions were thoroughly discussed in previous rulemaking cycles. Without these exclusions, we would not be confident we were appropriately grouping 30-day periods into simulated 60-day episodes. It is also important to note, for CY 2020 we excluded 9.5 percent of 30-day periods and for CY 2021 we excluded 16.3 percent of 30-day periods. That is, we kept the majority of 30-day periods in each year (over 90 percent for CY 2020 and over 83 percent for CY 2021). The excluded 30-day periods would need to show large differences compared to the episodes that were not excluded in order to significantly change the estimated aggregate expenditures from the 60-day episodes to produce significant revisions to our calculations. As we showed in the monitoring section of the CY 2023 HH PPS proposed rule, utilization patterns look largely the same in both CYs 2020 and 2021 (87 FR 37605). Additionally, the permanent adjustment is based on the percent change between the payment rates (which utilizes the same claims) and the temporary adjustment is based on the aggregate expenditures of all claims (that is, no exclusions) using the two payment rates (that is, the actual payment rate and the budget neutral payment rate with the permanent adjustment applied). Therefore, we do not expect the small portion of excluded claims significantly biased our results.

Comment: A commenter stated that in their own analysis of CMS data they excluded 30-day claims with a primary diagnosis of COVID–19 because they were unable to assign it a HIPPS code.

Response: We appreciate the diligence of the commenter, and are grateful that they were able to make full analytical use of the publicly available data. However, simulated 60-day episodes with a primary diagnosis of COVID–19 would still be assigned a HIPPS under the V8219 Home Health Grouper from 3M and would not have been excluded from the repricing analysis unless there was another unrelated issue with the claim that prevented grouping.

Final Decision: After consideration of all the comments received and thorough review of section 1895(b) of the Act, we are finalizing the proposed methodology to evaluate the impact of the differences of assumed versus actual behavior changes on estimated aggregate expenditures.

c. Calculating Permanent and Temporary Payment Adjustments

To offset for such increases or decreases in estimated aggregate expenditures as a result of the impact of differences between assumed behavior changes and actual behavior changes, in any given year, we calculate a permanent prospective adjustment by determining what the 30-day base payment amount should have been in order to achieve the same estimated aggregate expenditures as obtained from the simulated 60-day episodes. This would be our recalculated base payment rate. The percent change between the actual 30-day base payment rate and the recalculated 30-day base payment rate would be the permanent prospective adjustment.

To calculate a temporary retrospective adjustment for each year we would determine the dollar amount difference between the estimated aggregate expenditures from all 30-day periods using the recalculated 30-day base payment rate, and the aggregate expenditures for all 30-day periods using the actual 30-day base payment rate for the same year. In determining the temporary retrospective dollar amount, we use the full dataset of actual 30-day periods using both the actual and recalculated base payment rates to ensure utilization and distribution of claims are the same. In accordance with section 1895(b)(3)(D)(iii) of the Act, the temporary adjustment is to be applied on a prospective basis and shall apply only with respect to the year for which such temporary increase or decrease is made. Therefore, after we determine the dollar amount to be reconciled in any given year, we calculate a temporary adjustment factor to be applied to the base payment rate. The temporary adjustment factor is based on an estimated number of 30-day periods in the next year using historical data trends, and as applicable, we control for a permanent adjustment factor, case-mix weight recalibration neutrality factor, wage index budget neutrality factor, and the home health payment update. The temporary adjustment factor is applied last.

d. CY 2020 Results

Using the methodology described previously, we simulated 60-day episodes using actual CY 2020 30-day periods to determine what the CY 2020 permanent and temporary payment adjustments should be to offset for such increases or decreases in estimated aggregate expenditures. For CY 2020, we began with 8,423,688 30-day periods and dropped 603,157 30-day periods that had a claim occurrence code 50 date after October 31, 2020. We also eliminated 79,328 30-day periods that didn't appear to group with another 30-day period to form a 60-day episode if the 30-day period had a ''from date'' before January 15, 2020 or a ''through

date'' after November 30, 2020. This was done to ensure a 30-day period would not have been part of a 60-day episode that would have overlapped into CY 2021. Applying the additional exclusions and assumptions as described previously, an additional 14,062 30-day periods were excluded from this analysis. Additionally, we excluded 66,469 simulated 60-day episodes of care where no OASIS information was available in the CCW VRDC or could not be grouped to a HIPPS due to a missing primary diagnosis or other reason. Our simulated 60-day episodes of care produced a distribution of two 30-day periods of care (70.6 percent) and single 30-day periods of care (29.4 percent). This distribution is similar to what we found when we simulated 30-day periods of care for implementation of the PDGM. After all exclusions and assumptions were applied, the final dataset included 7,618,061 actual 30-day periods of care and 4,463,549 simulated 60-day episodes of care for CY 2020.

Using the final dataset for CY 2020 (7,618,061 actual 30-day periods which made up the 4,463,549 simulated 60-day episodes) we determined the estimated aggregate expenditures using the pre-PDGM HH PPS data were lower than the estimated aggregate expenditures using the PDGM HH PPS data (see Table 2). This indicates that actual aggregate expenditures under the PDGM were higher than if the 153-group payment system was still in place in CY 2020. As described previously, we recalculated what the CY 2020 30-day base payment rate should have been to equal aggregate expenditures that we calculated using the simulated CY 2020 60-day episodes. The percent change between the two payment rates would be the permanent adjustment. To calculate the temporary adjustment for CY 2020, we calculated the difference in aggregate expenditures for all CY 2020 PDGM 30-day claims using the actual and recalculated payment rates. This difference between these two aggregate expenditures, based on actual and recalculated payment rates, is the retrospective dollar amount needed to offset any increase or decrease in the estimated aggregate expenditures. Our results are shown in Table 2.

Table 2—CY 2020 Proposed Permanent and Temporary Adjustments

	Budget-neutral 30-day Payment Rate with Assumed Behavior Changes	Budget-neutral 30-day Payment Rate with Actual Behavior Changes	Adjustment
Base Payment Rate	$1,864.03	$1,742.52	**Permanent** - 6.52%
Aggregate Expenditures	$15,170,223,126	$14,297,150,005	**Temporary** - $873,073,121

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed on the CCW July 12, 2021.

As shown in Table 2, a permanent prospective adjustment of −6.52 percent to the CY 2023 30-day payment rate would be required to offset for such increases in estimated aggregate expenditures in future years. Additionally, we determined that our initial estimate of base payment rates required to achieve budget neutrality resulted in excess payments to HHAs of approximately $873 million in CY 2020. This would require a temporary adjustment to offset for such increase in estimated aggregate expenditures for CY 2020.

e. CY 2021 Results

We will continue the practice of using the most recent complete home health claims data at the time of rulemaking. The CY 2021 analysis presented in the CY 2023 HH PPS proposed rule was considered ''preliminary'' and as more data became available from the latter half of CY 2021, we updated our results. Using the methodology described previously, we simulated 60-day episodes using actual CY 2021 30-day periods to determine what the permanent and temporary payment adjustments should be to offset for such increases or decreases in estimated aggregate expenditures as a result of the impact of differences between assumed behavior changes and actual behavior changes. For CY 2021, we began with 9,269,971 30-day periods of care and dropped 570,882 30-day periods of care that had claim occurrence code 50 date after October 31, 2021. We also excluded 968,434 30-day periods of care that had claim occurrence code 50 date before January 1, 2021 to ensure the 30-day period would not be part of a simulated 60-day episode that began in CY 2020. Applying the additional exclusions and assumptions as described previously, an additional 5,868 30-day periods were excluded.

Additionally, we excluded 14,302 simulated 60-day episodes of care where no OASIS information was available in the CCW VRDC or could not be grouped to a HIPPS due to a missing primary diagnosis or other reason. Our simulated 60-day episodes of care produced a distribution of two 30-day periods of care (70.0 percent) and single 30-day periods of care (30.0 percent) that was similar to what we found when we simulated two 30-day periods of care for implementation of the PDGM. After all exclusions and assumptions were applied, the final dataset included 7,703,261 actual 30-day periods of care and 4,529,498 simulated 60-day episodes of care for CY 2021.

Using the final dataset for CY 2021 (7,703,261 actual 30-day periods which made up the 4,529,498 simulated 60-day episodes) we determined the estimated aggregate expenditures under the pre-PDGM HH PPS was lower than the actual estimated aggregate expenditures under the PDGM HH PPS. This indicates that aggregate expenditures under the PDGM were higher than if the 153-group payment system was still in place in CY 2021. As described previously, we recalculated what the CY 2021 30-day base payment rate should have been to equal aggregate expenditures that we calculated using the simulated CY 2021 60-day episodes. We note, the actual CY 2021 base payment rate of $1,901.12 does not account for any adjustments previously made for CY 2020 and therefore, to evaluate changes for only CY 2021 we need to control for the −6.52 percent prospective adjustment that we determined for CY 2020. Therefore, using the recalculated CY 2020 base

payment rate of $1,742.52, multiplied by the CY 2021 wage index budget neutrality factor (0.9999) and the CY 2021 home health payment update (1.020), the CY 2021 base payment rate for assumed behavior would have been $1,777.19. The percent change between the two payment rates would be the permanent adjustment (assuming the –6.52 percent adjustment was already taken). Next, we calculated the difference in aggregate expenditures for all CY 2021 PDGM 30-day claims using the actual ($1,901.12) and recalculated ($1,751.90) payment rates. This difference is the retrospective dollar amount needed to offset payment. Our results are shown in Table 3.

Table 3—CY 2021 Proposed Permanent and Temporary Adjustments

	Budget-neutral 30-day Payment Rate with Assumed Behavior Changes	Budget-neutral 30-day Payment Rate with Actual Behavior Changes	Adjustment
Base Payment Rate	$1,777.19	$1,751.90	**Permanent** -1.42%
Aggregate Expenditures	$17,068,503,155*	15,857,500,202	**Temporary** $1,211,002,953

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed on the CCW July 15, 2022
***Note**: The estimated aggregate expenditures for assumed behavior ($17.1 billion), uses the CY 2021 payment rate of $1,901.12 as this is what CMS actually paid in CY 2021.

As shown in Table 3, an additional permanent prospective adjustment of −1.42 percent (assuming the −6.52 percent adjustment was already taken) would be required to offset for such increases in estimated aggregate expenditures in future years. Additionally, we determined that our initial estimate of the base payment rates required to achieve budget neutrality resulted in excess expenditures of approximately $1.2 billion in CY 2021. This would require a temporary adjustment factor to offset for such increases in estimated aggregate expenditures for CY 2021.

f. CY 2023 Permanent and Temporary Adjustments

The percent change between the actual CY 2021 base payment rate of $1,901.12 and the CY 2021 recalculated base payment rate of $1,751.90 is the total permanent adjustment for CYs 2020 and 2021, because no previous adjustments were applied to the CY 2020 rate to reset the CY 2021 rate. The summation of the dollar amount for CYs 2020 and 2021 is the amount that represents the temporary payment adjustment to offset for increased aggregate expenditures in both CYs 2020 and 2021. Our results are shown in Table 4 and 5.

Table 4—Total Permanent Adjustment for CYs 2020 and 2021

Actual CY 2021 Base Payment Rate (Assumed Behavior)	Recalculated CY 2021 Base Payment Rate (Actual Behavior)	Total Permanent Prospective Adjustment
$1,901.12	$1,751.90	-7.85%

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed on the CCW March 21, 2022.

Table 5—Total Temporary Adjustment for CYs 2020 and 2021

CY 2020 Temporary Adjustment	CY 2021 Temporary Adjustment	Total Temporary Adjustment Dollar Amount for CYs 2020 and 2021
- $873,073,121	- $1,211,002,953	- $2,084,076,074

Source: CY 2020 Home Health Claims Data, Periods that begin and end in CY 2020 accessed on the CCW July 12, 2021. CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed on the CCW July 15, 2022.

To offset the increase in estimated aggregate expenditures for CYs 2020 and 2021 based on the impact of the differences between assumed and actual behavior changes, CMS would need to apply a −7.85 percent permanent adjustment to the CY 2023 base payment rate as well as implement a temporary adjustment of approximately $2.1 billion to reconcile retrospective overpayments in CYs 2020 and 2021. We recognize that applying the full permanent and temporary adjustment immediately would result in a significant negative adjustment in a single year. However, if the PDGM base 30-day payment rate remains higher than it should be, then there would likely be a compounding effect, potentially creating the need for an even larger reduction to adjust for behavioral

changes in future years. Therefore, we proposed to apply only the permanent adjustment to the CY 2023 base payment rate. We believed this could mitigate the need for a larger permanent adjustment and could reduce the amount of any additional temporary adjustments in future years. We solicited comments on the application of only the permanent payment adjustment to the CY 2023 30-day payment rate. Additionally, we solicited comments on how best to collect the temporary payment adjustment of approximately $2.0 billion for CYs 2020 and 2021.

Comment: MedPAC supported the proposed payment reduction and stated it is consistent with their recommendation of a five percent reduction to the base payment rate in the March 2022 report to Congress.[19] MedPAC commented CMS should decrease home health payments to better align payments with actual incurred costs, as they found that Medicare margins for freestanding agencies averaged more than 20 percent from 2001 to 2020.

Response: We appreciate the supportive comment by MedPAC.

Comment: Several commenters expressed concern that the proposed permanent behavior assumption adjustment would negatively impact home health providers' business operations. These commenters stated that the negative adjustment does not consider operational and financial challenges providers are currently experiencing related to inflation, staffing shortages, rising costs of gasoline, and medical supplies, including personal protective equipment (PPE). Commenters also stated that staffing shortages could be the reason for the decline in visits. They stated that a negative 7.69 percent behavior assumption adjustment will cause many agencies to operate with negative margins. Commenters also expressed concerns that the proposed behavior assumption adjustment penalizes HHAs and would put access to home health in jeopardy and impact the quality of care given to home health beneficiaries. Other commenters stated that CMS should utilize the existing program integrity measures to identify and target specific agencies that have excess profit margins rather than impose an across the board reduction for all agencies, and that CMS should use its enforcement authority to target HHAs that are cutting utilization or engaged in other payment-driven behaviors to the detriment of patients. Another commenter stated that CMS should look for ways to reward ''good provider behavior.''

Response: We recognize concerns around staffing and appreciate the commenters' recommendation. However, the statutorily required permanent and temporary adjustments due to behavior changes is neither to ''reward'' nor ''penalize'' providers. The proposed methodology controls for overall utilization by using a single year of utilization data priced under two payment systems to estimate aggregate expenditures. As such, any effects of staffing issues would be present in the data under both systems. The payment adjustment is solely to offset for any increase or decrease in estimated aggregate expenditures between the two payment systems.

We also recognize the impact inflation and the COVID–19 PHE has had on healthcare providers, however, we note that in its March 2022 Report to the Congress,[20] MedPAC states that Medicare margins increased under the PDGM, from 15.4 percent in 2019 to 20.2 percent in 2020. Additionally, they projected margins for home health agencies in 2022 will be roughly 17.0 percent. Furthermore, MedPAC stated in their report that the Commission found positive access, quality, and financial indicators for the sector, with average margins of 20.2 percent for freestanding HHAs in 2020, even though the cost per 30-day period increased by 3.1 percent in this year. We believe that these margins, despite economic challenges, demonstrate that the payment rate, along with the market basket update, are more than adequate to support business operations. Finally, while we appreciate the commenters' suggestion regarding targeted claim review for specific home health agencies, we do not believe targeted program integrity efforts would mitigate behavioral changes resulting from a case-mix system. We previously addressed this suggestion in the CY 2016 HH PPS and CY 2019 HH PPS final rules (80 FR 68421 and 83 FR 56455, respectively). As we previously noted, this strategy is not viable, given the widespread nature of coding changes and improvements, small sample sizes of agencies with significant nominal case-mix across different classes of agencies, and difficulty in precisely distinguishing the agencies that engage in abusive coding from all others. Additionally, we reiterate that we are required to make temporary and permanent payment adjustments to the national, standardized 30-day period payment rate based on the impact of differences between assumed versus actual behavior change, in accordance with sections 1895(b)(3)(D)(ii) and (iii) to offset for such increases or decreases in estimated aggregate expenditures. These adjustments are not intended to account for coding abuses, but rather behavior changes CMS observes across the system. As such, we do not believe that reducing the 30-day payment rate only for agencies with high margins is the best way to implement the by statute.

Comment: A few commenters also stated that reduced payment from the permanent behavior assumption adjustment would exacerbate the already reduced payment that home health agencies receive from Medicare Advantage and Medicaid. A commenter stated that CMS fails to consider that the margins associated with a traditional Medicare beneficiary subsidize the care of managed Medicare Advantage and Medicaid patients.

Response: While industry representatives contend that Medicare payments should subsidize payments from other payers (Medicare Advantage and Medicaid), we disagree. Medicare has never set payments in order to cross-subsidize other payers. Section 1861(v)(1)(A) of the Act states ''under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs.'' There is no statutory authority to take the payment rates of other payers into account when setting Medicare fee-for-service payment rates.

Comment: Many commenters recommended a phased-in approach over several years for the permanent and temporary adjustments. Specifically, a commenter indicated that a phase-in should reduce payments by no more than 2 percent annually until the adjustment is achieved. Another commenter recommended the temporary adjustment starting no earlier than 2026. A few commenters recommended postponing any adjustments until more data are made available.

Response: We thank the commenters for their recommendations. We recognize the desire to reduce the payment adjustment; however, note that any delay in the permanent adjustment

[19] *https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_v2_SEC.pdf.*

[20] *https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_v2_SEC.pdf.*

through a phase-in approach may require larger temporary and permanent adjustments in the future. While we didn't propose a temporary adjustment in CY 2023, we will consider the best approach, including a phase-in, when we do propose the temporary adjustment in future rule-making.

Final Decision: We stand by the methodology as described previously and maintain our authority to finalize the adjustment as proposed. But we recognize the potential hardship of implementing the full −7.85 percent permanent adjustment in a single year. As we have the discretion to implement any adjustment in a time and manner determined appropriate, we are finalizing only a −3.925 percent (half of the −7.85 percent) permanent adjustment for CY 2023. However, we note the permanent adjustment to account for actual behavior changes in CYs 2020 and 2021 should be −7.85 percent. Therefore, applying a −3.925 percent permanent adjustment to the CY 2023 30-day payment rate would not adjust the rate fully to account for differences in behavior changes on estimated aggregate expenditures during those years, as well as in CYs 2022 and 2023. We would have to account for that difference, and any other potential adjustments needed to the base payment rate, to account for behavior change based on data analysis in future rulemaking.

While we did not propose to adjust the CY 2023 payment rate using our temporary adjustment authority for CYs 2020 and 2021, we did solicit comments on how best to implement the temporary adjustment.

Comment: MedPAC recommended CMS adjust temporary payment rates over several years, such as adjusting the aggregate rate by $502.5 million per year for CYs 2023 through 2026. MedPAC strongly recommended beginning these reductions immediately to avoid potential larger reductions in future years.

Response: We thank MedPAC for their recommendation. However, while CMS proposed the methodology for calculating both the permanent and temporary adjustments, in the CY 2023 HH PPS proposed rule we did not propose collecting the $2.0 billion temporary adjustment for CYs 2020 and 2021 beginning in CY 2023. We did solicit comments on how best to collect the temporary payment adjustment and will take these comments into consideration when we propose any temporary adjustments in future rulemaking.

Comment: Many commenters recommended a phase-in over several years for the temporary adjustment and another year delay before recovering any overpayments. Another commenter stated the recoupment should not be applied equally to all HHAs, but rather CMS should target recoupment based on agency level analyses to determine those HHAs who had high margins, egregious behavior changes, and ''cherry pick'' patients.

Response: We appreciate the commenters recommendation. We note that this is not a recoupment in the legal sense, but, as the statute specifies at section 1895(b)(3)(D)(iii) of the Act, a temporary adjustment to account for retrospective behavior. While there may be different business models between HHAs, those practices are outside the scope of this policy. Specifically, we believe the best way to interpret the statute is to apply any adjustments (permanent and temporary) to the national, standardized 30-day period payment rate on a prospective basis.

Final Decision: We thank commenters for their suggestions about how to implement the temporary payment adjustments and will consider them in future rulemaking.

3. Reassignment of Specific ICD–10–CM Codes Under the PDGM

a. Background

The 2009 final rule, ''HIPAA Administrative Simplification: Modifications to Medical Data Code Set Standards To Adopt ICD–10–CM and ICD–10–PCS'' [21] (74 FR 3328, January 16, 2009), set October 1, 2013, as the compliance date for all covered entities under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to use the International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) and the International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS) medical data code sets. The ICD–10–CM diagnosis codes are granular and specific, and provide HHAs a better opportunity to report codes that best reflect the patient's conditions that support the need for home health services. However, as stated in the CY 2019 HH PPS final rule with comment period (83 FR 56473), because the ICD–10–CM is comprehensive, it also contains many codes that may not support the need for home health services. For example, diagnosis codes that indicate death as the outcome are Medicare covered codes, but are not relevant to home health. In addition, diagnosis and procedure coding guidelines may specify the sequence of ICD–10–CM coding conventions. For example, the underlying condition must be listed first (for example, Parkinson's disease must be listed prior to Dementia if both codes were listed on a claim). Therefore, not all the ICD–10–CM diagnosis codes are appropriate as principal diagnosis codes for grouping home health periods into clinical groups or to be placed into a comorbidity subgroup when listed as a secondary diagnosis. As such, each ICD–10–CM diagnosis code is assigned, including those diagnosis codes designated as ''not assigned'' (NA), to a clinical group and comorbidity subgroup within the HH PPS grouper software (HHGS). We reminded commenters the ICD–10–CM diagnosis code list is updated each fiscal year with an effective date of October 1st and therefore, the HH PPS is generally subject to a minimum of two HHGS releases, one in October and one in January of each year, to ensure that claims are submitted with the most current code set available. Likewise, there may be new ICD–10–CM diagnosis codes created (for example, codes for emergency use) or a new or revised edit in the Medicare Code Editor (MCE) so an update to the HHGS may occur on the first of each quarter (January, April, July, October).

b. Methodology for ICD–10–CM Diagnosis Code Assignments

Although it is not our intent to review all ICD–10–CM diagnosis codes each year, we recognize that occasionally some ICD–10–CM diagnosis codes may require changes to their assigned clinical group and/or comorbidity subgroup. For example, there may be an update to the MCE unacceptable principal diagnosis list, or we receive public comments from interested parties requesting specific changes. Any addition or removal of a specific diagnosis code to the ICD–10–CM code set (for example, three new diagnosis codes, Z28.310, Z28.311 and Z28.39, for reporting COVID–19 vaccination status were effective April 1, 2022) or minor tweaks to a descriptor of an existing ICD–10–CM diagnosis code generally would not require rulemaking and may occur at any time. However, if an ICD–10–CM diagnosis code is to be reassigned from one clinical group and/or a comorbidity subgroup to another, which may affect payment, then we believe it is appropriate to propose these changes through notice and comment rulemaking.

We rely on the expert opinion of our clinical reviewers (for example, nurse

[21] *https://www.federalregister.gov/documents/2009/01/16/E9-743/hipaa-administrative-simplification-modifications-to-medical-data-code-set-standards-to-adopt.*

consultants and medical officers) and current ICD–10–CM coding guidelines to determine if the ICD–10–CM diagnosis codes under review for reassignment are significantly similar or different to the existing clinical group and/or comorbidity subgroup assignment. As we stated in the CY 2018 HH PPS proposed rule (82 FR 35313), the intent of the clinical groups is to reflect the reported principal diagnosis, clinical relevance, and coding guidelines and conventions. Therefore, for the purposes of assignment of ICD–10–CM diagnosis codes into the PDGM clinical groups we would not conduct additional statistical analysis as such decisions are clinically based and the clinical groups are part of the overall case-mix weights.

As we noted in the CY 2019 HH PPS final rule with comment period (83 FR 56486), the home health-specific comorbidity list is based on the principles of patient assessment by body systems and their associated diseases, conditions, and injuries to develop larger categories of conditions that identified clinically relevant relationships associated with increased resource use meaning the diagnoses have at least as high as the median resource use and are reported in more than 0.1 percent of 30-day periods of care. If specific ICD–10–CM diagnosis codes are to be reassigned to a different comorbidity subgroup (including NA), we will first evaluate the clinical characteristics (as discussed previously for clinical groups) and if the ICD–10–CM diagnosis code does not meet the clinical criteria, then no reassignment will occur. However, if an ICD–10–CM diagnosis code does meet the clinical criteria for a comorbidity subgroup reassignment, then we will evaluate the resource consumption associated with the ICD–10–CM diagnosis codes, the current assigned comorbidity subgroup, and the proposed (reassigned) comorbidity subgroup. This analysis is to ensure that any reassignment of an ICD–10–CM diagnosis code (if reported as secondary) in any given year would not significantly alter the overall resource use of a specific comorbidity subgroup. For resource consumption, we use non-LUPA 30-day periods to evaluate the total number of 30-day periods for the comorbidity subgroup(s) and the ICD–10–CM diagnosis code, the average number of visits per 30-day periods for the comorbidity subgroup(s) and the ICD–10–CM diagnosis code, and the average resource use for the comorbidity subgroup(s) and the ICD–10–CM diagnosis code. The average resource use measures the costs associated with visits performed during a home health period, and was previously described in the CY 2019 HH PPS final rule with comment period (83 FR 56450).

c. ICD–10–CM Diagnosis Code Reassignments to a PDGM Clinical Group or Comorbidity Subgroup

The following section proposed reassignment of 320 diagnosis codes to a different clinical group when listed as a principal diagnosis, reassignment of 37 diagnosis codes to a different comorbidity subgroup when listed as a secondary diagnosis, and the establishment of a new comorbidity subgroup for certain neurological conditions and disorders. Due to the amount of diagnosis codes proposed for reassignment this year, we posted the ''CY 2023 Proposed Reassignment of ICD–10–CM Diagnosis Codes for HH PDGM Clinical Groups and Comorbidity Subgroups'' supplemental file on the Home Health Prospective Payment System Regulations and Notices web page.[22]

Comment: Several commenters supported the general refinement of coding assignments, including all the proposed coding changes. A commenter stated that the changes will help to more accurately reflect patients' needs and why they need home health services, rather than using ''pain'' as a diagnosis.

Response: We thank these commenters for their support and agree that the changes will provide more specific information related to the needs of the patient under a home health plan of care.

Comment: Several commenters expressed concern that reassignment of clinical groups for principal diagnosis codes would result in an access to care issue. For example, commenters were concerned that a reassignment of principal diagnosis codes from a clinical group to no clinical group, would change the case-mix weight and reimbursement, and that the HHA may refuse the patient, thus restricting access to care. There was also concern that if the clinical group changed (for example, MS-Rehab to Wounds), the HHA would restrict the type of services provided, such as physical therapy, also restricting access to care.

Response: It is unclear why commenters believe any reassignments would restrict access to care, and note that the CoPs at § 484.60 state that the individualized plan of care must specify the care and services necessary to meet the patient-specific needs as identified in the comprehensive assessment, including identification of the responsible discipline(s), and the measurable outcomes that the HHA anticipates will occur as a result of implementing and coordinating the plan of care. Services must be furnished in accordance with accepted standards of practice. The purpose of any reassignment is to ensure that diagnoses are assigned to the appropriate clinical group or comorbidity subgroup and to align as closely as possible to ICD–10–CM coding conventions and MCE edits. These edits may have payment effects but should not result in any change in clinical practice or availability of services, unless the agency is failing to act in accordance with the plan of care.

Comment: A few commenters requested that CMS modify the clinical groups to accept and include diagnosis codes which may drive a home health need. Specifically, commenters requested allowing R29.6 (repeated falls), R54 (age-related physical debility), R26.89 (other abnormalities of gait and mobility), R42.82 (altered mental status, unspecified), and M62.81(muscle weakness (generalized)) to be accepted as a principal diagnosis and placed into a clinical group for payment.

Response: We thank the commenters for their coding recommendations. However, we did not propose to assign any of the R-codes to a clinical group and therefore, such suggestions are out of scope for this rule. We remind commenters that R-codes are codes describing symptoms, signs, and abnormal clinical and laboratory findings, not elsewhere classified) and are generally not allowed as a principal diagnosis (except for a few) in accordance with ICD–10–CM coding guidelines. Any changes to the acceptable principal diagnosis list for home health, including the addition of new ICD–10 codes, would have to go through notice and comment rulemaking.

(1) Clinical Group Reassignment of Certain Unspecified Diagnosis Codes

We reminded readers that in the CY 2019 HH PPS final rule with comment period (83 FR 56473) we stated that whenever possible, the most specific code that describes a medical disease, condition, or injury should be used. Generally, ''unspecified'' codes are used when there is lack of information about location or severity of medical conditions in the medical record. However, we would expect a provider to

[22] Home Health Prospective Payment System Regulations and Notices web page. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.*

use a precise code whenever more specific codes are available. Furthermore, if additional information regarding the diagnosis is needed, we would expect the HHA to follow-up with the referring provider in order to ensure the care plan is sufficient in meeting the needs of the patient. For example, T14.90 ''Injury, unspecified'' does not provide sufficient information (for example, the type and extent of the injury) that would be necessary in care planning for home health services. The ICD–10–CM code set also includes laterality. We believe a home health clinician should not report an ''unspecified'' code if that clinician can identify the side or site of a condition. For example, a home health clinician should be able to state whether a fracture of the arm is on the right or left arm. In the FY 2022 Inpatient Prospective Payment System/Long-Term Care Hospital Prospective Payment System (IPPS/LTCH PPS) final rule (86 FR 44940 through 44943), CMS finalized the implementation of a new MCE to expand the list of unacceptable principal diagnoses for ''unspecified'' ICD–10–CM diagnosis codes when there are other diagnosis codes available in that diagnosis code subcategory that further specify the anatomic site. As such, we reviewed all the ICD–10–CM diagnosis codes where ''unspecified'' is used and not just the ones listed on the new MCE edit. We identified 159 ICD–10–CM diagnosis codes that are currently accepted as a principal diagnosis that have more specific codes available for such medical conditions that would more accurately identify the primary reason for home health services. For example, S59.109A (Unspecified physeal fracture of upper end of radius, unspecified arm, initial encounter for closed fracture) does not specify which arm has the fracture; whereas, S59.101A (Unspecified physeal fracture of upper end of radius, right arm, initial encounter for closed fracture) does indicate the fracture is on the right arm and therefore more accurately identifies the primary reason for home health services. Therefore, in accordance with our expectation that the most precise code be used, we stated that we believe these 159 ICD–10 CM diagnosis codes are not acceptable as principal diagnoses and we proposed to reassign them to ''no clinical group'' (NA). We refer readers to Table 1.A of the CY 2023 Proposed Reassignment of ICD–10–CM Diagnosis Codes supplemental file [23] for the list of the 159 unspecified diagnosis codes.

We also determined that B78.9 strongyloidiasis, unspecified was assigned to clinical group C (Wounds), and should be reassigned to clinical group K (MMTA—Infectious Disease, Neoplasms, and Blood-Forming Diseases) because it would be consistent with the assignment of the other strongyloidiasis codes. We also identified that N83.201 unspecified ovarian cyst, right side was assigned to clinical group A (MMTA—Other) and should be reassigned to clinical group J (MMTA—Gastrointestinal Tract and Genitourinary System) because it would be consistent with the assignment of other ovarian cyst codes. We proposed to reassign these two ICD–10–CM diagnosis codes' clinical groups as shown in Table 6.

Table 6—Reassignment of Clinical Group for ''Unspecified'' ICD–10–CM Diagnosis Codes

ICD-10–CM Code	Code Description	Reassigned Clinical Group	Reassigned Clinical Group Description
B78.9	Strongyloidiasis, unspecified	K	MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases
N83.201	Unspecified ovarian cyst, right side	J	MMTA - Gastrointestinal Tract and Genitourinary System

Comment: Several commenters were concerned about the proposal to reassign the 159 ICD–10–CM codes to no clinical group (NA) when listed as a principal diagnosis. Commenters stated that only 45 of the 159 ICD–10–CM codes were listed on the MCE 20 list of unacceptable principal diagnoses and that the home health Grouper would be inconsistent with the other MCE edits. While commenters agreed the most specific documentation should be reflected in medical records to assign the most specific code available, they noted that there are certain circumstances in which an unspecified code should be accepted as a principal diagnosis according to the MCE manual and ICD–10–CM Official Guidelines for Coding and Reporting.[24] In addition, commenters stated that obtaining additional information may be burdensome to certain HHAs.

Response: We thank interested parties for their comments. As we noted in the CY 2023 HH PPS proposed rule and previously in this final rule, we did not limit our review of unspecified codes only to those on the MCE edit list. Instead, the release of the MCE 20 edit prompted our review of all unspecified codes currently assigned to a clinical group when listed as a principal diagnosis.

We also recognize the desire for a consistent unspecified edit for all health care entities; however, this is not feasible given the vast differences across Medicare benefits and their associated payment systems. As such, CMS has created different groupers to institute edits to a specific program. For example, home health uses the Home Health Resource Group (HHRG), while inpatient rehabilitation facilities use Case Mix Group (CMG), both of which are different from the inpatient and outpatient grouper software.

We acknowledge the ICD–10–CM Official Guidelines for Coding and Reporting Section I.B.18 states ''If a definitive diagnosis has not been established by the end of the encounter, it is appropriate to report codes for sign(s) and/or symptom(s) in lieu of a definitive diagnosis. When sufficient clinical information is not known or available about a particular health condition to assign a more specific code, it is acceptable to report the appropriate ''unspecified'' code (for example, a diagnosis of pneumonia has been determined, but not the specific type). Unspecified codes should be reported when they are the codes that most accurately reflect what is known about the patient's condition at the time of that particular encounter.'' However, as previously stated in the CY 2019 HH PPS final rule with comment period (83

[23] Home Health Prospective Payment System Regulations and Notices web page. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.*

[24] *https://www.cms.gov/files/document/fy-2022-icd-10-cm-coding-guidelines-updated-02012022.pdf.*

FR 56473) and the CY 2023 HH PPS proposed rule, ''unspecified'' codes are used when the record lacks information about location or severity of medical conditions if additional information regarding the diagnosis is needed, we would expect the HHA to follow-up with the referring provider in order to ensure the care plan is sufficient in meeting the needs of the patient. Of the proposed 159 ICD–10–CM diagnosis codes, 85 percent (136 codes) lacked information about location (that is, laterality) while the remaining 15 percent (23 codes) lacked information about severity. We understand commenters concerns that many home health visits may be subsequent to the initial injury or disease and the medical record may lack information. However, we still believe this supports the need for more specific codes in order for the provider to appropriately provide services in alignment with the plan of care.

In addition, per the FY 2022 IPPS/LTCH final rule (86 FR 44943), if, upon review, additional information to identify the laterality from the available medical record documentation by any other clinical provider is unable to be obtained, or there is documentation in the record indicating that the physician is clinically unable to determine the laterality because of the nature of the disease/condition, then the provider must enter that information into the remarks section. If there is no language entered into the remarks section as to the availability of additional information to specify laterality and the provider submits the claim for processing, the claim would then be returned to the provider. While Medicare systems may allow an edit to be bypassable (for example, the NOA timelines extension), it does not currently allow an unacceptable home health principal diagnosis to be bypassable. We may consider adding certain additional edits as bypassable in future rulemaking.

In response to the 15 codes where more specific codes identify severity, rather than laterality, we further evaluated if a more specific code would be appropriate in determining the plan of care and home health services required. We determined that 11 of the codes not only had more specific codes, but there are similar unspecified codes in the same subchapter which we do not accept as a principal diagnosis. For example, for pregnancy-related codes, we expect the trimester to be specified. However, based on comments and further review we determined the four codes listed in Table 7 below should remain with their current assigned clinical group when listed as a principal diagnosis as we believe the information in these codes is sufficient to establish a home health plan of care to address such conditions.

Table 7—Unspecified Diagnosis Codes Remaining in Clinical Groups

ICD-10–CM Code	Code Description	Clinical Group	Clinical Group Description
H20.9	Unspecified iridocyclitis	A	MMTA - Other
M50.00	Cervical disc disorder with myelopathy, unsp cervical region	E	Musculoskeletal Rehabilitation
N70.91	Salpingitis, unspecified	A	MMTA - Other
N70.92	Oophoritis, unspecified	A	MMTA - Other

Final Decision: After consideration of the public comments received, we are modifying our proposal of the 159 ICD–10 CM ''unspecified'' diagnosis codes to be reassigned to N/A by excluding the four codes listed in Table 7. Instead we are finalizing the reassignment of the remaining 155 ICD–10 CM diagnosis codes from their current assigned clinical group to NA when the codes are listed as a principal diagnosis. We remind readers that if a claim cannot be assigned a clinical group, the claim will be returned to the provider for further information. We are also finalizing the reassignment of B78.9 (strongyloidiasis, unspecified) from clinical group C (Wounds) to clinical group K (MMTA—Infectious Disease, Neoplasms, and Blood-Forming Diseases) and the reassignment of N83.201 (unspecified ovarian cyst, right side) from clinical group A (MMTA-Other) to clinical group J (MMTA—Gastrointestinal Tract and Genitourinary System) when listed as the principal diagnoses. We urge interested parties to review the final HH Clinical Group and Comorbidity Adjustment Diagnosis list released with this final rule, as well as the 3M Grouper January 2023 HH PPS Grouper Software HH PDGM v04.0.23, when determining if an ICD–10 CM diagnosis code is accepted as a principal diagnosis and assigned a clinical group.

(2) Clinical Group Reassignment of Gout-Related Codes

We identified that certain groups of gout-related ICD–10–CM diagnosis codes, such as idiopathic gout and drug-induced gout, were assigned to clinical group E (musculoskeletal rehabilitation) when listed as a principal diagnosis. However, other groups of gout related ICD–10–CM diagnosis codes, such as gout due to renal impairment, were assigned to ''no clinical group'' (NA). Therefore, we reviewed all gout-related codes and determined there are 144 gout related codes with an anatomical site specified, not currently assigned to a clinical group that should be moved to clinical group E (musculoskeletal rehabilitation) for consistency with the aforementioned gout codes. In the ICD–10–CM code set, gout codes and osteoarthritis codes are found in chapter 13 Diseases of the Musculoskeletal System and Connective Tissue (M00–M99). Gout and osteoarthritis affect similar joints such as the fingers, toes, and knees and they can initially be treated with medications. However, generally, as a part of a treatment program, once the initial inflammation

is reduced, physical therapy can be started to stretch and strengthen the affected joint to restore flexibility and joint function. Because those cases may require therapy, we believe gout codes are more appropriately placed into MS rehab along with other codes affecting the musculoskeletal system. We refer readers to Table 1.B of the CY 2023 Proposed Reassignment of ICD–10–CM Diagnosis Codes supplemental file for the list of the 144 gout related codes. We did not receive comments on this proposal and therefore are finalizing the reassignment of these 144 gout-related ICD–10–CM diagnosis codes to clinical group E (musculoskeletal rehabilitation) without modification.

(3) Clinical Group Reassignment of Crushing Injury-Related Codes

We identified 12 ICD–10–CM diagnosis codes related to crushing injury of the face, skull, and head that warrant reassignment. These codes are listed in Table 8.

Table 8—ICD–10–CM Diagnosis Codes Related to Crushing Injury of Face, Skull, and Head

ICD–10–CM Code	Code Description	Current Clinical Group	Current Clinical Group Description
S07.0XXA	Crushing injury of face, initial encounter	A	MMTA – Other
S07.0XXD	Crushing injury of face, subsequent encounter	A	MMTA – Other
S07.0XXS	Crushing injury of face, sequela	A	MMTA – Other
S07.1XXA	Crushing injury of skull, initial encounter	A	MMTA – Other
S07.1XXD	Crushing injury of skull, subsequent encounter	A	MMTA – Other
S07.1XXS	Crushing injury of skull, sequela	A	MMTA – Other
S07.8XXA	Crushing injury of other parts of head, initial encounter	A	MMTA – Other
S07.8XXD	Crushing injury of other parts of head, subsequent encounter	A	MMTA – Other
S07.8XXS	Crushing injury of other parts of head, sequela	A	MMTA – Other
S07.9XXA	Crushing injury of head, part unspecified, initial encounter	A	MMTA – Other
S07.9XXD	Crushing injury of head, part unspecified, subsequent encounter	A	MMTA – Other
S07.9XXS	Crushing injury of head, part unspecified, sequela	A	MMTA – Other

Our clinical advisors reviewed the 12 ICD–10–CM diagnosis codes related to crushing injury of the face, skull, and head and determined that reassignment of these codes to clinical group B (Neurological Rehabilitation) is clinically appropriate because they are consistent with other diagnosis codes in clinical group B that describe injuries requiring neurological rehabilitation. We did not receive comments on this proposal and therefore are finalizing the reassignment of the ICD–10–CM diagnosis codes listed in Table 8 from clinical group A (MMTA-Other) to clinical group B (Neurological Rehabilitation) without modification.

(4) Clinical Group Reassignment of Lymphedema-Related Codes

We received questions from interested parties regarding three lymphedema codes with conflicting clinical group assignments when listed as a principal diagnosis. These codes are listed in Table 9.

Table 9—ICD–10–CM Diagnosis Code Related to Lymphedema

ICD-10 CM Diagnosis Code	Code Description	Current Clinical Group	Current Clinical Group Description
I89.0	Lymphedema, not elsewhere classified	E	Musculoskeletal Rehabilitation
I97.2	Postmastectomy lymphedema syndrome	E	Musculoskeletal Rehabilitation
Q82.0	Hereditary lymphedema	A	MMTA – Other

Our clinical advisors reviewed the three ICD–10–CM diagnosis codes related to lymphedema and determined that assessing and treating lymphedema is similar to the assessment and staging of wounds. It requires the assessment of pulses, evaluation of the color and amount of drainage, and measurement. In addition, some lymphedema can require compression bandaging, similar to wound care. Because of these similarities, we determined the reassignment of the three ICD–10–CM diagnosis codes related to lymphedema to clinical group C (Wounds) is clinically appropriate. Therefore, we proposed to reassign the ICD–10–CM diagnosis codes listed in Table 9 from clinical group E (Musculoskeletal Rehabilitation) and clinical group A (MMTA-Other) to clinical group C (Wounds).

Comment: Several commenters questioned whether the reassignment of lymphedema to clinical group C (wounds) would impact the type of practitioner who would be able to treat the wound or limit patient access to resources such as complete decongestive therapy including manual lymph drain

Response: We thank the commenters for their concern. The reassignment of lymphedema, or any other code, would not impact the type of practitioner providing services, as long as the allowed practitioner can perform the care under their scope of practice. In addition, per the CoPs, HHAs should continue to provide services in accordance with the plan of care.

Comment: A commenter questioned if CMS considers lymphedema a wound type and if we believe lymphedema is correlated to venous disease/wounds.

Response: Although CMS does not consider lymphedema to be a wound type, we believe clinically that the home health services needed to treat and manage lymphedema are equivalent to the time and services needed for managing an open wound regardless of the precipitating condition that resulted in lymphedema. Treatment for lymphedema focuses on reducing swelling and minimizing complications. As such, treatment could involve exercises, manual lymphatic drainage, compression bandages or garments, sequential pneumatic compression, and even wound care for any skin breakdown. Because the home health treatments can be similar in terms of care and intensity of care, we believe lymphedema and wounds are appropriate to be grouped together for clinical groupings.

Final Decision: After consideration of the public comments we received, we are finalizing the reassignment of the ICD–10–CM diagnosis codes listed in Table B19 from clinical group E (Musculoskeletal Rehabilitation) and clinical group A (MMTA-Other) to clinical group C (Wounds).

(5) Behavioral Health Comorbidity Subgroups

Our clinical advisors reviewed the ICD–10–CM diagnosis code F60.5 (obsessive-compulsive personality disorder) which is currently assigned to the comorbidity subgroup behavioral 6 (Schizotypal, Persistent Mood, and Adult Personality Disorders). However, they noted that behavioral 5 (Phobias, Other Anxiety and Obsessive-Compulsive Disorders) contains other obsessive-compulsive disorders (for example, F42.8 and F42.9) and clinically F60.5 should be reassigned to the comorbidity subgroup behavioral 5. In addition, we evaluated resource consumption related to the comorbidity subgroup behavioral 5, the comorbidity subgroup behavioral 6, and F60.5 and found no significant variations negating a reassignment, meaning the reassignment is still in alignment with the actual costs of providing care. We did not receive comments on this proposal, and therefore are finalizing the reassignment of diagnosis code F60.5 to behavioral 5 when listed as a secondary diagnosis.

(6) Circulatory Comorbidity Subgroups

We reviewed Q82.0 (hereditary lymphedema) for clinical group reassignment, as described in section II.B.3.4. of this rule. During this review, we discovered Q82.0 is not currently assigned to a comorbidity subgroup when listed as a secondary diagnosis. The comorbidity subgroup circulatory 10 includes ICD–10–CM diagnosis codes related to varicose veins and lymphedema. Therefore, our clinical advisors determined that Q82.0 should be assigned to the comorbidity subgroup circulatory 10 similar to other lymphedema diagnosis codes. In addition, we evaluated resource consumption related to the comorbidity subgroup circulatory 10 and Q82.0 and found no significant variations negating a reassignment. Therefore, we proposed to assign diagnosis code Q82.0 to circulatory 10 (varicose veins and lymphedema) when listed as a secondary diagnosis.

Final Decision: We received a comment in support of this assignment; therefore, we are finalizing the assignment of Q82.0 (hereditary lymphedema) from ''NA'' to circulatory 10 (varicose veins and lymphedema) when listed as a secondary diagnosis.

(7) Neoplasm Comorbidity Subgroups

(i) Malignant Neoplasm of Upper Respiratory

In response to interested parties' questions regarding upper respiratory malignant neoplasms, we reviewed 14 ICD–10–CM diagnosis codes related to malignant neoplasms of the upper respiratory tract currently assigned to the comorbidity subgroup neoplasm 6 (malignant neoplasms of trachea, bronchus, lung, and mediastinum). These 14 codes are listed in Table 10.

Table 10—ICD–10–CM Diagnosis Code Related to Malignant Neoplasms of Upper Respiratory Tract

ICD–10–CM Diagnosis Code	Code Description
C30.0	Malignant neoplasm of nasal cavity
C30.1	Malignant neoplasm of middle ear
C31.0	Malignant neoplasm of maxillary sinus
C31.1	Malignant neoplasm of ethmoidal sinus
C31.2	Malignant neoplasm of frontal sinus
C31.3	Malignant neoplasm of sphenoid sinus
C31.8	Malignant neoplasm of overlapping sites of accessory sinuses
C31.9	Malignant neoplasm of accessory sinus, unspecified
C32.0	Malignant neoplasm of glottis
C32.1	Malignant neoplasm of supraglottis
C32.2	Malignant neoplasm of subglottis
C32.3	Malignant neoplasm of laryngeal cartilage
C32.8	Malignant neoplasm of overlapping sites of larynx
C32.9	Malignant neoplasm of larynx, unspecified

Our clinical advisors reviewed the codes listed in Table 10 and determined that C32.3, C32.8, and C32.9 are currently assigned to the most clinically appropriate neoplasm comorbidity subgroup (neoplasm 6), and therefore no further analysis was conducted for these three ICD–10 CM diagnosis codes. However, upon review of all the neoplasm comorbidity subgroups, they determined that the remaining 11 codes listed in Table 10 should be reassigned

to neoplasm 1 (malignant neoplasms of lip, oral cavity, and pharynx, including head and neck cancers) in alignment with clinically similar diagnosis codes already assigned (for example, C11.0 malignant neoplasm of superior wall of nasopharynx). In addition, we evaluated resource consumption related to the comorbidity subgroup, neoplasm 1, as well as diagnosis codes, C30.0, C30.1, C31.0, C31.1, C31.2, C31.3, C31.8, C31.9, C32.0, C32.1, or C32.2 and found no significant variations negating a reassignment.

We did not receive comments on this proposal and therefore are finalizing the reassignment of diagnosis codes C30.0, C30.1, C31.0, C31.1, C31.2, C31.3, C31.8, C31.9, C32.0, C32.1, or C32.2 from neoplasm 6 to neoplasm 1 when listed as a secondary diagnosis.

(ii) Malignant Neoplasm of Unspecified Adrenal Gland

While reviewing unspecified codes for a change in clinical group, we noticed that ICD–10–CM diagnosis codes C74.00 (malignant neoplasm of cortex of unspecified adrenal gland) and C74.90 (malignant neoplasm of unspecified part of unspecified adrenal gland) were coded as ''N/A'' instead of placed in a comorbidity subgroup. The comorbidity subgroup neoplasm 15 currently includes ICD–10–CM diagnosis codes related to malignant neoplasm of adrenal gland, endocrine glands and related structures; specifically, C74.10 (malignant neoplasm of medulla of unspecified adrenal gland). At this time, we believe that C74.00 and C74.90 should be reassigned to neoplasm 15 based on clinical similarities of other codes currently assigned. In addition, we evaluated resource consumption related to the comorbidity subgroup neoplasm 15, as well as diagnosis codes C74.00, and C74.90 and found no significant variations negating a reassignment. We did not receive comments on this proposal and therefore are finalizing the reassignment of diagnosis codes C74.00 and C74.90 from ''NA'' to neoplasm 15 (malignant neoplasm of adrenal gland, endocrine glands and related structures) when listed as secondary diagnoses.

(8) New Neurological Comorbidity Subgroup

In response to a comment received, we discussed in the CY 2022 final rule (86 FR 62263, 62264) our review of ICD–10–CM diagnosis codes related to specified neuropathy or unspecified polyneuropathy. These include specific ICD–10–CM G-codes. We stated that the codes were assigned to the most clinically appropriate subgroup at the time. However, upon further clinical review we believe a new neurological comorbidity subgroup to include ICD–10–CM diagnosis codes related to nondiabetic neuropathy is warranted. We identified 18 ICD–10–CM diagnosis codes for potential reassignment to a proposed new comorbidity subgroup, neurological 12. We refer readers to Table 1.C of the CY 2023 Proposed Reassignment of ICD–10–CM Diagnosis Codes supplemental file for a list of the G-codes related to specified neuropathy or unspecified polyneuropathy. Of the 18 codes, 11 diagnosis codes were not currently assigned a comorbidity group and seven diagnosis codes were assigned to neurological 11 comorbidity subgroup.

Using claims data from the CY 2021 HH PPS analytical file, we identified that the 18 diagnosis G-codes related to specified neuropathy or unspecified polyneuropathy would have sufficient claims (>400,000) for a new comorbidity subgroup. The removal of the seven codes from the neurological 11 comorbidity subgroup, would still allow for sufficient claims (>250,000) and include the remaining 146 diagnosis codes currently listed in the neurological 11 comorbidity subgroup. We evaluated resource consumption related to the comorbidity subgroup neurological 11, the 18 diagnosis G-codes, and the proposed comorbidity subgroup neurological 12 and found no significant variations negating a reassignment. A new neurological comorbidity subgroup allows more clinically similar codes, nondiabetic neuropathy, to be grouped together. Therefore, we proposed to reassign the 18 diagnosis codes listed in Table 1.C of the CY 2023 Proposed Reassignment of ICD–10 CM Diagnosis Codes supplemental file, to the new comorbidity subgroup neurological 12 (nondiabetic neuropathy) when listed as secondary diagnoses. In conjunction with the proposed new comorbidity subgroup, we proposed to change the description of the current comorbidity subgroup, neurological 11, from ''Diabetic Retinopathy and Macular Edema'' to ''Disease of the Macula and Blindness/Low Vision''.

Comment: A few commenters supported the creation of the neurological subgroup for nondiabetic neuropathy.

Response: We thank the commenters for their support.

Final Decision: After consideration of the public comments we received, we are finalizing a new neurological comorbidity subgroup, neurological 12 (nondiabetic neuropathy), and reassigning the 18 diagnosis codes listed in Table 1.C of the CY 2023 Proposed Reassignment of ICD–10 CM Diagnosis Codes supplemental file to the neurological 12 (nondiabetic neuropathy). We did not receive comments on the proposal to change the description of the comorbidity subgroup, neurological 11, and are therefore finalizing neurological 11, from ''Diabetic Retinopathy and Macular Edema'' to ''Disease of the Macula and Blindness/Low Vision''.

(9) Respiratory Comorbidity Subgroups

(i) J18.2 Hypostatic Pneumonia, Unspecified Organism

Our clinical advisors reviewed the ICD–10–CM diagnosis code J18.2 (hypostatic pneumonia, unspecified organism) which is currently assigned to the comorbidity subgroup respiratory 4 (bronchitis, emphysema, and interstitial lung disease). However, respiratory 2 (whooping cough and pneumonia) contains other pneumonia with unspecified organism (for example, J18.1 and J18.8). Clinically, J18.2 is similar to the other pneumonias in respiratory 2 and therefore, should be reassigned from comorbidity subgroup respiratory 4 to comorbidity subgroup respiratory 2. In addition, we evaluated resource consumption related to the comorbidity subgroups respiratory 2 and respiratory 4, and J18.2 and found no significant variations negating a reassignment.

We did not receive comments on this proposal and therefore are finalizing the reassignment of diagnosis code J18.2 (hypostatic pneumonia, unspecified organism) to respiratory 2 when listed as a secondary diagnosis.

(ii) J98.2 Interstitial Emphysema and J98.3 Compensatory Emphysema

Our clinical advisors reviewed the ICD–10–CM diagnosis codes J98.2 (interstitial emphysema) and J98.3 (compensatory emphysema), which are currently assigned to the comorbidity subgroup respiratory 9 (respiratory failure and atelectasis). However, respiratory 4 (bronchitis, emphysema, and interstitial lung disease) contains other emphysema codes (for example, J43.0 through J43.9) and therefore clinically we believe it is appropriate to reassign J98.2 and J98.3 to the comorbidity subgroup respiratory 9. In addition, we evaluated resource consumption related to the comorbidity subgroups respiratory 4 and respiratory 9, as well as diagnosis codes J98.2, and J98.3 and found no significant variations negating a reassignment. We did not receive comments on this proposal and therefore are finalizing the reassignment

of diagnosis codes J98.2 and J98.3 to respiratory 4 when listed as a secondary diagnosis.

(iii) U09.9 Post COVID–19 Condition, Unspecified

Our clinical advisors reviewed the ICD–10–CM diagnosis code U09.9 (post COVID–19 condition, unspecified), which is currently assigned to the comorbidity subgroup, respiratory 2 (whooping cough and pneumonia). However, respiratory 10 (2019 novel Coronavirus) contains other COVID–19 codes (for example, U07.1). Therefore, we believe clinically that U09.9 should be reassigned to the comorbidity subgroup, respiratory 10. In addition, we evaluated resource consumption related to the comorbidity subgroups respiratory 2 and respiratory 10, and diagnosis codes U09.9 and found no significant variations negating a reassignment. We did not receive comments on this proposal and therefore are finalizing the reassignment of diagnosis code U09.9 to respiratory 10 when listed as a secondary diagnosis.

4. CY 2023 PDGM LUPA Thresholds and PDGM Case-Mix Weights

a. CY 2023 PDGM LUPA Thresholds

Under the HH PPS, LUPAs are paid when a certain visit threshold for a payment group during a 30-day period of care is not met. In the CY 2019 HH PPS final rule with comment period (83 FR 56492), we finalized setting the LUPA thresholds at the 10th percentile of visits or 2 visits, whichever is higher, for each payment group. This means the LUPA threshold for each 30-day period of care varies depending on the PDGM payment group to which it is assigned. If the LUPA threshold for the payment group is met under the PDGM, the 30-day period of care will be paid the full 30-day period case-mix adjusted payment amount (subject to any PEP or outlier adjustments). If a 30-day period of care does not meet the PDGM LUPA visit threshold, then payment will be made using the CY 2023 per-visit payment amounts as described in section II.B.5.c. of this final rule. For example, if the LUPA visit threshold is four, and a 30-day period of care has four or more visits, it is paid the full 30-day period payment amount; if the period of care has three or less visits, payment is made using the per-visit payment amounts.

In the CY 2019 HH PPS final rule with comment period (83 FR 56492), we finalized our policy that the LUPA thresholds for each PDGM payment group would be reevaluated every year based on the most current utilization data available at the time of rulemaking. However, as CY 2020 was the first year of the new case-mix adjustment methodology, we stated in the CY 2021 HH PPS final rule (85 FR 70305 through 70306) that we would maintain the LUPA thresholds that were finalized and shown in Table 17 of the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2021 payment purposes. We stated that at that time; we did not have sufficient CY 2020 data to reevaluate the LUPA thresholds for CY 2021.

In the CY 2022 HH PPS final rule (86 FR 62249), we finalized the proposal to recalibrate the PDGM case-mix weights, functional impairment levels, and comorbidity subgroups while maintaining the LUPA thresholds for CY 2022. We stated that because there are several factors that contribute to how the case-mix weight is set for a particular case-mix group (such as the number of visits, length of visits, types of disciplines providing visits, and non-routine supplies) and the case-mix weight is derived by comparing the average resource use for the case-mix group relative to the average resource use across all groups, we believe the COVID–19 PHE would have impacted utilization within all case-mix groups similarly. Therefore, the impact of any reduction in resource use caused by the COVID–19 PHE on the calculation of the case-mix weight would be minimized since the impact would be accounted for both in the numerator and denominator of the formula used to calculate the case-mix weight. However, in contrast, the LUPA thresholds are based on the number of overall visits in a particular case-mix group (the threshold is the 10th percentile of visits or 2 visits, whichever is greater) instead of a relative value (like what is used to generate the case-mix weight) that would control for the impacts of the PHE. We noted that visit patterns and some of the decrease in overall visits in CY 2020 may not be representative of visit patterns in CY 2022. Therefore, to mitigate any potential future and significant short-term variability in the LUPA thresholds due to the COVID–19 PHE, we finalized the proposal to maintain the LUPA thresholds finalized and displayed in Table 17 in the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2022 payment purposes.

For CY 2023, we proposed to update the LUPA thresholds using CY 2021 Medicare home health claims (as of March 21, 2022) linked to OASIS assessment data. After reviewing the CY 2021 home health claims utilization data we determined that visit patterns have stabilized. Our data analysis indicates that visits in 2021 were similar to visits in 2020. We believe that CY 2021 data will be more indicative of visit patterns in CY 2023 rather than continuing to use the LUPA thresholds derived from the CY 2018 data pre-PDGM. Therefore, we proposed to update the LUPA thresholds for CY 2023 using data from CY 2021.

The final LUPA thresholds for the CY 2023 PDGM payment groups with the corresponding Health Insurance Prospective Payment System (HIPPS) codes and the case-mix weights are listed in Table B26. We solicited public comments on the proposed updates to the LUPA thresholds for CY 2023. The public comments on our proposal to recalibrate the LUPA thresholds for CY 2023 payment purposes and our responses are summarized in this section of the rule.

Comment: A commenter expressed concern regarding the proposal to recalibrate the LUPA thresholds using CY 2021 utilization data. This commenter stated that while the observed changes in the recalibrated thresholds may not seem large, they could serve as evidence that visits during 2020 and 2021 may well be reduced (when compared to pre-PDGM levels) due to pandemic influence.

Response: We acknowledge the commenter's statement and concerns regarding the potential impact of the COVID–19 PHE on home health utilization in CYs 2020 and 2021. However, we continue to believe that it is important to base the LUPA thresholds on actual PDGM utilization data and shift away from the use of data prior to the implementation of the PDGM. Using the most recent data ensures that payment aligns with the most recent cost of providing home health care services.

Comment: A commenter recommended that CMS reduce the LUPA threshold in CY 2023 for all case-mix groups to two visits and reassess the impact using CY 2023 data before making any further adjustments.

Response: We thank the commenter for this recommendation; however, this recommendation is out of scope for the CY 2023 HH PPS proposed rule. In the CY 2019 HH PPS final rule with comment period (83 FR 56492), we finalized setting the LUPA thresholds at the 10th percentile of visits or 2 visits, whichever is higher, for each payment group. Any changes to the LUPA threshold policy beyond the proposal to recalibrate the thresholds using the CY 2021 utilization data would need to go through notice and comment rulemaking.

Final Decision: We are finalizing the proposal to update the LUPA thresholds for CY 2023. The LUPA thresholds for CY 2023 are located in table 16 and will also be available on the HHA Center web page.

b. CY 2023 Functional Impairment Levels

Under the PDGM, the functional impairment level is determined by responses to certain OASIS items associated with activities of daily living and risk of hospitalization; that is, responses to OASIS items M1800–M1860 and M1033. A home health period of care receives points based on each of the responses associated with these functional OASIS items, which are then converted into a table of points corresponding to increased resource use. The sum of all of these points results in a functional score which is used to group home health periods into a functional level with similar resource use. That is, the higher the points, the higher the response is associated with increased resource use. The sum of all of these points results in a functional impairment score which is used to group home health periods into one of three functional impairment levels with similar resource use. The three functional impairment levels of low, medium, and high were designed so that approximately one-third of home health periods from each of the clinical groups fall within each level. This means home health periods in the low impairment level have responses for the functional OASIS items that are associated with the lowest resource use, on average. Home health periods in the high impairment level have responses for the functional OASIS items that are associated with the highest resource use on average.

For CY 2023, we proposed to use CY 2021 claims data to update the functional points and functional impairment levels by clinical group. The CY 2018 HH PPS proposed rule (82 FR 35320) and the technical report from December 2016, posted on the Home Health PPS Archive web page located at: *https://www.cms.gov/medicare/home-health-pps/home-health-pps-archive,* provide a more detailed explanation as to the construction of these functional impairment levels using the OASIS items. We proposed to use this same methodology previously finalized to update the functional impairment levels for CY 2023. The updated OASIS functional points table and the table of functional impairment levels by clinical group for CY 2023 are listed in Tables 11 and 12, respectively. We solicited public comments on the updates to functional points and the functional impairment levels by clinical group.

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Table 11—Final Oasis Points Table for CY 2023

TABLE 11: FINAL OASIS POINTS TABLE FOR CY 2023

	Responses	Points 2023	Percent of Periods in 2021 with this Response Category
M1800: Grooming	0 or 1	**0**	**31.6%**
	2 or 3	**3**	**68.4%**
M1810: Current Ability to Dress Upper Body	0 or 1	**0**	**26.2%**
	2 or 3	**5**	**73.8%**
M1820: Current Ability to Dress Lower Body	0 or 1	**0**	**12.4%**
	2	**4**	**64.8%**
	3	**12**	**22.8%**
M1830: Bathing	0 or 1	**0**	**3.1%**
	2	**2**	**12.3%**
	3 or 4	**10**	**51.2%**
	5 or 6	**17**	**33.4%**
M1840: Toilet Transferring	0 or 1	**0**	**63.6%**
	2, 3 or 4	**6**	**36.4%**
M1850: Transferring	0	**0**	**1.8%**
	1	**3**	**22.6%**
	2, 3, 4 or 5	**6**	**75.6%**
M1860: Ambulation/Locomotion	0 or 1	**0**	**3.9%**
	2	**6**	**15.2%**
	3	**5**	**63.3%**
	4, 5 or 6	**20**	**17.6%**
M1033: Risk of Hospitalization	Three or fewer items marked (Excluding responses 8, 9 or 10)	**0**	**66.2%**
	Four or more items marked (Excluding responses 8, 9 or 10)	**10**	**33.8%**

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed from the CCW on July 14, 2022.
Note: For item M1860, the point values for response 2 is worth more than the point values for response 3. There may be times in which the resource use for certain OASIS items associated with functional impairment will result in a seemingly inverse relationship to the response reported. However, this is the result of the direct association between the responses reported on the OASIS items and actual resource use.

	Four or more items marked (Excluding responses 8, 9 or 10)	**10**	**33.8%**

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed from the CCW on July 14, 2022.
Note: For item M1860, the point values for response 2 is worth more than the point values for response 3. There may be times in which the resource use for certain OASIS items associated with functional impairment will result in a seemingly inverse relationship to the response reported. However, this is the result of the direct association between the responses reported on the OASIS items and actual resource use.

Table 12—Final Thresholds for Functional Levels by Clinical Group, for CY 2023

Clinical Group	Level of Impairment	Points (2023)
MMTA - Other	Low	**0-32**
	Medium	**33-43**
	High	**44+**
Behavioral Health	Low	**0-31**
	Medium	**32-43**
	High	**44+**
Complex Nursing Interventions	Low	**0-33**
	Medium	**34-54**
	High	**55+**
Musculoskeletal Rehabilitation	Low	**0-33**
	Medium	**34-45**
	High	**46+**
Neuro Rehabilitation	Low	**0-35**
	Medium	**36-51**
	High	**52+**
Wound	Low	**0-33**
	Medium	**34-51**
	High	**52+**
MMTA - Surgical Aftercare	Low	**0-33**
	Medium	**34-43**
	High	**44+**
MMTA - Cardiac and Circulatory	Low	**0-31**
	Medium	**32-43**
	High	**44+**
MMTA - Endocrine	Low	**0-30**
	Medium	**31-43**
	High	**44+**
MMTA - Gastrointestinal tract and Genitourinary system	Low	**0-33**
	Medium	**34-49**
	High	**50+**
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases	Low	**0-33**
	Medium	**34-45**
	High	**46+**
MMTA - Respiratory	Low	**0-33**
	Medium	**34-46**
	High	**47+**

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed from the CCW on July 14, 2022.

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Comment: Some commenters were concerned that changes caused by recalibration were reducing resources to home health agencies. Commenters argued that since the CY 2022 rates were recalibrated, it should not be done again prior to the availability of the CY 2022 data. Commenters were particularly concerned that changes to the functional impairment points and thresholds did not account for the higher acuity patients they have treated in recent years.

Response: It is important to note that recalibration is calculated so that changes to case-mix and related items (for example, functional points) are budget neutral. The adjustments made to functional points, functional threshold levels, comorbidities, LUPA thresholds, and case-mix weights are made so that after the application of the case-mix budget neutrality factor, recalibration does not have any impact on aggregate payments when using data from CY 2021. Recalibration ensures there is variation in payment between the 432 case-mix groups so that those groups with lower resource use get paid less than those with higher resource use. If we did not adjust the functional points, functional threshold levels, comorbidities, LUPA thresholds, and case-mix weights to reflect resource utilization, then payments would be less accurate. Specifically, if we did not account for changes in functional points, we could potentially pay the same for the low functional impairment patients and the high functional impairments patients (who have more resources associated with their visits). If that occurred, and since payment would be adjusted in a budget neutral way, this could mean we would be overpaying for low functional impairment and underpaying for high functional impairment.

Functional points, functional threshold levels, comorbidities, LUPA thresholds and case-mix weights can be impacted even if there are no changes in coding patterns but there are changes in resource use. In the CY 2019 HH PPS final rule with comment period (83 FR 56486), we stated that after implementation of the PDGM in CY 2020, we would continue to analyze the impact of all of the PDGM case mix variables to determine if any additional refinements need to made. We continue to believe that updating the functional impairment levels using current data ensures that all variables used as part of the overall case-mix adjustment appropriately align home health payment with the actual cost of providing home health care services. Performing a yearly recalibration allows us to be as accurate and up-to-date as possible when measuring relationship between resource use and functional points, functional threshold levels, comorbidities, LUPA thresholds and case-mix weights. The most recent year of data that we have is CY 2021. We feel that relationships seen in the CY 2021 data are going to be more similar to the relationships that we will eventually in see in CY 2023 data versus if we continued to use the relationships we see in the CY 2020 data. Commenters should note that although functional points did decrease for many items, the functional thresholds also decreased (meaning fewer points are needed to qualify for the higher functional impairment levels).

Comment: Some commenters were concerned that CMS grouped patients into one of three functional impairment levels even if it meant potentially reducing resources to patients who previously would have been classified as medium or high functional impairment.

Response: We remind commenters that the recalibration is implemented in a budget neutral manner. We set the functional levels so roughly a third of periods within each clinical group are assigned to low, medium, and high. This is done to ensure that the case-mix system pays appropriately for differences in functional impairment level. If all 30-day periods ended up in one functional impairment level then we'd be paying the same for the low functional impairment patients and the high functional impairment patients (who have more resources associated with their visits). We believe that the functional impairment level adjustment adequately captures the level of functional impairment based on patient characteristics reported on the OASIS. The PDGM not only uses the same five OASIS items used under the previous HH PPS to determine the functional case-mix adjustment (M1810, M1820, M1830, M1830, M1850, and M1860), but also adds two additional OASIS items (M1800 and M1033) to determine the level of functional impairment. The structure of categorizing functional impairment into low, medium, and high levels has been part of the home health payment structure since the implementation of the HH PPS. The previous HH PPS grouped home health episodes using functional scores based on functional OASIS items with similar average resource use within the same functional level, with approximately a third of episodes classified as low functional score, a third of episodes classified as medium functional score, and a third of episodes classified as high functional score. Likewise, the PDGM groups home health periods of care using functional impairment scores based on functional OASIS items with similar resource use and has three levels of functional impairment severity: low, medium, and high. However, the PDGM differs from the current HH PPS functional variable in that the three functional impairment level thresholds in the PDGM vary between the clinical groups. The PDGM functional impairment level structure accounts for the patient characteristics within that clinical group associated with increased resource costs affected by functional impairment. This is to further ensure that payment is more accurately aligned with actual patient characteristics and resource needs.

Comment: A commenter indicated that Table B21 in the CY 2023 HH PPS proposed rule (87 FR 37627) showed that a lower functional impairment response was associated with more points than a higher functional impairment response (M1860 responses 2 and 3).

Response: For recalibration, we use the data as they are submitted. Home health agencies should consider the appropriateness of their OASIS responses in relation to the level of resources that should be required for certain functional impairments. CMS would expect to find, on average, that patients who are more functionally impaired would have higher resource use. However, as noted by the commenter, this correlation does not always occur when looking at individual OASIS items and responses.

Final Decision: We are finalizing to update the functional points and functional impairment levels for CY 2023 as proposed, using CY 2021 claims data. Table 11 includes the final functional points based on the most available data.

c. CY 2023 Comorbidity Subgroups

Thirty-day periods of care receive a comorbidity adjustment category based on the presence of certain secondary diagnoses reported on home health claims. These diagnoses are based on a home-health specific list of clinically and statistically significant secondary diagnosis subgroups with similar resource use, meaning the diagnoses have at least as high as the median resource use and are reported in more than 0.1 percent of 30-day periods of care. Home health 30-day periods of care can receive a comorbidity adjustment under the following circumstances:

- *Low comorbidity adjustment:* There is a reported secondary diagnosis on the home health-specific comorbidity subgroup list that is associated with higher resource use.
- *High comorbidity adjustment:* There are two or more secondary diagnoses on the home health-specific comorbidity subgroup interaction list that are associated with higher resource use when both are reported together compared to when they are reported separately. That is, the two diagnoses may interact with one another, resulting in higher resource use.
- *No comorbidity adjustment:* A 30-day period of care receives no comorbidity adjustment if no secondary diagnoses exist or do not meet the criteria for a low or high comorbidity adjustment.

In the CY 2019 HH PPS final rule with comment period (83 FR 56406), we stated that we would continue to examine the relationship of reported comorbidities on resource utilization and make the appropriate payment refinements to help ensure that payment is in alignment with the actual costs of providing care. For CY 2023, we proposed to use the same methodology used to establish the comorbidity subgroups to update the comorbidity subgroups using CY 2021 home health data.

For CY 2023, we proposed to update the comorbidity subgroups to include 23 low comorbidity adjustment subgroups and 94 high comorbidity adjustment interaction subgroups. The final update to the comorbidity adjustment subgroups includes 22 low comorbidity adjustment subgroups as identified in table 13 and 91 high comorbidity adjustment interaction subgroups as identified in table 14. The final 22 low comorbidity adjustment subgroups and 91 high comorbidity adjustment interactions reflect the final coding changes detailed in section II.B.3.c. of this final rule. The final CY 2023 low comorbidity adjustment subgroups and the high comorbidity adjustment interaction subgroups including those diagnoses within each of these comorbidity adjustments will also be posted on the HHA Center web page at *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

We invited comments on the proposed updates to the low comorbidity adjustment subgroups and the high comorbidity adjustment interactions for CY 2023.

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Table 13—Low Comorbidity Adjustment Subgroups for CY 2023

Low Comorbidity Subgroup	Description
Circulatory 7	Atherosclerosis, includes Peripheral Vascular Disease, Aortic Aneurysms and Hypotension
Gastrointestinal 1	Crohn's, Ulcerative Colitis, and other Functional Intestinal Disorders
Musculoskeletal 2	Rheumatoid Arthritis
Circulatory 2	Hemolytic, Aplastic, and Other Anemias
Neurological 12	Nondiabetic neuropathy
Neoplasm 2	Malignant Neoplasms of Digestive Organs, includes Gastrointestinal Cancers
Neoplasm 6	Malignant neoplasms of trachea, bronchus, lung, and mediastinum
Neoplasm 1	Malignant Neoplasms of Lip, Oral Cavity and Pharynx, includes Head and Neck Cancers
Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter
Heart 11	Heart Failure
Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease
Neurological 11	Disease of the Macula and Blindness/Low Vision
Neurological 10	Diabetes with neuropathy
Neoplasm 18	Secondary Neoplasms of Urinary and Reproductive Systems, Skin, Brain, and Bone
Circulatory 9	Other Venous Embolism and Thrombosis
Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae
Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
Circulatory 10	Varicose Veins and Lymphedema
Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
Skin 4	Stages Two-Four and unstageable pressure ulcers by site

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed on the CCW July 14, 2022.

Table 14—High Comorbidity Adjustment Interactions for CY 2023

Comorbidity Subgroup Interaction	Comorbidity Group	Description	Comorbity Group	Description
1	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD
2	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
3	Circulatory 9	Other Venous Embolism and Thrombosis	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes
4	Heart 11	Heart Failure	Neurological 11	Disease of the Macula and Blindness/Low Vision
5	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes
6	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease	Neurological 8	Epilepsy
7	Circulatory 9	Other Venous Embolism and Thrombosis	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD
8	Behavioral 5	Phobias, Other Anxiety and Obsessive Compulsive Disorders	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
9	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Neurological 10	Diabetes with neuropathy
10	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Infectious 1	C-diff, MRSA, E-coli
11	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Heart 11	Heart Failure

12	Heart 12	Other Heart Diseases	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
13	Neurological 10	Diabetes with neuropathy	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
14	Endocrine 1	Hypothyroidism	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
15	Neurological 4	Alzheimer's disease and related dementias	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
16	Neurological 8	Epilepsy	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
17	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
18	Endocrine 1	Hypothyroidism	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
19	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia	Respiratory 5	Chronic Obstructive Pulmonary Disease, and Asthma, and Bronchiectasis
20	Behavioral 4	Psychotic, major depressive, and dissociative disorders, includes unspecified dementia, eating disorder and intellectual disabilities	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
21	Circulatory 10	Varicose Veins and Lymphedema	Heart 12	Other Heart Diseases
22	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Circulatory 10	Varicose Veins and Lymphedema
23	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
24	Circulatory 10	Varicose Veins and Lymphedema	Circulatory 4	Hypertensive Chronic Kidney Disease
25	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter
26	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia

27	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
28	Circulatory 9	Other Venous Embolism and Thrombosis	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease
29	Heart 7	Chronic Ischemic Heart Disease	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
30	Circulatory 10	Varicose Veins and Lymphedema	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes
31	Circulatory 4	Hypertensive Chronic Kidney Disease	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
32	Neurological 10	Diabetes with neuropathy	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
33	Heart 12	Other Heart Diseases	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
34	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
35	Behavioral 5	Phobias, Other Anxiety and Obsessive Compulsive Disorders	Circulatory 10	Varicose Veins and Lymphedema
36	Neurological 4	Alzheimer's disease and related dementias	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
37	Circulatory 4	Hypertensive Chronic Kidney Disease	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
38	Heart 11	Heart Failure	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
39	Circulatory 1	Nutritional, Enzymatic, and Other Heredity Anemias	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
40	Circulatory 2	Hemolytic, Aplastic, and Other Anemias	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis
41	Circulatory 4	Hypertensive Chronic Kidney Disease	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers

42	Heart 11	Heart Failure	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
43	Circulatory 10	Varicose Veins and Lymphedema	Heart 11	Heart Failure
44	Circulatory 10	Varicose Veins and Lymphedema	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance
45	Circulatory 2	Hemolytic, Aplastic, and Other Anemias	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease
46	Respiratory 4	Bronchitis, Emphysema, and Interstitial Lung Disease	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
47	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
48	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Neurological 11	Disease of the Macula and Blindness/Low Vision
49	Neurological 11	Disease of the Macula and Blindness/Low Vision	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
50	Behavioral 2	Mood Disorders, includes Depression and Bipolar Disorder	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
51	Circulatory 10	Varicose Veins and Lymphedema	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter
52	Behavioral 5	Phobias, Other Anxiety and Obsessive Compulsive Disorders	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
53	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
54	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
55	Circulatory 2	Hemolytic, Aplastic, and Other Anemias	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers

56	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
57	Musculoskeletal 3	Joint Pain	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
58	Circulatory 10	Varicose Veins and Lymphedema	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease
59	Skin 1	Cutaneous Abscess, Cellulitis, and Lymphangitis	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
60	Endocrine 1	Hypothyroidism	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
61	Circulatory 1	Nutritional, Enzymatic, and Other Heredity Anemias	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
62	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD
63	Heart 9	Valve Disorders	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
64	Circulatory 1	Nutritional, Enzymatic, and Other Heredity Anemias	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
65	Musculoskeletal 2	Rheumatoid Arthritis	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
66	Heart 8	Other Pulmonary Heart Diseases	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
67	Heart 11	Heart Failure	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
68	Endocrine 5	Obesity, and Disorders of Metabolism and Fluid Balance	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
69	Circulatory 2	Hemolytic, Aplastic, and Other Anemias	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia

70	Circulatory 7	Atherosclerosis, includes Peripheral Vascular Disease, Aortic Aneurysms and Hypotension	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
71	Musculoskeletal 4	Lumbar Spinal Stenosis	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
72	Infectious 1	C-diff, MRSA, E-coli	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
73	Neurological 12	Nondiabetic neuropathy	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
74	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
75	Endocrine 4	Other Combined Immunodeficiencies and Malnutrition, includes graft-versus-host-disease	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia
76	Neurological 5	Spinal Muscular Atrophy, Systemic atrophy and Motor Neuron Disease	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
77	Behavioral 4	Psychotic, major depressive, and dissociative disorders, includes unspecified dementia, eating disorder and intellectual disabilities	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
78	Circulatory 1	Nutritional, Enzymatic, and Other Heredity Anemias	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
79	Musculoskeletal 3	Joint Pain	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
80	Neurological 4	Alzheimer's disease and related dementias	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
81	Respiratory 2	Whooping cough	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
82	Heart 11	Heart Failure	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
83	Infectious 1	C-diff, MRSA, E-coli	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
84	Neurological 10	Diabetes with neuropathy	Skin 4	Stages Two-Four and unstageable pressure ulcers by site

85	Circulatory 10	Varicose Veins and Lymphedema	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers
86	Cerebral 4	Sequelae of Cerebrovascular Diseases, includes Cerebral Atherosclerosis and Stroke Sequelae	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
87	Renal 3	Other disorders of the kidney and ureter, excluding chronic kidney disease and ESRD	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
88	Endocrine 3	Type 1, Type 2, and Other Specified Diabetes	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
89	Neurological 7	Paraplegia, Hemiplegia and Quadriplegia	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
90	Heart 10	Dysrhythmias, includes Atrial Fibrillation and Atrial Flutter	Skin 4	Stages Two-Four and unstageable pressure ulcers by site
91	Skin 3	Diseases of arteries, arterioles and capillaries with ulceration and non-pressure chronic ulcers	Skin 4	Stages Two-Four and unstageable pressure ulcers by site

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed from the CCW July 14, 2022.

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Comment: A commenter expressed support for the proposed updates to the low and high comorbidity subgroups. This commenter stated that the changes achieve the stated goal of ensuring that payment is in alignment with the actual costs of providing care and that the high comorbidity adjustment interaction subgroups acknowledge the impact of multiple diagnoses on care delivery complexity and cost.

Response: We thank the commenter for their support.

Final Decision: We are finalizing the proposal to use the same methodology used to establish the comorbidity subgroups to update the comorbidity subgroups using CY 2021 home health data. For CY 2023, the final update to the comorbidity adjustment subgroups includes 22 low comorbidity adjustment subgroups as identified in Table 13 and 91 high comorbidity adjustment interaction subgroups as identified in Table 14. The final 22 low comorbidity adjustment subgroups and 91 high comorbidity adjustment interactions reflect the final coding changes detailed in section II.B.3.c. of this final rule.

d. CY 2023 PDGM Case-Mix Weights

As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56502), the PDGM places patients into meaningful payment categories based on patient and other characteristics, such as timing, admission source, clinical grouping using the reported principal diagnosis, functional impairment level, and comorbid conditions. The PDGM case-mix methodology results in 432 unique case-mix groups called HHRGs. We also finalized a policy in the CY 2019 HH PPS final rule with comment period (83 FR 56515) to recalibrate annually the PDGM case-mix weights using a fixed effects model, as outlined in that rule, with the most recent and complete utilization data available at the time of annual rulemaking. Annual recalibration of the PDGM case-mix weights ensures that the case-mix weights reflect, as accurately as possible, current home health resource use and changes in utilization patterns. To generate the proposed recalibrated CY 2023 case-mix weights, we used CY 2021 home health claims data with linked OASIS data (as of March 21, 2021). These data are the most current and complete data available at this time. We believe that recalibrating the case-mix weights using data from CY 2021 would be reflective of PDGM utilization and patient resource use for CY 2023. The proposed recalibrated case-mix weights were updated based on more complete CY 2021 claims data for this final rule.

The claims data provide visit-level data and data on whether non-routine supplies (NRS) were provided during the period and the total charges of NRS. We determine the case-mix weight for each of the 432 different PDGM payment groups by regressing resource use on a series of indicator variables for each of the categories using a fixed effects model as described in the following steps:

Step 1: Estimate a regression model to assign a functional impairment level to each 30-day period. The regression model estimates the relationship between a 30-day period's resource use and the functional status and risk of hospitalization items included in the PDGM, which are obtained from certain OASIS items. We refer readers to Table B21 for further information on the OASIS items used for the functional impairment level under the PDGM. We measure resource use with the cost-per-minute + NRS approach that uses

information from 2020 home health cost reports. We use 2020 home health cost report data because it is the most complete cost report data available at the time of rulemaking. Other variables in the regression model include the 30-day period's admission source, clinical group, and 30-day period timing. We also include home health agency level fixed effects in the regression model. After estimating the regression model using 30-day periods, we divide the coefficients that correspond to the functional status and risk of hospitalization items by 10 and round to the nearest whole number. Those rounded numbers are used to compute a functional score for each 30-day period by summing together the rounded numbers for the functional status and risk of hospitalization items that are applicable to each 30-day period. Next, each 30-day period is assigned to a functional impairment level (low, medium, or high) depending on the 30-day period's total functional score. Each clinical group has a separate set of functional thresholds used to assign 30-day periods into a low, medium or high functional impairment level. We set those thresholds so that we assign roughly a third of 30-day periods within each clinical group to each functional impairment level (low, medium, or high).

Step 2: A second regression model estimates the relationship between a 30-day period's resource use and indicator variables for the presence of any of the comorbidities and comorbidity interactions that were originally examined for inclusion in the PDGM. Like the first regression model, this model also includes home health agency level fixed effects and includes control variables for each 30-day period's admission source, clinical group, timing, and functional impairment level. After we estimate the model, we assign comorbidities to the low comorbidity adjustment if any comorbidities have a coefficient that is statistically significant (p-value of 0.05 or less) and which have a coefficient that is larger than the 50th percentile of positive and statistically significant comorbidity coefficients. If two comorbidities in the model and their interaction term have coefficients that sum together to exceed $150 and the interaction term is statistically significant (p-value of 0.05 or less), we assign the two comorbidities together to the high comorbidity adjustment.

Step 3: After Step 2, each 30-day period is assigned to a clinical group, admission source category, episode timing category, functional impairment level, and comorbidity adjustment category. For each combination of those variables (which represent the 432 different payment groups that comprise the PDGM), we then calculate the 10th percentile of visits across all 30-day periods within a particular payment group. If a 30-day period's number of visits is less than the 10th percentile for their payment group, the 30-day period is classified as a Low Utilization Payment Adjustment (LUPA). If a payment group has a 10th percentile of visits that is less than two, we set the LUPA threshold for that payment group to be equal to two. That means if a 30-day period has one visit, it is classified as a LUPA and if it has two or more visits, it is not classified as a LUPA.

Step 4: Take all non-LUPA 30-day periods and regress resource use on the 30-day period's clinical group, admission source category, episode timing category, functional impairment level, and comorbidity adjustment category. The regression includes fixed effects at the level of the home health agency. After we estimate the model, the model coefficients are used to predict each 30-day period's resource use. To create the case-mix weight for each 30-day period, the predicted resource use is divided by the overall resource use of the 30-day periods used to estimate the regression.

The case-mix weight is then used to adjust the base payment rate to determine each 30-day period's payment. Table 15 shows the coefficients of the payment regression used to generate the weights, and the coefficients divided by average resource use.

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Table 15—Coefficient of Payment Regression and Coefficient Divided by Average Resource Use

Variable	Coefficient	Percentage of 30-Day Periods for this Model	Coefficient Divided by Average Resource Use
Clinical Group and Functional Impairment Level (MMTA - Other - Low is excluded)			
MMTA - Other - Medium Functional	$149.97	1.1%	0.1010
MMTA - Other - High Functional	$314.96	1.1%	0.2120
MMTA - Surgical Aftercare - Low Functional	-$44.23	1.5%	-0.0298
MMTA - Surgical Aftercare - Medium Functional	$145.94	0.9%	0.0983
MMTA - Surgical Aftercare - High Functional	$352.80	1.0%	0.2375
MMTA - Cardiac and Circulatory - Low Functional	-$50.35	6.4%	-0.0339
MMTA - Cardiac and Circulatory - Medium Functional	$123.88	6.5%	0.0834
MMTA - Cardiac and Circulatory - High Functional	$295.93	5.8%	0.1992
MMTA - Endocrine - Low Functional	$334.42	2.3%	0.2251
MMTA - Endocrine - Medium Functional	$436.34	2.5%	0.2937
MMTA - Endocrine - High Functional	$593.94	2.1%	0.3998
MMTA - Gastrointestinal tract and Genitourinary system - Low Functional	-$75.37	1.7%	-0.0507
MMTA - Gastrointestinal tract and Genitourinary system - Medium Functional	$131.94	1.5%	0.0888
MMTA - Gastrointestinal tract and Genitourinary system - High Functional	$259.92	1.5%	0.1750
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - Low Functional	-$19.65	1.9%	-0.0132
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - Medium Functional	$123.32	1.1%	0.0830
MMTA - Infectious Disease, Neoplasms, and Blood-Forming Diseases - High Functional	$310.22	1.6%	0.2088
MMTA - Respiratory - Low Functional	-$33.75	3.2%	-0.0227
MMTA - Respiratory - Medium Functional	$141.26	2.3%	0.0951
MMTA - Respiratory - High Functional	$315.57	2.6%	0.2124
Behavioral Health - Low Functional	-$100.09	0.8%	-0.0674
Behavioral Health - Medium Functional	$100.61	0.8%	0.0677
Behavioral Health - High Functional	$244.25	0.8%	0.1644

Complex - Low Functional	-$89.08	1.1%	-0.0600
Complex - Medium Functional	$126.93	0.8%	0.0855
Complex - High Functional	$93.06	1.0%	0.0627
MS Rehab - Low Functional	$106.83	7.9%	0.0719
MS Rehab - Medium Functional	$233.48	5.0%	0.1572
MS Rehab - High Functional	$431.77	6.7%	0.2907
Neuro - Low Functional	$234.10	3.7%	0.1576
Neuro - Medium Functional	$409.93	3.6%	0.2760
Neuro - High Functional	$621.31	3.7%	0.4183
Wound - Low Functional	$499.21	5.3%	0.3361
Wound - Medium Functional	$662.09	4.3%	0.4457
Wound - High Functional	$859.07	4.8%	0.5783
Admission Source with Timing (Community Early is excluded)			
Community - Late	-$544.74	64.0%	-0.3667
Institutional - Early	$326.63	18.4%	0.2199
Institutional - Late	$200.34	6.1%	0.1349
Comorbidity Adjustment (No Comorbidity Adjustment - is excluded)			
Comorbidity Adjustment - Has at least one comorbidity from comorbidity list, no interaction from interaction list	$86.51	51.2%	0.0582
Comorbidity Adjustment - Has at least one interaction from interaction list	$298.59	16.4%	0.2010
Constant	$1,391.01		
Average Resource Use	$1,485.42		
Number of 30-day Periods	8,572,191		
Adjusted R-Squared	0.3238		

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed on the CCW July 14, 2022.

The case-mix weights proposed for CY 2023 are listed in Table 16 and will also be posted on the HHA Center web page [25] upon display of this final rule.

[25] HHA Center web page: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

Table 16—Final Case-Mix Weights and LUPA Thresholds for Each HHRG Payment Group

HIPPS	Clinical Group and Functional Level	Admission Source and Timing	Comorbidity Adjustment (0 = none, 1 = single comorbidity, 2 = interaction)	Recalibrated Weight for 2023	LUPA Visit Threshold (LUPAs have fewer visits than the threshold)
1FC11	Behavioral Health - High	Early - Community	0	1.1009	4
1FC21	Behavioral Health - High	Early - Community	1	1.1591	4
1FC31	Behavioral Health - High	Early - Community	2	1.3019	4
2FC11	Behavioral Health - High	Early - Institutional	0	1.3208	4
2FC21	Behavioral Health - High	Early - Institutional	1	1.3790	4
2FC31	Behavioral Health - High	Early - Institutional	2	1.5218	4
3FC11	Behavioral Health - High	Late - Community	0	0.7342	2
3FC21	Behavioral Health - High	Late - Community	1	0.7924	2
3FC31	Behavioral Health - High	Late - Community	2	0.9352	2
4FC11	Behavioral Health - High	Late - Institutional	0	1.2357	3
4FC21	Behavioral Health - High	Late - Institutional	1	1.2940	3
4FC31	Behavioral Health - High	Late - Institutional	2	1.4368	3
1FA11	Behavioral Health - Low	Early - Community	0	0.8691	3
1FA21	Behavioral Health - Low	Early - Community	1	0.9273	3
1FA31	Behavioral Health - Low	Early - Community	2	1.0701	3
2FA11	Behavioral Health - Low	Early - Institutional	0	1.0890	3
2FA21	Behavioral Health - Low	Early - Institutional	1	1.1472	3
2FA31	Behavioral Health - Low	Early - Institutional	2	1.2900	3
3FA11	Behavioral Health - Low	Late - Community	0	0.5023	2
3FA21	Behavioral Health - Low	Late - Community	1	0.5606	2
3FA31	Behavioral Health - Low	Late - Community	2	0.7034	2
4FA11	Behavioral Health - Low	Late - Institutional	0	1.0039	2
4FA21	Behavioral Health - Low	Late - Institutional	1	1.0622	3
4FA31	Behavioral Health - Low	Late - Institutional	2	1.2050	3

1FB11	Behavioral Health - Medium	Early - Community	0	1.0042	4
1FB21	Behavioral Health - Medium	Early - Community	1	1.0624	4
1FB31	Behavioral Health - Medium	Early - Community	2	1.2052	4
2FB11	Behavioral Health - Medium	Early - Institutional	0	1.2241	3
2FB21	Behavioral Health - Medium	Early - Institutional	1	1.2823	4
2FB31	Behavioral Health - Medium	Early - Institutional	2	1.4251	4
3FB11	Behavioral Health - Medium	Late - Community	0	0.6375	2
3FB21	Behavioral Health - Medium	Late - Community	1	0.6957	2
3FB31	Behavioral Health - Medium	Late - Community	2	0.8385	2
4FB11	Behavioral Health - Medium	Late - Institutional	0	1.1390	3
4FB21	Behavioral Health - Medium	Late - Institutional	1	1.1973	3
4FB31	Behavioral Health - Medium	Late - Institutional	2	1.3401	3
1DC11	Complex - High	Early - Community	0	0.9991	2
1DC21	Complex - High	Early - Community	1	1.0573	2
1DC31	Complex - High	Early - Community	2	1.2001	2
2DC11	Complex - High	Early - Institutional	0	1.2190	3
2DC21	Complex - High	Early - Institutional	1	1.2772	3
2DC31	Complex - High	Early - Institutional	2	1.4200	4
3DC11	Complex - High	Late - Community	0	0.6324	2
3DC21	Complex - High	Late - Community	1	0.6906	2
3DC31	Complex - High	Late - Community	2	0.8334	2
4DC11	Complex - High	Late - Institutional	0	1.1340	3
4DC21	Complex - High	Late - Institutional	1	1.1922	3
4DC31	Complex - High	Late - Institutional	2	1.3350	3
1DA11	Complex - Low	Early - Community	0	0.8765	2
1DA21	Complex - Low	Early - Community	1	0.9347	2
1DA31	Complex - Low	Early - Community	2	1.0775	2
2DA11	Complex - Low	Early - Institutional	0	1.0964	3
2DA21	Complex - Low	Early - Institutional	1	1.1546	3
2DA31	Complex - Low	Early - Institutional	2	1.2974	3
3DA11	Complex - Low	Late - Community	0	0.5098	2
3DA21	Complex - Low	Late - Community	1	0.5680	2
3DA31	Complex - Low	Late - Community	2	0.7108	2
4DA11	Complex - Low	Late - Institutional	0	1.0113	2
4DA21	Complex - Low	Late - Institutional	1	1.0696	2

4DA31	Complex - Low	Late - Institutional	2	1.2124	3
1DB11	Complex - Medium	Early - Community	0	1.0219	2
1DB21	Complex - Medium	Early - Community	1	1.0801	2
1DB31	Complex - Medium	Early - Community	2	1.2229	2
2DB11	Complex - Medium	Early - Institutional	0	1.2418	4
2DB21	Complex - Medium	Early - Institutional	1	1.3000	4
2DB31	Complex - Medium	Early - Institutional	2	1.4428	4
3DB11	Complex - Medium	Late - Community	0	0.6552	2
3DB21	Complex - Medium	Late - Community	1	0.7134	2
3DB31	Complex - Medium	Late - Community	2	0.8562	2
4DB11	Complex - Medium	Late - Institutional	0	1.1568	3
4DB21	Complex - Medium	Late - Institutional	1	1.2150	3
4DB31	Complex - Medium	Late - Institutional	2	1.3578	3
1HC11	MMTA - Cardiac - High	Early - Community	0	1.1357	4
1HC21	MMTA - Cardiac - High	Early - Community	1	1.1939	3
1HC31	MMTA - Cardiac - High	Early - Community	2	1.3367	3
2HC11	MMTA - Cardiac - High	Early - Institutional	0	1.3556	4
2HC21	MMTA - Cardiac - High	Early - Institutional	1	1.4138	4
2HC31	MMTA - Cardiac - High	Early - Institutional	2	1.5566	4
3HC11	MMTA - Cardiac - High	Late - Community	0	0.7689	2
3HC21	MMTA - Cardiac - High	Late - Community	1	0.8272	2
3HC31	MMTA - Cardiac - High	Late - Community	2	0.9700	3
4HC11	MMTA - Cardiac - High	Late - Institutional	0	1.2705	4
4HC21	MMTA - Cardiac - High	Late - Institutional	1	1.3288	3
4HC31	MMTA - Cardiac - High	Late - Institutional	2	1.4716	4
1HA11	MMTA - Cardiac - Low	Early - Community	0	0.9025	4
1HA21	MMTA - Cardiac - Low	Early - Community	1	0.9608	3
1HA31	MMTA - Cardiac - Low	Early - Community	2	1.1036	3
2HA11	MMTA - Cardiac - Low	Early - Institutional	0	1.1224	3
2HA21	MMTA - Cardiac - Low	Early - Institutional	1	1.1807	4
2HA31	MMTA - Cardiac - Low	Early - Institutional	2	1.3235	4
3HA11	MMTA - Cardiac - Low	Late - Community	0	0.5358	2
3HA21	MMTA - Cardiac - Low	Late - Community	1	0.5941	2
3HA31	MMTA - Cardiac - Low	Late - Community	2	0.7368	2
4HA11	MMTA - Cardiac - Low	Late - Institutional	0	1.0374	3

4HA21	MMTA - Cardiac - Low	Late - Institutional	1	1.0957	3
4HA31	MMTA - Cardiac - Low	Late - Institutional	2	1.2384	3
1HB11	MMTA - Cardiac - Medium	Early - Community	0	1.0198	4
1HB21	MMTA - Cardiac - Medium	Early - Community	1	1.0781	4
1HB31	MMTA - Cardiac - Medium	Early - Community	2	1.2209	4
2HB11	MMTA - Cardiac - Medium	Early - Institutional	0	1.2397	4
2HB21	MMTA - Cardiac - Medium	Early - Institutional	1	1.2980	4
2HB31	MMTA - Cardiac - Medium	Early - Institutional	2	1.4408	4
3HB11	MMTA - Cardiac - Medium	Late - Community	0	0.6531	2
3HB21	MMTA - Cardiac - Medium	Late - Community	1	0.7114	2
3HB31	MMTA - Cardiac - Medium	Late - Community	2	0.8541	2
4HB11	MMTA - Cardiac - Medium	Late - Institutional	0	1.1547	4
4HB21	MMTA - Cardiac - Medium	Late - Institutional	1	1.2130	3
4HB31	MMTA - Cardiac - Medium	Late - Institutional	2	1.3557	4
1IC11	MMTA - Endocrine - High	Early - Community	0	1.3363	4
1IC21	MMTA - Endocrine - High	Early - Community	1	1.3945	4
1IC31	MMTA - Endocrine - High	Early - Community	2	1.5373	4
2IC11	MMTA - Endocrine - High	Early - Institutional	0	1.5562	4
2IC21	MMTA - Endocrine - High	Early - Institutional	1	1.6144	4
2IC31	MMTA - Endocrine - High	Early - Institutional	2	1.7572	4
3IC11	MMTA - Endocrine - High	Late - Community	0	0.9696	3
3IC21	MMTA - Endocrine - High	Late - Community	1	1.0278	3
3IC31	MMTA - Endocrine - High	Late - Community	2	1.1706	3
4IC11	MMTA - Endocrine - High	Late - Institutional	0	1.4712	4
4IC21	MMTA - Endocrine - High	Late - Institutional	1	1.5294	4
4IC31	MMTA - Endocrine - High	Late - Institutional	2	1.6722	4
1IA11	MMTA - Endocrine - Low	Early - Community	0	1.1616	4
1IA21	MMTA - Endocrine - Low	Early - Community	1	1.2198	4
1IA31	MMTA - Endocrine - Low	Early - Community	2	1.3626	3
2IA11	MMTA - Endocrine - Low	Early - Institutional	0	1.3815	3
2IA21	MMTA - Endocrine - Low	Early - Institutional	1	1.4397	3
2IA31	MMTA - Endocrine - Low	Early - Institutional	2	1.5825	4
3IA11	MMTA - Endocrine - Low	Late - Community	0	0.7949	3
3IA21	MMTA - Endocrine - Low	Late - Community	1	0.8531	2
3IA31	MMTA - Endocrine - Low	Late - Community	2	0.9959	3

4IA11	MMTA - Endocrine - Low	Late - Institutional	0	1.2965	3
4IA21	MMTA - Endocrine - Low	Late - Institutional	1	1.3547	3
4IA31	MMTA - Endocrine - Low	Late - Institutional	2	1.4975	3
1IB11	MMTA - Endocrine - Medium	Early - Community	0	1.2302	4
1IB21	MMTA - Endocrine - Medium	Early - Community	1	1.2884	4
1IB31	MMTA - Endocrine - Medium	Early - Community	2	1.4312	4
2IB11	MMTA - Endocrine - Medium	Early - Institutional	0	1.4501	4
2IB21	MMTA - Endocrine - Medium	Early - Institutional	1	1.5083	4
2IB31	MMTA - Endocrine - Medium	Early - Institutional	2	1.6511	4
3IB11	MMTA - Endocrine - Medium	Late - Community	0	0.8635	3
3IB21	MMTA - Endocrine - Medium	Late - Community	1	0.9217	3
3IB31	MMTA - Endocrine - Medium	Late - Community	2	1.0645	3
4IB11	MMTA - Endocrine - Medium	Late - Institutional	0	1.3651	4
4IB21	MMTA - Endocrine - Medium	Late - Institutional	1	1.4233	3
4IB31	MMTA - Endocrine - Medium	Late - Institutional	2	1.5661	4
1JC11	MMTA - GI/GU - High	Early - Community	0	1.1114	3
1JC21	MMTA - GI/GU - High	Early - Community	1	1.1697	2
1JC31	MMTA - GI/GU - High	Early - Community	2	1.3124	2
2JC11	MMTA - GI/GU - High	Early - Institutional	0	1.3313	4
2JC21	MMTA - GI/GU - High	Early - Institutional	1	1.3896	3
2JC31	MMTA - GI/GU - High	Early - Institutional	2	1.5323	3
3JC11	MMTA - GI/GU - High	Late - Community	0	0.7447	2
3JC21	MMTA - GI/GU - High	Late - Community	1	0.8029	2
3JC31	MMTA - GI/GU - High	Late - Community	2	0.9457	2
4JC11	MMTA - GI/GU - High	Late - Institutional	0	1.2463	3
4JC21	MMTA - GI/GU - High	Late - Institutional	1	1.3045	3
4JC31	MMTA - GI/GU - High	Late - Institutional	2	1.4473	3
1JA11	MMTA - GI/GU - Low	Early - Community	0	0.8857	3
1JA21	MMTA - GI/GU - Low	Early - Community	1	0.9439	2
1JA31	MMTA - GI/GU - Low	Early - Community	2	1.0867	2
2JA11	MMTA - GI/GU - Low	Early - Institutional	0	1.1056	3
2JA21	MMTA - GI/GU - Low	Early - Institutional	1	1.1638	3
2JA31	MMTA - GI/GU - Low	Early - Institutional	2	1.3066	4
3JA11	MMTA - GI/GU - Low	Late - Community	0	0.5190	2
3JA21	MMTA - GI/GU - Low	Late - Community	1	0.5772	2

3JA31	MMTA - GI/GU - Low	Late - Community	2	0.7200	2
4JA11	MMTA - GI/GU - Low	Late - Institutional	0	1.0206	3
4JA21	MMTA - GI/GU - Low	Late - Institutional	1	1.0788	3
4JA31	MMTA - GI/GU - Low	Late - Institutional	2	1.2216	3
1JB11	MMTA - GI/GU - Medium	Early - Community	0	1.0253	3
1JB21	MMTA - GI/GU - Medium	Early - Community	1	1.0835	3
1JB31	MMTA - GI/GU - Medium	Early - Community	2	1.2263	3
2JB11	MMTA - GI/GU - Medium	Early - Institutional	0	1.2452	4
2JB21	MMTA - GI/GU - Medium	Early - Institutional	1	1.3034	4
2JB31	MMTA - GI/GU - Medium	Early - Institutional	2	1.4462	4
3JB11	MMTA - GI/GU - Medium	Late - Community	0	0.6585	2
3JB21	MMTA - GI/GU - Medium	Late - Community	1	0.7168	2
3JB31	MMTA - GI/GU - Medium	Late - Community	2	0.8596	2
4JB11	MMTA - GI/GU - Medium	Late - Institutional	0	1.1601	3
4JB21	MMTA - GI/GU - Medium	Late - Institutional	1	1.2184	3
4JB31	MMTA - GI/GU - Medium	Late - Institutional	2	1.3612	4
1KC11	MMTA - Infectious - High	Early - Community	0	1.1453	2
1KC21	MMTA - Infectious - High	Early - Community	1	1.2035	2
1KC31	MMTA - Infectious - High	Early - Community	2	1.3463	2
2KC11	MMTA - Infectious - High	Early - Institutional	0	1.3652	3
2KC21	MMTA - Infectious - High	Early - Institutional	1	1.4234	3
2KC31	MMTA - Infectious - High	Early - Institutional	2	1.5662	3
3KC11	MMTA - Infectious - High	Late - Community	0	0.7786	2
3KC21	MMTA - Infectious - High	Late - Community	1	0.8368	2
3KC31	MMTA - Infectious - High	Late - Community	2	0.9796	2
4KC11	MMTA - Infectious - High	Late - Institutional	0	1.2802	3
4KC21	MMTA - Infectious - High	Late - Institutional	1	1.3384	3
4KC31	MMTA - Infectious - High	Late - Institutional	2	1.4812	3
1KA11	MMTA - Infectious - Low	Early - Community	0	0.9232	2
1KA21	MMTA - Infectious - Low	Early - Community	1	0.9815	2
1KA31	MMTA - Infectious - Low	Early - Community	2	1.1242	2
2KA11	MMTA - Infectious - Low	Early - Institutional	0	1.1431	3
2KA21	MMTA - Infectious - Low	Early - Institutional	1	1.2013	3
2KA31	MMTA - Infectious - Low	Early - Institutional	2	1.3441	3
3KA11	MMTA - Infectious - Low	Late - Community	0	0.5565	2

3KA21	MMTA - Infectious - Low	Late - Community	1	0.6147	2
3KA31	MMTA - Infectious - Low	Late - Community	2	0.7575	2
4KA11	MMTA - Infectious - Low	Late - Institutional	0	1.0581	3
4KA21	MMTA - Infectious - Low	Late - Institutional	1	1.1163	3
4KA31	MMTA - Infectious - Low	Late - Institutional	2	1.2591	3
1KB11	MMTA - Infectious - Medium	Early - Community	0	1.0195	2
1KB21	MMTA - Infectious - Medium	Early - Community	1	1.0777	2
1KB31	MMTA - Infectious - Medium	Early - Community	2	1.2205	2
2KB11	MMTA - Infectious - Medium	Early - Institutional	0	1.2394	3
2KB21	MMTA - Infectious - Medium	Early - Institutional	1	1.2976	3
2KB31	MMTA - Infectious - Medium	Early - Institutional	2	1.4404	4
3KB11	MMTA - Infectious - Medium	Late - Community	0	0.6527	2
3KB21	MMTA - Infectious - Medium	Late - Community	1	0.7110	2
3KB31	MMTA - Infectious - Medium	Late - Community	2	0.8538	2
4KB11	MMTA - Infectious - Medium	Late - Institutional	0	1.1543	3
4KB21	MMTA - Infectious - Medium	Late - Institutional	1	1.2126	3
4KB31	MMTA - Infectious - Medium	Late - Institutional	2	1.3554	3
1AC11	MMTA - Other - High	Early - Community	0	1.1485	4
1AC21	MMTA - Other - High	Early - Community	1	1.2067	4
1AC31	MMTA - Other - High	Early - Community	2	1.3495	3
2AC11	MMTA - Other - High	Early - Institutional	0	1.3684	4
2AC21	MMTA - Other - High	Early - Institutional	1	1.4266	4
2AC31	MMTA - Other - High	Early - Institutional	2	1.5694	4
3AC11	MMTA - Other - High	Late - Community	0	0.7818	2
3AC21	MMTA - Other - High	Late - Community	1	0.8400	2
3AC31	MMTA - Other - High	Late - Community	2	0.9828	2
4AC11	MMTA - Other - High	Late - Institutional	0	1.2834	3
4AC21	MMTA - Other - High	Late - Institutional	1	1.3416	3
4AC31	MMTA - Other - High	Late - Institutional	2	1.4844	4
1AA11	MMTA - Other - Low	Early - Community	0	0.9364	3
1AA21	MMTA - Other - Low	Early - Community	1	0.9947	3
1AA31	MMTA - Other - Low	Early - Community	2	1.1375	3
2AA11	MMTA - Other - Low	Early - Institutional	0	1.1563	3
2AA21	MMTA - Other - Low	Early - Institutional	1	1.2146	3
2AA31	MMTA - Other - Low	Early - Institutional	2	1.3574	4

3AA11	MMTA - Other - Low	Late - Community	0	0.5697	2
3AA21	MMTA - Other - Low	Late - Community	1	0.6280	2
3AA31	MMTA - Other - Low	Late - Community	2	0.7707	2
4AA11	MMTA - Other - Low	Late - Institutional	0	1.0713	3
4AA21	MMTA - Other - Low	Late - Institutional	1	1.1296	3
4AA31	MMTA - Other - Low	Late - Institutional	2	1.2723	3
1AB11	MMTA - Other - Medium	Early - Community	0	1.0374	4
1AB21	MMTA - Other - Medium	Early - Community	1	1.0956	4
1AB31	MMTA - Other - Medium	Early - Community	2	1.2384	3
2AB11	MMTA - Other - Medium	Early - Institutional	0	1.2573	4
2AB21	MMTA - Other - Medium	Early - Institutional	1	1.3155	4
2AB31	MMTA - Other - Medium	Early - Institutional	2	1.4583	4
3AB11	MMTA - Other - Medium	Late - Community	0	0.6707	2
3AB21	MMTA - Other - Medium	Late - Community	1	0.7289	2
3AB31	MMTA - Other - Medium	Late - Community	2	0.8717	2
4AB11	MMTA - Other - Medium	Late - Institutional	0	1.1723	3
4AB21	MMTA - Other - Medium	Late - Institutional	1	1.2305	3
4AB31	MMTA - Other - Medium	Late - Institutional	2	1.3733	4
1LC11	MMTA - Respiratory - High	Early - Community	0	1.1489	3
1LC21	MMTA - Respiratory - High	Early - Community	1	1.2071	3
1LC31	MMTA - Respiratory - High	Early - Community	2	1.3499	2
2LC11	MMTA - Respiratory - High	Early - Institutional	0	1.3688	4
2LC21	MMTA - Respiratory - High	Early - Institutional	1	1.4270	4
2LC31	MMTA - Respiratory - High	Early - Institutional	2	1.5698	4
3LC11	MMTA - Respiratory - High	Late - Community	0	0.7822	2
3LC21	MMTA - Respiratory - High	Late - Community	1	0.8404	2
3LC31	MMTA - Respiratory - High	Late - Community	2	0.9832	2
4LC11	MMTA - Respiratory - High	Late - Institutional	0	1.2838	3
4LC21	MMTA - Respiratory - High	Late - Institutional	1	1.3420	3
4LC31	MMTA - Respiratory - High	Late - Institutional	2	1.4848	3
1LA11	MMTA - Respiratory - Low	Early - Community	0	0.9137	2
1LA21	MMTA - Respiratory - Low	Early - Community	1	0.9720	2
1LA31	MMTA - Respiratory - Low	Early - Community	2	1.1147	3
2LA11	MMTA - Respiratory - Low	Early - Institutional	0	1.1336	3
2LA21	MMTA - Respiratory - Low	Early - Institutional	1	1.1919	4

2LA31	MMTA - Respiratory - Low	Early - Institutional	2	1.3346	4
3LA11	MMTA - Respiratory - Low	Late - Community	0	0.5470	2
3LA21	MMTA - Respiratory - Low	Late - Community	1	0.6052	2
3LA31	MMTA - Respiratory - Low	Late - Community	2	0.7480	2
4LA11	MMTA - Respiratory - Low	Late - Institutional	0	1.0486	3
4LA21	MMTA - Respiratory - Low	Late - Institutional	1	1.1068	3
4LA31	MMTA - Respiratory - Low	Late - Institutional	2	1.2496	3
1LB11	MMTA - Respiratory - Medium	Early - Community	0	1.0315	3
1LB21	MMTA - Respiratory - Medium	Early - Community	1	1.0898	3
1LB31	MMTA - Respiratory - Medium	Early - Community	2	1.2326	3
2LB11	MMTA - Respiratory - Medium	Early - Institutional	0	1.2514	4
2LB21	MMTA - Respiratory - Medium	Early - Institutional	1	1.3097	4
2LB31	MMTA - Respiratory - Medium	Early - Institutional	2	1.4524	4
3LB11	MMTA - Respiratory - Medium	Late - Community	0	0.6648	2
3LB21	MMTA - Respiratory - Medium	Late - Community	1	0.7231	2
3LB31	MMTA - Respiratory - Medium	Late - Community	2	0.8658	2
4LB11	MMTA - Respiratory - Medium	Late - Institutional	0	1.1664	3
4LB21	MMTA - Respiratory - Medium	Late - Institutional	1	1.2247	3
4LB31	MMTA - Respiratory - Medium	Late - Institutional	2	1.3674	4
1GC11	MMTA - Surgical Aftercare - High	Early - Community	0	1.1740	3
1GC21	MMTA - Surgical Aftercare - High	Early - Community	1	1.2322	2
1GC31	MMTA - Surgical Aftercare - High	Early - Community	2	1.3750	2
2GC11	MMTA - Surgical Aftercare - High	Early - Institutional	0	1.3938	4
2GC21	MMTA - Surgical Aftercare - High	Early - Institutional	1	1.4521	4
2GC31	MMTA - Surgical Aftercare - High	Early - Institutional	2	1.5949	4
3GC11	MMTA - Surgical Aftercare - High	Late - Community	0	0.8072	2
3GC21	MMTA - Surgical Aftercare - High	Late - Community	1	0.8655	2
3GC31	MMTA - Surgical Aftercare - High	Late - Community	2	1.0082	2

4GC11	MMTA - Surgical Aftercare - High	Late - Institutional	0	1.3088	3
4GC21	MMTA - Surgical Aftercare - High	Late - Institutional	1	1.3671	4
4GC31	MMTA - Surgical Aftercare - High	Late - Institutional	2	1.5098	4
1GA11	MMTA - Surgical Aftercare - Low	Early - Community	0	0.9067	2
1GA21	MMTA - Surgical Aftercare - Low	Early - Community	1	0.9649	2
1GA31	MMTA - Surgical Aftercare - Low	Early - Community	2	1.1077	2
2GA11	MMTA - Surgical Aftercare - Low	Early - Institutional	0	1.1266	3
2GA21	MMTA - Surgical Aftercare - Low	Early - Institutional	1	1.1848	3
2GA31	MMTA - Surgical Aftercare - Low	Early - Institutional	2	1.3276	4
3GA11	MMTA - Surgical Aftercare - Low	Late - Community	0	0.5399	2
3GA21	MMTA - Surgical Aftercare - Low	Late - Community	1	0.5982	2
3GA31	MMTA - Surgical Aftercare - Low	Late - Community	2	0.7410	2
4GA11	MMTA - Surgical Aftercare - Low	Late - Institutional	0	1.0415	3
4GA21	MMTA - Surgical Aftercare - Low	Late - Institutional	1	1.0998	3
4GA31	MMTA - Surgical Aftercare - Low	Late - Institutional	2	1.2426	4
1GB11	MMTA - Surgical Aftercare - Medium	Early - Community	0	1.0347	2
1GB21	MMTA - Surgical Aftercare - Medium	Early - Community	1	1.0929	2
1GB31	MMTA - Surgical Aftercare - Medium	Early - Community	2	1.2357	2
2GB11	MMTA - Surgical Aftercare - Medium	Early - Institutional	0	1.2546	4
2GB21	MMTA - Surgical Aftercare - Medium	Early - Institutional	1	1.3128	4

2GB31	MMTA - Surgical Aftercare - Medium	Early - Institutional	2	1.4556	5
3GB11	MMTA - Surgical Aftercare - Medium	Late - Community	0	0.6680	2
3GB21	MMTA - Surgical Aftercare - Medium	Late - Community	1	0.7262	2
3GB31	MMTA - Surgical Aftercare - Medium	Late - Community	2	0.8690	2
4GB11	MMTA - Surgical Aftercare - Medium	Late - Institutional	0	1.1696	3
4GB21	MMTA - Surgical Aftercare - Medium	Late - Institutional	1	1.2278	3
4GB31	MMTA - Surgical Aftercare - Medium	Late - Institutional	2	1.3706	4
1EC11	MS Rehab - High	Early - Community	0	1.2271	4
1EC21	MS Rehab - High	Early - Community	1	1.2854	4
1EC31	MS Rehab - High	Early - Community	2	1.4281	4
2EC11	MS Rehab - High	Early - Institutional	0	1.4470	5
2EC21	MS Rehab - High	Early - Institutional	1	1.5053	5
2EC31	MS Rehab - High	Early - Institutional	2	1.6480	5
3EC11	MS Rehab - High	Late - Community	0	0.8604	2
3EC21	MS Rehab - High	Late - Community	1	0.9186	2
3EC31	MS Rehab - High	Late - Community	2	1.0614	3
4EC11	MS Rehab - High	Late - Institutional	0	1.3620	4
4EC21	MS Rehab - High	Late - Institutional	1	1.4202	4
4EC31	MS Rehab - High	Late - Institutional	2	1.5630	5
1EA11	MS Rehab - Low	Early - Community	0	1.0084	4
1EA21	MS Rehab - Low	Early - Community	1	1.0666	4
1EA31	MS Rehab - Low	Early - Community	2	1.2094	4
2EA11	MS Rehab - Low	Early - Institutional	0	1.2283	5
2EA21	MS Rehab - Low	Early - Institutional	1	1.2865	5
2EA31	MS Rehab - Low	Early - Institutional	2	1.4293	5
3EA11	MS Rehab - Low	Late - Community	0	0.6416	2
3EA21	MS Rehab - Low	Late - Community	1	0.6999	2
3EA31	MS Rehab - Low	Late - Community	2	0.8427	2
4EA11	MS Rehab - Low	Late - Institutional	0	1.1432	4

4EA21	MS Rehab - Low	Late - Institutional	1	1.2015	4
4EA31	MS Rehab - Low	Late - Institutional	2	1.3443	4
1EB11	MS Rehab - Medium	Early - Community	0	1.0936	5
1EB21	MS Rehab - Medium	Early - Community	1	1.1519	4
1EB31	MS Rehab - Medium	Early - Community	2	1.2946	4
2EB11	MS Rehab - Medium	Early - Institutional	0	1.3135	5
2EB21	MS Rehab - Medium	Early - Institutional	1	1.3718	5
2EB31	MS Rehab - Medium	Early - Institutional	2	1.5145	5
3EB11	MS Rehab - Medium	Late - Community	0	0.7269	2
3EB21	MS Rehab - Medium	Late - Community	1	0.7851	2
3EB31	MS Rehab - Medium	Late - Community	2	0.9279	2
4EB11	MS Rehab - Medium	Late - Institutional	0	1.2285	4
4EB21	MS Rehab - Medium	Late - Institutional	1	1.2867	4
4EB31	MS Rehab - Medium	Late - Institutional	2	1.4295	4
1BC11	Neuro - High	Early - Community	0	1.3547	4
1BC21	Neuro - High	Early - Community	1	1.4130	4
1BC31	Neuro - High	Early - Community	2	1.5557	4
2BC11	Neuro - High	Early - Institutional	0	1.5746	5
2BC21	Neuro - High	Early - Institutional	1	1.6328	5
2BC31	Neuro - High	Early - Institutional	2	1.7756	4
3BC11	Neuro - High	Late - Community	0	0.9880	2
3BC21	Neuro - High	Late - Community	1	1.0462	3
3BC31	Neuro - High	Late - Community	2	1.1890	3
4BC11	Neuro - High	Late - Institutional	0	1.4896	4
4BC21	Neuro - High	Late - Institutional	1	1.5478	4
4BC31	Neuro - High	Late - Institutional	2	1.6906	4
1BA11	Neuro - Low	Early - Community	0	1.0940	4
1BA21	Neuro - Low	Early - Community	1	1.1523	4
1BA31	Neuro - Low	Early - Community	2	1.2951	4
2BA11	Neuro - Low	Early - Institutional	0	1.3139	4
2BA21	Neuro - Low	Early - Institutional	1	1.3722	4
2BA31	Neuro - Low	Early - Institutional	2	1.5150	5
3BA11	Neuro - Low	Late - Community	0	0.7273	2
3BA21	Neuro - Low	Late - Community	1	0.7856	2
3BA31	Neuro - Low	Late - Community	2	0.9283	2

4BA11	Neuro - Low	Late - Institutional	0	1.2289	4
4BA21	Neuro - Low	Late - Institutional	1	1.2872	4
4BA31	Neuro - Low	Late - Institutional	2	1.4299	4
1BB11	Neuro - Medium	Early - Community	0	1.2124	4
1BB21	Neuro - Medium	Early - Community	1	1.2707	4
1BB31	Neuro - Medium	Early - Community	2	1.4134	4
2BB11	Neuro - Medium	Early - Institutional	0	1.4323	5
2BB21	Neuro - Medium	Early - Institutional	1	1.4905	5
2BB31	Neuro - Medium	Early - Institutional	2	1.6333	5
3BB11	Neuro - Medium	Late - Community	0	0.8457	2
3BB21	Neuro - Medium	Late - Community	1	0.9039	2
3BB31	Neuro - Medium	Late - Community	2	1.0467	2
4BB11	Neuro - Medium	Late - Institutional	0	1.3473	4
4BB21	Neuro - Medium	Late - Institutional	1	1.4055	4
4BB31	Neuro - Medium	Late - Institutional	2	1.5483	4
1CC11	Wound - High	Early - Community	0	1.5148	4
1CC21	Wound - High	Early - Community	1	1.5730	4
1CC31	Wound - High	Early - Community	2	1.7158	4
2CC11	Wound - High	Early - Institutional	0	1.7347	5
2CC21	Wound - High	Early - Institutional	1	1.7929	4
2CC31	Wound - High	Early - Institutional	2	1.9357	4
3CC11	Wound - High	Late - Community	0	1.1481	3
3CC21	Wound - High	Late - Community	1	1.2063	3
3CC31	Wound - High	Late - Community	2	1.3491	3
4CC11	Wound - High	Late - Institutional	0	1.6497	4
4CC21	Wound - High	Late - Institutional	1	1.7079	4
4CC31	Wound - High	Late - Institutional	2	1.8507	4
1CA11	Wound - Low	Early - Community	0	1.2725	4
1CA21	Wound - Low	Early - Community	1	1.3308	4
1CA31	Wound - Low	Early - Community	2	1.4735	4
2CA11	Wound - Low	Early - Institutional	0	1.4924	4
2CA21	Wound - Low	Early - Institutional	1	1.5507	4
2CA31	Wound - Low	Early - Institutional	2	1.6934	4
3CA11	Wound - Low	Late - Community	0	0.9058	2
3CA21	Wound - Low	Late - Community	1	0.9640	3

3CA31	Wound - Low	Late - Community	2	1.1068	3
4CA11	Wound - Low	Late - Institutional	0	1.4074	3
4CA21	Wound - Low	Late - Institutional	1	1.4656	4
4CA31	Wound - Low	Late - Institutional	2	1.6084	4
1CB11	Wound - Medium	Early - Community	0	1.3822	4
1CB21	Wound - Medium	Early - Community	1	1.4404	4
1CB31	Wound - Medium	Early - Community	2	1.5832	4
2CB11	Wound - Medium	Early - Institutional	0	1.6021	4
2CB21	Wound - Medium	Early - Institutional	1	1.6603	5
2CB31	Wound - Medium	Early - Institutional	2	1.8031	5
3CB11	Wound - Medium	Late - Community	0	1.0154	3
3CB21	Wound - Medium	Late - Community	1	1.0737	3
3CB31	Wound - Medium	Late - Community	2	1.2165	3
4CB11	Wound - Medium	Late - Institutional	0	1.5170	4
4CB21	Wound - Medium	Late - Institutional	1	1.5753	4
4CB31	Wound - Medium	Late - Institutional	2	1.7181	4

Source: CY 2021 Home Health Claims Data, Periods that end in CY 2021 accessed on the CCW July 14, 2022.

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Changes to the PDGM case-mix weights are implemented in a budget neutral manner by multiplying the CY 2023 national standardized 30-day period payment rate by a case-mix budget neutrality factor. Typically, the case-mix weight budget neutrality factor is also calculated using the most recent, complete home health claims data available. However, in the CY 2022 HH PPS proposed rule (86 FR 35908), due to the COVID–19 PHE, we discussed using the previous calendar year's home health claims data (CY 2019) to determine if there were significant differences between utilizing CY 2019 and CY 2020 claims data. We noted that CY 2020 was the first year of actual PDGM utilization data, therefore, if we were to use CY 2019 data due to the COVID–19 PHE we would need to simulate 30-day periods from 60-day episodes under the old system. We determined that using CY 2020 utilization data was more appropriate than using CY 2019 utilization data, as it is actual PDGM utilization data. For CY 2023, we will continue the practice of using the most recent complete home health claims data at the time of rulemaking, which is CY 2021 data. The case-mix budget neutrality factor is calculated as the ratio of 30-day base payment rates such that total payments when the CY 2023 PDGM case-mix

weights (developed using CY 2021 home health claims data) are applied to CY 2021 utilization (claims) data are equal to total payments when CY 2022 PDGM case-mix weights (developed using CY 2020 home health claims data) are applied to CY 2021 utilization data. This produces a case-mix budget neutrality factor for CY 2023 of 0.9904.

We invited comments on the CY 2023 proposed case-mix weights and proposed case-mix weight budget neutrality factor and these are summarized below.

Comment: A few commenters expressed support for the proposal to recalibrate the PDGM case-mix weights for CY 2023 using CY 2021 utilization data.

Response: We thank the commenters for their support.

Comment: Several commenters were opposed to the proposal to recalibrate the PDGM case-mix weights for CY 2023. A commenter expressed concerns about the influence of the COVID–19 surges and its overall effects on the types of patients being served. This commenter recommended not updating the case-mix weights at this time and resuming this practice once the pandemic is over.

Response: CMS appreciates the comments received regarding CY 2021 utilization trends and the impact of the COVID–19 PHE on the provision of home health services. We recognize that commenters have concerns regarding how the COVID–19 PHE affected the type of home health patients served as well as care practices. However, as stated in the CY 2023 HH PPS proposed rule (87 FR 37626), we believe that visit patterns have stabilized as our data analysis indicates that visits in 2021 were similar to visits in 2020. As such, we believe that CY 2021 data will be indicative of visit patterns in CY 2023. In the CY 2019 HH PPS final rule, we finalized our proposal to annually recalibrate the PDGM case-mix weights (83 FR 56515) to reflect the most recent utilization data available at the time of rulemaking. We continue to believe that the annual recalibration of the HH PPS case-mix weights ensures that the case-mix weights reflect, as accurately as possible, current home health resource use, changes in utilization patterns, and reflects the types of patients currently receiving home health services. We believe that prolonging recalibration could lead to more significant variation in the case-mix weights than what is observed using CY 2021 utilization data. Therefore, we believe that utilizing CY 2021 data to recalibrate the CY 2023 case-mix weights is appropriate.

Comment: A commenter recommended that any recalibration should be done in a non-budget-neutral manner given the higher-acuity patients, increasing expenses, increased demand for care, and increased shortage of labor.

Response: We thank the commenter for this recommendation; however, consistent with our established policy, we apply a case-mix budget neutrality factor to the CY 2023 national, standardized 30-day period payment rate to ensure that there are no changes in aggregate payments due to the recalibration.

Final Decision: We are finalizing the recalibration of the HH PPS case-mix weights as proposed for CY 2023. We are also finalizing the proposal to implement the changes to the PDGM case-mix weights in a budget neutral manner by applying a case-mix budget neutrality factor to the CY 2023 national, standardized 30-day period payment rate. As stated previously, the final case-mix budget neutrality factor for CY 2023 will be 0.9904.

5. CY 2023 Home Health Payment Rate Updates

a. CY 2023 Home Health Market Basket Update for HHAs

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for home health be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. In the CY 2019 HH PPS final rule with comment period (83 FR 56425), we finalized a rebasing of the home health market basket to reflect 2016 cost report data. A detailed description of how we rebased the home health market basket is available in the CY 2019 HH PPS final rule with comment period (83 FR 56425 through 56436).

Section 1895(b)(3)(B) of the Act requires that in CY 2015 and in subsequent calendar years, except CY 2018 (under section 411(c) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, enacted April 16, 2015)), and CY 2020 (under section 53110 of the Bipartisan Budget Act of 2018 (BBA) (Pub. L. 115–123, enacted February 9, 2018)), the market basket percentage under the HHA prospective payment system, as described in section 1895(b)(3)(B) of the Act, be annually adjusted by changes in economy-wide productivity. Section 1886(b)(3)(B)(xi)(II) of the Act defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, calendar year, cost reporting period, or other annual period). The United States Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the United States economy. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term ''multifactor productivity'' with ''total factor productivity'' (TFP). BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is now published by BLS as ''private nonfarm business total factor productivity''. We refer readers to *https://www.bls.gov* for the BLS historical published TFP data. A complete description of IGI's TFP projection methodology is available on the CMS website at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.*

The proposed home health update percentage for CY 2023 was based on the estimated home health market basket update, specified at section 1895(b)(3)(B)(iii) of the Act, of 3.3 percent (based on IHS Global Inc.'s first-quarter 2022 forecast with historical data through fourth-quarter 2021). The estimated proposed CY 2023 home health market basket update of 3.3 percent was then reduced by a productivity adjustment, as mandated by the section 3401 of the Affordable Care Act, which at the time of the proposed rule was estimated to be 0.4 percentage point for CY 2023. In effect, the proposed home health payment update percentage for CY 2023 was a 2.9 percent increase. Section 1895(b)(3)(B)(v) of the Act requires that the home health update be decreased by 2 percentage points for those HHAs that do not submit quality data as required by the Secretary. For HHAs that do not submit the required quality data for CY 2023, the home health payment update was proposed to be 0.9 percent (2.9 percent minus 2 percentage points). In the CY 2023 HH PPS proposed rule we stated that if more recent data became available after the publication of the

proposed rule and before the publication of the final rule (for example, more recent estimates of the home health market basket update and productivity adjustment), we would use such data, if appropriate, to determine the home health payment update percentage for CY 2023 in the final rule.

The following is a summary of the public comments received on the CY 2023 annual payment update and our responses.

Comment: A few commenters supported the positive market basket payment update of 2.9 percent. Several commenters opposed the proposed update of 3.3 percent reduced by 0.4 percent productivity adjustment stating it falls short of real-life cost inflation and is insufficient to cover their costs. Commenters noted that home health agencies are struggling with recruitment and retention of staffing and increased costs of staffing due to tight labor markets and paying for sick leave for COVID–19, as well as with increased costs of supplies and equipment (as a result of supply chain shortages), and overall higher inflation. Commenters also noted that home health agencies are struggling to compete for staffing with hospitals that received large amounts of relief funding for COVID–19 and offer large sign-on bonuses. A few commenters noted that there are changes impacting the home health PPS that will require additional resources such as OASIS and EVV monitoring and suggested that payment increases are not keeping pace with inflation.

Several commenters stated cost inflation is at a 40-year high and HHAs report continuing labor cost increases in second quarter 2022 and third quarter 2022 that range from 7 to 12 percent. A commenter noted that a recent survey conducted by Dobson & Davanzo found higher labor cost growth than is reflected in the proposed market basket index, along with a significantly greater nurse labor cost increase as determined by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) average hourly earnings for home health industry, which showed year-over-year growth in the first quarter of 2022 of 5.2 percent.

With labor representing 75 percent of home health costs, commenters stated the proposed market basket index is less than half of actual labor cost increases. In addition, they noted HHAs, unlike many other health care sectors, are hard hit with transportation cost increases—either directly due to vehicle acquisition and gasoline costs or by higher reimbursement rates. With an estimated 7.8 billion miles driven each year, they noted that HHAs face transportation cost increases alone that may exceed the proposed market basket index increase. They stated CMS has the authority to modify its market basket index calculation methodology, stating section 1895(b)(3)(B)(iii) of the Act offers significant discretion to the Secretary to account for cost increases specifically related to ''the mix of goods and services included in home health service.'' They noted that labor and transportation costs are within the scope of home health services.

The commenters stated that the recent market basket index increases for hospitals, SNFs, and hospices is a positive indication that CMS will raise the market basket index in the final rule. However, they stated the increases seen in the other sectors remain short of what HHAs report as actual cost increases in 2022. Several commenters requested that CMS use the most recent BLS data, and where sector specific data is not recent, use CPI data to determine the market basket increase. Commenters urged CMS to provide a home health market basket update comparable to what was finalized in the fiscal year payment rules, which used IHS Global Inc.'s second quarter forecast. A commenter requested that CMS exercise any additional authorities to ensure market basket updates are based on data that is consistent with what is occurring in the overall economy.

A few commenters noted that they believe home health agencies should be getting a 6 percent increase for inflation. A commenter requested that CMS propose an inflation adjustment to enable best practices and allow agencies to continue to provide a high level of care. Commenters stated that the low reimbursement rates would be detrimental to patient care and may cause HHA closures.

Response: We believe the 2016-based home health market basket increase adequately reflects the average change in the price of goods and services hospitals purchase in order to provide HHA medical services, and is appropriate to use as the HHA payment update factor. As described in the CY 2019 HH PPS final rule with comment period (83 FR 56425 through 56436), the home health market basket (similar to the other CMS market baskets) is a fixed-weight, Laspeyres-type index that measures price changes over time and would not reflect increases in costs associated with changes in the volume or intensity of input goods and services. As such, the home health market basket update would reflect the prospective price pressures for the types of inputs described by the commenters (such as labor or wage growth and transportation costs), but would inherently not reflect other factors that might increase the level of costs, such as the quantity of labor used or any changes in occupation (such as the decreased use of home health aides). We note that cost changes (that is, the product of price and quantities) would only be reflected when a market basket is rebased and the base year weights are updated to a more recent time period.

At the time of the CY 2023 HH PPS proposed rule, based on IHS Global Inc.'s first quarter 2022 forecast with historical data through the fourth quarter of 2021, IGI forecasted the 2016-based home health market basket update of 3.3 percent for CY 2023 reflecting forecasted compensation price growth of 3.8 percent (by comparison, compensation price growth in the home health market basket averaged 2.3 percent from 2012–2021). In the CY 2023 HH PPS proposed rule, we proposed that if more recent data became available, we would use such data, if appropriate, to derive the final CY 2023 home health market basket update for the final rule. For this final rule, we now have an updated forecast of the price proxies underlying the market basket that incorporates more recent historical data and reflects a revised outlook regarding the United States economy and expected price inflation for CY 2023 for HHAs (including upward revision to the price growth as compared to the proposed rule for compensation and transportation). Based on IHS Global Inc.'s third quarter 2022 forecast with historical data through the second quarter of 2022 (and reflecting forecasted data for the third quarter of 2022 through fourth quarter of 2023), the final CY 2023 home health market basket update is 4.1 percent (reflecting forecasted compensation price growth of 4.4 percent) and the final CY 2023 productivity adjustment is 0.1 percentage point. Therefore, for CY 2023, the final home health productivity-adjusted market basket update of 4.0 percent (4.1 percent less 0.1 percentage point) will be applicable, compared to the 2.9 percent productivity-adjusted market basket update that was proposed. We note that the final CY 2023 home health market basket growth rate of 4.1 percent would be the highest market basket increase we have implemented in a final rule since the beginning of the HH PPS.

We acknowledge the commenters' concern regarding the tight labor market and competing with hospitals and skilled nursing facilities for labor. For the compensation cost weight in the 2016-based home health market basket (which includes salaried and contract

labor employees), we use a blend of Employment Cost Indexes (ECI) for wages and salaries and benefits to proxy the price increases of labor for HHAs. The blend of ECIs reflects the occupational composition of HHA staff as measured by the National Industry-Specific Occupational Employment and Wage estimates for North American Industrial Classification System (NAICS) 621600, Home Health Care Services, published by the BLS Office of Occupational Employment Statistics (OES). A more detailed discussion can be found in the CY 2019 HH PPS final rule with comment period (83 FR 56429). For the Health-Related Professional and Technical workers compensation costs (accounting for 26 percent of the 2016-based home health market basket and including, but not limited to, registered nurses and therapists) we use the ECIs for All Civilian workers in Hospitals as the price proxies. For the Health and Social Assistance Services workers compensation costs (accounting for 27 percent of the 2016-based home health market basket and including, but not limited to, home health aides and licensed practical nurses) we use the ECIs for All Civilian workers in Health Care and Social Assistance. Each of these price proxies reflects the forecasted price factors affecting the labor occupations across the health sector, including those for hospital workers and others that are in high demand.

While we appreciate the commenter's recommendation for CMS to exercise any additional authorities to ensure market basket updates are based on data that is consistent with what is occurring in the overall economy, we note that section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for home health be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. Additionally, section 1895(b)(3)(B) of the Act requires that in CY 2015 and in subsequent calendar years, the market basket percentage under the HHA prospective payment system, as described in section 1895(b)(3)(B) of the Act, be annually adjusted by changes in economy-wide productivity. Therefore, we do not have additional authority to apply an update to the home health payments beyond what is set out in statute.

Comment: Several commenters expressed concerns over the final CY 2022 home health market basket update and the latest CY 2022 market basket forecast. Commenters noted that with more recent data, the market basket for CY 2022 is trending toward 5.0 percent, well above the 3.1 percent HH PPS update implemented in the CY 2022 HH PPS final rule. Several commenters requested CMS adjust 2022 base rates to conform to actual cost inflation in 2022 that exceeds the 2022 market basket index as was done for SNFs.

Response: The commenter seems to be referring to the market basket forecast error adjustment that was implemented in the FY 2023 SNF PPS final rule. However, that forecast error adjustment was to adjust for the difference between actual SNF market basket increase for FY 2021 and the final SNF market basket increase for FY 2021. However, as the commenter is referring to 2022 inflation and not 2021 inflation, it is not clear what the commenter is suggesting. The HH PPS market basket updates are required by law to be set prospectively, which means that the update relies on a mix of both historical data for part of the period for which the update is calculated and forecasted data for the remainder. There is currently no mechanism to adjust for market basket forecast error in the HH PPS payment update.

Comment: A commenter stated the market basket update of 3.3 percent was inadequate due to use of the ECI to update labor costs. They stated the ECI does not include the costs of contracted health care providers which was a key driver of surging input costs. The commenter stated that by excluding costs related to contracted labor, CMS has dramatically underestimated the true cost of providing care and urged CMS to conduct a one-time forecast error correction to the market basket to adequately capture the true costs of providing care. A commenter stated that they have to rely on more contract labor, which has resulted in increased costs per visit as their contractors charged more per visit.

Response: For the compensation cost weight in the 2016-based home health market basket (which includes salaried and contract labor employees), we use a blend of ECIs for wages and salaries and benefits to proxy the price increases of labor for HHAs (for more details see the CY 2019 HH PPS final rule (83 FR 56429). The ECIs (published by the BLS) measure the change in the hourly labor cost to employers, independent of the influence of employment shifts among occupations and industry categories. We note that the Medicare cost report data shows contract labor costs account for about 7 percent of total compensation for HHAs in 2020, compared to about 10 percent in the 2016-based home health market basket. Data through 2021 are incomplete at this time. Therefore, while we acknowledge that the ECI only reflects price changes for employed staff, we believe that the blended ECIs used in the home health market basket are accurately reflecting the price change associated with the labor used to provide home health services (as employed workers' costs account for 93 percent of HHA compensation costs) and appropriately does not reflect other factors that might affect labor costs. Therefore, we believe it continues to be an appropriate measure to use in the home health market basket. We also note that based on IGI's third quarter 2022 forecast with historical data through second quarter 2022, compensation price growth (using the ECIs) for CY 2023 is now projected to be 4.4 percent, which is 0.6 percentage point higher than projected price growth at the time of the CY 2023 HH PPS proposed rule (3.8 percent) and 2.1 percentage points higher than the historical average from 2012 through 2021.

Comment: Several commenters were concerned about the proposed reduction for productivity. A commenter requested that CMS also elaborate in the final rule on the specific productivity gains that are the basis for the proposed 0.4 percent productivity offset as the latest data actually indicate *decreases* in productivity, not gains. Another commenter stated that they believe the assumptions underpinning the productivity adjustment are fundamentally flawed as it assumes that HHAs can increase overall productivity—producing more goods with the same or fewer units of labor input—at the same rate as increases in the broader economy. However, the commenters stated that providing home-based care to patients is highly labor intensive and therefore, they strongly disagreed with the continuation of this punitive policy—particularly during the PHE. They stated that given that CMS is required by statute to implement a productivity adjustment to the market basket update, they ask the agency to work with Congress to permanently eliminate this unjustified reduction in home health payments.

Response: Section 1895(b)(3)(B) of the Act requires the market basket percentage under the HH PPS, as described in section 1895(b)(3)(B) of the Act, be annually adjusted by changes in economy-wide productivity. Section 1886(b)(3)(B)(xi)(II) of the Act defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (as projected by the Secretary for the 10-year period ending

with the applicable fiscal year, year, cost reporting period, or other annual period). Therefore, we do not have the authority to eliminate the productivity adjustment. For the CY 2023 HH PPS proposed rule, based on IGI's first quarter 2022 forecast, the productivity adjustment was projected to be 0.4 percentage point for CY 2023. For this final rule, based on IGI's third quarter 2022 forecast, we are incorporating a revised productivity adjustment that reflects more recent historical total factor productivity data as published by BLS through 2021 (previously published by BLS as multifactor productivity) as well as a revised economic outlook for CY 2022 and CY 2023 (including the negative labor productivity quarterly growth rates in the first half of 2022). Using this more recent forecast, the CY 2023 productivity adjustment based on the 10-year moving average growth in economy-wide total factor productivity for the period ending CY 2023 is currently estimated to be 0.1 percent.

Comment: A commenter stated that while some of the increased costs due to the pandemic, structural changes in staffing costs and general inflation, may be captured in the proposed market basket update, it does not track with the realized increase of costs of providing quality healthcare. This commenter also noted that the most recent annual inflation rate for the United States is 9.1 percent. The commenter stated that the proposed home health market basket update for CY 2023 is not keeping pace with the national rate of inflation and is woefully inadequate. They urged CMS to discuss the impact of this disparity in the final rule.

Response: As required in section 1895(b)(4)(B)(iii) of the Act, the home health market basket reflects the average change in the price of goods and services HHAs purchase in order to provide medical services. While the Consumer Price Index (CPI) All Items Urban (BLS' measure of overall inflation for the U.S. referenced by the commenter) is also a fixed-weight, Laspeyres-type index that measures price changes over time, it reflects a market basket of consumer goods and services purchased by urban consumers. Thus, it is a measure of price change that does not reflect the mix of goods and services included in a home health service but instead reflects a mix of goods and services specific to consumers such as Shelter (33 percent), Food (13 percent), New and used vehicles (9 percent), and energy (7 percent), where the weights are based on relative importance for December 2021. Thus, there is not a direct one-to-one relationship between these two price indices and any disparity would appropriately reflect their different purposes.

Comment: A commenter stated the proposed market basket update does not reflect the increased cost of giving care, but also breaks from longstanding economic policy from the Department of Health and Human Services, citing that the last time that inflation was at this level, from 1979–1982, the then-Health Care Financing Administration, forerunners of CMS, provided a price index update of 11.5 percent in 1980, 11.5 percent in 1981, and 10 percent in 1983. The commenter suggested that CMS provide a home health full market basket adjustment that recognizes the dramatic increases in the cost of care.

Response: As stated previously, the home health market basket measures price changes (similar to other CMS market baskets) over time and would not reflect increases in costs associated with changes in the volume or intensity of input goods and services. The price index updates cited by the commenter were implemented when CMS (formerly Health Care Financing Administration) reimbursed HHAs on a cost basis prior to the HH PPS. Beginning in 2001, CMS implemented the HH PPS with annual updates being equal to the home health market basket percentage increase as stated in section 1895(b)(4)(B)(iii) of the Act, and effective beginning with 2015, reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. As noted previously, the final CY 2023 home health market basket growth rate of 4.1 percent would be the highest market basket increase we have implemented in a final rule since the beginning of the HH PPS.

Final Decision: As proposed, we are finalizing our policy to use the most recent data to determine the home health payment update percentage for CY 2023 in this final rule. Based on IHS Global Inc.'s third-quarter 2022 forecast with historical data through second-quarter 2022, the home health market basket update is 4.1 percent. The CY 2023 home health market basket update of 4.1 percent is then reduced by a productivity adjustment of 0.1 percentage point for CY 2023. For HHAs that submit the required quality data for CY 2022, the home health payment update is a 4.0 percent increase. For HHAs that do not submit the required quality data for CY 2023, the home health payment update is 2.0 percent (4.0 percent minus 2 percentage points).

b. CY 2023 Home Health Wage Index

(1) CY 2023 Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services. Since the inception of the HH PPS, we have used inpatient hospital wage data in developing a wage index to be applied to home payments. We proposed to continue this practice for CY 2023, as we continue to believe that, in the absence of home health-specific wage data that accounts for area differences, using inpatient hospital wage data is appropriate and reasonable for the HH PPS.

In the CY 2021 HH PPS final rule (85 FR 70298), we finalized our proposal to adopt the revised Office of Management and Budget (OMB) delineations with a 5-percent cap on wage index decreases, where the estimated reduction in a geographic area's wage index would be capped at 5-percent in CY 2021 only, meaning no cap would be applied to wage index decreases for the second year (CY 2022). Therefore, we proposed and finalized the use of the FY 2022 pre-floor, pre-reclassified hospital wage index with no 5-percent cap on decreases as the CY 2022 wage adjustment to the labor portion of the HH PPS rates (86 FR 62285). For CY 2023, we proposed to base the HH PPS wage index on the FY 2023 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2018, and before October 1, 2019 (FY 2019 cost report data). The proposed CY 2023 HH PPS wage index would not take into account any geographic reclassification of hospitals, including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. We also proposed that the CY 2023 HH PPS wage index would include a 5-percent cap on wage index decreases as discussed later in this section. If finalized, we will apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence).

To address those geographic areas in which there are no inpatient hospitals, and thus, no hospital wage data on which to base the calculation of the CY 2023 HH PPS wage index, we proposed to continue to use the same methodology discussed in the CY 2007

HH PPS final rule (71 FR 65884) to address those geographic areas in which there are no inpatient hospitals. For rural areas that do not have inpatient hospitals, we proposed to use the average wage index from all contiguous Core Based Statistical Areas (CBSAs) as a reasonable proxy. Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity of the majority of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas). Instead, we proposed to continue to use the most recent wage index previously available for that area. The most recent wage index previously available for rural Puerto Rico is 0.4047, which is what we proposed to use. For urban areas without inpatient hospitals, we use the average wage index of all urban areas within the State as a reasonable proxy for the wage index for that CBSA. For CY 2023, the only urban area without inpatient hospital wage data is Hinesville, GA (CBSA 25980). Using the average wage index of all urban areas in Georgia as proxy, we proposed the CY 2023 wage index value for Hinesville, GA to be 0.8542.

On February 28, 2013, OMB issued Bulletin No. 13–01, announcing revisions to the delineations of MSAs, Micropolitan Statistical Areas, and CBSAs, and guidance on uses of the delineation of these areas. In the CY 2015 HH PPS final rule (79 FR 66085 through 66087), we adopted OMB's area delineations using a 1-year transition.

On August 15, 2017, OMB issued Bulletin No. 17–01 in which it announced that one Micropolitan Statistical Area, Twin Falls, Idaho, now qualifies as a Metropolitan Statistical Area. The new CBSA (46300) comprises the principal city of Twin Falls, Idaho in Jerome County, Idaho and Twin Falls County, Idaho. The CY 2022 HH PPS wage index value for CBSA 46300, Twin Falls, Idaho, will be 0.8799. Bulletin No. 17–01 is available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/bulletins/2017/b-17-01.pdf*.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01. On September 14, 2018, OMB issued OMB Bulletin No. 18–04 which superseded the April 10, 2018, OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of OMB Bulletin No. 18–04 may be obtained at: *https://www.bls.gov/bls/omb-bulletin-18-04-revised-delineations-of-metropolitan-statistical-areas.pdf*.

On March 6, 2020, OMB issued Bulletin No. 20–01, which provided updates to and superseded OMB Bulletin No. 18–04 that was issued on September 14, 2018. The attachments to OMB Bulletin No. 20–01 provided detailed information on the update to statistical areas since September 14, 2018, and were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2017, and July 1, 2018. (For a copy of this bulletin, we refer readers to *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*.) In OMB Bulletin No. 20–01, OMB announced one new Micropolitan Statistical Area, one new component of an existing Combined Statistical Are and changes to New England City and Town Area (NECTA) delineations. In the CY 2021 HH PPS final rule (85 FR 70298) we stated that if appropriate, we would propose any updates from OMB Bulletin No. 20–01 in future rulemaking. After reviewing OMB Bulletin No. 20–01, we have determined that the changes in Bulletin 20–01 encompassed delineation changes that would not affect the Medicare home health wage index for CY 2022. Specifically, the updates consisted of changes to NECTA delineations and the re-designation of a single rural county into a newly created Micropolitan Statistical Area. The Medicare home health wage index does not utilize NECTA definitions, and, as most recently discussed in the CY 2021 HH PPS final rule (85 FR 70298) we include hospitals located in Micropolitan Statistical areas in each State's rural wage index. In other words, these OMB updates did not affect any geographic areas for purposes of the wage index calculation for CY 2022.

The proposed CY 2023 wage index is available on the CMS website at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

The following is a summary of the comments received on the CY 2023 wage index and our responses:

Comment: Several commenters recommended more far-reaching revisions and reforms to the wage index methodology used under Medicare fee-for-service. A commenter recommended that CMS create a home health specific wage index as soon as possible. This commenter stated that CMS should discontinue the use of any other segment (for example, IPPS Hospitals) of healthcare as a proxy for home health and create a home health specific wage index that is based solely on the issues impacting the cost of labor and the ability to attract and retain quality staff to the home health industry. Additionally, one commenter suggested that CMS revisit MedPAC's 2007 proposal, which recommended that the Congress repeal the existing hospital wage index statute, including reclassifications and exceptions, and give the Secretary authority to establish new wage index systems. Other commenters recommended that CMS consider establishing a floor for home health wage indices, as it did for hospice in 1983, to establish equity in geographic adjustment among provider types.

Response: While we appreciate these recommendations, these comments are outside the scope of the proposed rule. Any changes to the way we adjust home health payments to account for geographic wage differences beyond the wage index proposals discussed in the CY 2023 HH PPS proposed rule (87 FR 37600), including the creation of a home health specific wage index and the creation of a home health floor would have to go through notice and comment rulemaking. The application of the hospice floor is specific to hospices and does not apply to HHAs. The hospice floor was developed through a negotiated rulemaking advisory committee, under the process established by the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648). Committee members included representatives of national hospice associations; rural, urban, large, and small hospices; multi-site hospices; consumer groups; and a government representative. The Committee reached consensus on a methodology that resulted in the hospice wage index. Because there is no home health floor and the hospice floor applies only to hospices, we continue to believe the use of the pre-floor and pre-reclassified hospital wage index results in the most appropriate adjustment to the labor portion of the home health payment rates. This position is longstanding and consistent with other Medicare payment systems (for example, SNF PPS, IRF PPS, and Hospice).

Comment: Several commenters recommended that CMS allow home health providers to utilize geographic reclassification similar to the provision

used for IPPS hospitals. These commenters expressed concern that home health providers are not afforded the same options to adjust their wage indices as hospitals, yet must compete for the same types of health care professionals. A commenter stated that home health agencies that serve Medicare beneficiaries in Maryland, but who compete for labor with acute care hospitals and other post-acute care providers in the Washington, DC-Virginia metropolitan area that pay average hourly wages that are approximately 11 percent higher than the average hourly wages paid by Maryland acute care hospitals, have had, and will continue to have, difficulty maintaining adequate staffing levels and delivering quality home health care at a time when reliance on these services is at an all-time high. This commenter stated that the negative impact of applying the pre-reclassification, pre-floor IPPS wage index to home health agencies, coupled with the inability of a home health agency to receive any adjustments to their wage index based on close proximity to a major metropolitan area in an adjacent state with which it competes for labor, is greatly exacerbated in Maryland, where acute care hospitals are subject to a capped payment system that limits the ability of such hospitals to increase wages from one year to the next.

Response: We thank the commenters for their recommendations. However, the reclassification provision at section 1886(d)(10)(C)(i) of the Act states that the Board shall consider the application of any subsection (d) hospital requesting the Secretary change the hospital's geographic classification. The reclassification provision found in section 1886(d)(10) of the Act is specific to IPPS hospitals only. Because the reclassification provision applies only to hospitals, we continue to believe the use of the pre-floor and pre-reclassified hospital wage index results in the most appropriate adjustment to the labor portion of the home health payment rates. This position is longstanding and consistent with other Medicare payment systems (for example, SNF PPS, IRF PPS, and Hospice).

Comment: A commenter stated that when fully phased in, the implementation of the $15 per-hour minimum wage increase, and the additional $2 per hour minimum wage increase for home health care aides which takes effect in October 2022 will cost over $4 billion for New York HHAs across all payors (Medicaid, Medicare, managed care, commercial insurance, and private-pay), and will never be adequately addressed due to CMS's ongoing disposition to continue using the pre-floor, pre-reclassified hospital wage index to adjust home health costs.

Response: With regard to minimum wage standards, we note that such increases would be reflected in future data used to create the hospital wage index to the extent that these changes to State minimum wage standards are reflected in increased wages to hospital staff.

Final Decision: After considering the comments received in response to the proposed rule, and for the reasons discussed previously, we are finalizing our proposal to use the FY 2023 pre-floor, pre-reclassified hospital wage index data as the basis for the CY 2023 HH PPS wage index. The final CY 2023 wage index is available on the CMS website at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

(2) Permanent Cap on Wage Index Decreases

As discussed in section II.B.5.b.1 of this final rule, we have proposed and finalized temporary transition policies in the past to mitigate significant changes to payments due to changes to the home health wage index. Specifically, in the CY 2015 HH PPS final rule (79 FR 66086), we implemented a 50/50 blend for all geographic areas consisting of the wage index values using the then-current OMB area delineations and the wage index values using OMB's new area delineations based on OMB Bulletin No. 13–01. In the CY 2021 HH PPS final rule (85 FR 73100), we adopted the revised OMB delineations with a 5-percent cap on wage index decreases, where the estimated reduction in a geographic area's wage index would be capped at 5-percent in CY 2021. We explained that we believed the 5-percent cap would provide greater transparency and would be administratively less complex than the prior methodology of applying a 50/50 blended wage index. We noted that this transition approach struck an appropriate balance by providing a transition period to mitigate the resulting short-term instability and negative impacts on providers and time for them to adjust to their new labor market area delineations and wage index values.

In the CY 2022 HH PPS final rule (86 FR 62285), a few commenters stated that providers should be protected against substantial payment reductions due to dramatic reductions in wage index values from one year to the next. However, because we did not propose any transition policy in the CY 2022 HH PPS proposed rule, we did not extend the transition period for CY 2022. Instead, in the CY 2022 HH PPS final rule, we stated that we continued to believe that applying the 5-percent cap transition policy in year one provided an adequate safeguard against any significant payment reductions associated with the adoption of the revised CBSA delineations in CY 2021, allowed for sufficient time to make operational changes for future calendar years, and provided a reasonable balance between mitigating some short-term instability in home health payments and improving the accuracy of the payment adjustment for differences in area wage levels. However, we acknowledged that certain changes to wage index policy may significantly affect Medicare payments. In addition, we reiterated that our policy principles with regard to the wage index include generally using the most current data and information available and providing that data and information, as well as any approaches to addressing any significant effects on Medicare payments resulting from these potential scenarios, in notice and comment rulemaking. Consistent with these principles, we considered how best to address potential scenarios in which changes to wage index policy may significantly affect Medicare home health payments. In the past, we have established transition policies of limited duration to phase in significant changes to labor market areas. In taking this approach in the past, we sought to mitigate short-term instability and fluctuations that can negatively impact providers due to wage index changes. Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act requires the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services. We have previously stated that, because the wage index is a relative measure of the value of labor in prescribed labor market areas, we believe it is important to implement new labor market area delineations with as minimal a transition as is reasonably possible. However, we recognize that changes to the wage index have the potential to create instability and significant negative impacts on certain providers even when labor market areas do not change. In addition, year-to-year fluctuations in an area's wage index can occur due to external factors beyond a provider's control, such as the COVID–

19 PHE, and for an individual provider, these fluctuations can be difficult to predict. We also recognize that predictability in Medicare payments is important to enable providers to budget and plan their operations.

In light of these considerations, we proposed a permanent approach that increases the predictability of home health payments for providers and mitigates instability and significant negative impacts to providers resulting from changes to the wage index by smoothing year-to-year changes in providers' wage indexes.

As previously discussed, we believe that applying a 5-percent cap on wage index decreases for CY 2021 provided greater transparency and was administratively less complex than prior transition methodologies. In addition, we believe this methodology mitigates short-term instability and fluctuations that can negatively impact providers due to wage index changes. Lastly, we note that we believe the 5-percent cap we applied to all wage index decreases for CY 2021 provided an adequate safeguard against significant payment reductions related to the adoption of the revised CBSAs. However, as discussed earlier in this section of this final rule, we recognize there are circumstances that a one-year mitigation policy would not effectively address future years in which providers continue to be negatively affected by significant wage index decreases.

Typical year-to-year variation in the home health wage index has historically been within 5-percent, and we expect this will continue to be the case in future years. Therefore, we believe that applying a 5-percent cap on all wage index decreases in future years, regardless of the reason for the decrease, would effectively mitigate instability in home health payments due to any significant wage index decreases that may affect providers in any year that commenters raised in the CY 2022 HH PPS final rule. Additionally, we believe that applying a 5-percent cap on all wage index decreases would increase the predictability of home health payments for providers, enabling them to more effectively budget and plan their operations. Lastly, we believe that applying a 5-percent cap on all wage index decreases, from the prior year, would have a small overall impact on the labor market area wage index system. As discussed in further detail in section VII.C. of this final rule, we estimate that applying a 5-percent cap on all wage index decreases, from the prior year, will have a very small effect on the wage index budget neutrality factors for CY 2023. Because the wage index is a measure of the value of labor (wage and wage-related costs) in a prescribed labor market area relative to the national average, we anticipate that most providers will not experience year-to-year wage index declines greater than 5-percent in any given year. We believe that applying a 5-percent cap on all wage index decreases, from the prior year, would continue to maintain the accuracy of the overall labor market area wage index system.

Therefore, for CY 2023 and subsequent years, we proposed to apply a permanent 5-percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. That is, we proposed that a geographic area's wage index for CY 2023 would not be less than 95 percent of its final wage index for CY 2022, regardless of whether the geographic area is part of an updated CBSA, and that for subsequent years, a geographic area's wage index would not be less than 95 percent of its wage index calculated in the prior CY. We further proposed that if a geographic area's prior CY wage index is calculated based on the 5-percent cap, then the following year's wage index would not be less than 95 percent of the geographic area's capped wage index. For example, if a geographic area's wage index for CY 2023 is calculated with the application of the 5-percent cap, then its wage index for CY 2024 would not be less than 95 percent of its capped wage index in CY 2023. Likewise, we proposed to make the corresponding regulations text changes at § 484.220(c) as follows: Beginning on January 1, 2023, CMS will apply a cap on decreases to the home health wage index such that the wage index applied to a geographic area is not less than 95 percent of the wage index applied to that geographic area in the prior CY. This 5-percent cap on negative wage index changes would be implemented in a budget neutral manner through the use of wage index budget neutrality factors.

We received 47 comments on the proposed permanent cap on wage index decreases.

Comment: The majority of commenters expressed support for the proposal to cap wage index decreases at 5 percent.

Response: We thank the commenters for their support of the proposed wage index cap policy.

Comment: MedPAC expressed support for the wage index cap proposal, but recommended that the 5-percent cap also extend to wage index increases of more than 5 percent, such that no geographic area would have its wage index value increase or decrease by more than 5 percent in any given year. In addition, MedPAC recommended that the implementation of the revised relative wage index values (where changes are limited to plus or minus 5 percent) should be done in a budget-neutral manner.

Response: We appreciate MedPAC's suggestion that the cap on wage index changes of more than 5 percent should also be applied to increases in the wage index. However, as we discussed in the proposed rule, one purpose of the proposed policy is to help mitigate the significant negative impacts of certain wage index changes. As we noted in the CY 2023 HH PPS proposed rule (87 FR 37600), we believe applying a 5-percent cap on all wage index decreases would support increased predictability about home health payments for providers, enabling them to more effectively budget and plan their operations. That is, we proposed to cap decreases because we believe that a provider would be able to more effectively budget and plan when there is predictability about its expected minimum level of home health payments in the upcoming calendar year. We did not propose to limit wage index increases because we do not believe such a policy would enable HHAs to more effectively budget and plan their operations. Rather, we believe it would be more appropriate to allow providers that would experience an increase in their wage index value to receive the full benefit of their increased wage index value.

Comment: A few commenters recommended lowering the threshold percentage of the cap to percentages to 2 percent. In general, these commenters believe that lowering the cap would better allow HHAs to plan their operations. Other commenters recommended that CMS finalize the permanent cap in a non-budget neutral way.

Response: We believe that the 5-percent cap on wage index decreases is an adequate safeguard against any significant payment reductions and that lowering the cap on wage index decreases to 2 percent is not appropriate. We also believe that 5 percent is a reasonable level for the cap because it would more effectively mitigate any significant decreases in a HHA's wage index for future CYs, while still balancing the importance of ensuring that area wage index values accurately reflect relative differences in area wage levels. Additionally, we believe that a 5-percent cap on wage index decreases in CY 2023 and beyond is sufficient and provides a degree of predictability in payment changes for

providers; and it would not be appropriate to implement the cap policy in a non-budget neutral manner. Our longstanding policy is to apply the wage index budget neutrality factor to home health payments to eliminate the aggregate effect of wage index updates and revisions, such as updates in the underlying hospital wage data as well as other proposed wage index policies, resulting in any wage index changes being budget-neutral in the aggregate. In the CY 2023 HH PPS proposed rule (87 FR 37600), we stated that we believe that applying a 5-percent cap on all wage index decreases, from the prior year, would have a small overall impact on the labor market area wage index system. We estimate that applying a 5-percent cap on all wage index decreases, from the prior year, will have a very small effect on the wage index budget neutrality factor for CY 2023 and we expect the impact to the wage index budget neutrality factor in future years will continue to be minimal.

Comment: Several commenters recommended CMS adopt a transition policy that treats affected home health agencies CY 2023 wage index as if a 5-percent cap had also been implemented for CY 2022, while other commenters requested that CMS retroactively apply the permanent wage index cap proposal to CY 2022 payments.

Response: We thank commenters for these recommendations. In CY 2021 rulemaking, CMS proposed and finalized the one-year transition policy for CY 2021 only. We have historically implemented 1-year transitions, as discussed in the CY 2006 (70 FR 68132) and in the CY 2015 (79 FR 66032) final rules, to address CBSA changes due to substantial updates to OMB delineations. Our policy principles with regard to the wage index are to use the most current data and information available. Therefore, we proposed that the CY 2023 HH PPS wage index policy would be prospective to mitigate any significant decreases beginning in CY 2023, not retroactively.

As such, we did not calculate or propose the CY 2023 wage index as if the cap was in place for 2022. We note that we received comments on the CY 2022 HH PPS proposed rule requesting an extension to the one-year transition policy for CY 2021; however, because we did not propose this policy, or the wage index budget neutrality factor that we would have anticipated such a potential policy proposal to require in the CY 2023 HH PPS proposed rule, we did not propose a policy that treats affected HHAs CY 2023 wage index as if a 5-percent cap had also been implemented for CY 2022, or include any data and information that warrant the use of a cap for CY 2022 data in order to calculate the CY 2023 wage index. While such a policy may benefit some providers, it would change the wage index budget neutrality factor, and would impact the CY 2023 payment rates for all providers without allowing them the opportunity to comment.

Final Decision: CMS is finalizing, for CY 2023 and subsequent years, the application of a permanent 5-percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. That is, we are finalizing our policy that a geographic area's wage index for CY 2023 would not be less than 95 percent of its final wage index for CY 2022, regardless of whether the geographic area is part of an updated CBSA, and that for subsequent years, a geographic area's wage index would not be less than 95 percent of its wage index calculated in the prior CY. We are codifying the permanent cap on wage index decreases in regulation at § 484.220(c).

As previously discussed, we believe this methodology will maintain the HH PPS wage index as a relative measure of the value of labor in prescribed labor market areas, increase predictability of home health payments for providers, and mitigate instability and significant negative impacts to providers resulting from significant changes to the wage index. In section II.B.5.c. of this final rule, we estimate the impact to payments for providers in CY 2023 based on this policy. We also note that we will examine the effects of this policy on an ongoing basis in the future in order to assess its appropriateness.

c. CY 2023 Annual Payment Update

(1) Background

The HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the HH PPS was a national, standardized 60-day episode payment rate. As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56406), and as described in the CY 2020 HH PPS final rule with comment period (84 FR 60478), the unit of home health payment changed from a 60-day episode to a 30-day period effective for those 30-day periods beginning on or after January 1, 2020.

As set forth in § 484.220, we adjust the national, standardized prospective payment rates by a case-mix relative weight and a wage index value based on the site of service for the beneficiary. To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage differences, we apply the appropriate wage index value to the labor portion of the HH PPS rates. In the CY 2019 HH PPS final rule with comment period (83 FR 56435), we finalized rebasing the home health market basket to reflect 2016 Medicare cost report data. We also finalized a revision to the labor share to reflect the 2016-based home health market basket compensation (Wages and Salaries plus Benefits) cost weight. We finalized that for CY 2019 and subsequent years, the labor share would be 76.1 percent and the non-labor share would be 23.9 percent. The following are the steps we take to compute the case-mix and wage-adjusted 30-day period payment amount for CY 2023:

- Multiply the national, standardized 30-day period rate by the patient's applicable case-mix weight.
- Divide the case-mix adjusted amount into a labor (76.1 percent) and a non-labor portion (23.9 percent).
- Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.
- Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 30-day period payment amount, subject to any additional applicable adjustments.

We provide annual updates of the HH PPS rate in accordance with section 1895(b)(3)(B) of the Act. Section 484.225 sets forth the specific annual percentage update methodology. In accordance with section 1895(b)(3)(B)(v) of the Act and § 484.225(i), for an HHA that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 30-day period rate is equal to the rate for the previous calendar year increased by the applicable home health payment update, minus 2 percentage points. Any reduction of the percentage change would apply only to the calendar year involved and would not be considered in computing the prospective payment amount for a subsequent calendar year.

The final claim that the HHA submits for payment determines the total payment amount for the period and whether we make an applicable adjustment to the 30-day case-mix and wage-adjusted payment amount. The end date of the 30-day period, as reported on the claim, determines which calendar year rates Medicare will use to pay the claim.

We may adjust a 30-day case-mix and wage-adjusted payment based on the information submitted on the claim to reflect the following:

- A LUPA is provided on a per-visit basis as set forth in §§ 484.205(d)(1) and 484.230.
- A PEP adjustment as set forth in §§ 484.205(d)(2) and 484.235.
- An outlier payment as set forth in §§ 484.205(d)(3) and 484.240.

(2) CY 2023 National, Standardized 30-Day Period Payment Amount

Section 1895(b)(3)(A)(i) of the Act requires that the standard prospective payment rate and other applicable amounts be standardized in a manner that eliminates the effects of variations in relative case-mix and area wage adjustments among different home health agencies in a budget-neutral manner. To determine the CY 2023 national, standardized 30-day period payment rate, we apply a permanent behavioral adjustment factor, a case-mix weights recalibration budget neutrality factor, a wage index budget neutrality factor and the home health payment update percentage discussed in section II.C.2. of this final rule. As discussed in section II.B.2.f. of this final rule, we are implementing a permanent behavior adjustment of −3.925 percent to prevent further overpayments. The permanent behavior adjustment factor is 0.96075 (1 − 0.03925). As discussed previously, to ensure the changes to the PDGM case-mix weights are implemented in a budget neutral manner, we apply a case-mix weights budget neutrality factor to the CY 2022 national, standardized 30-day period payment rate. The case-mix weights budget neutrality factor for CY 2023 is 0.9904. Additionally, we also apply a wage index budget neutrality to ensure that wage index updates and revisions are implemented in a budget neutral manner. Typically, the wage index budget neutrality factor is calculated using the most recent, complete home health claims data available. However, in the CY 2022 HH PPS final rule, due to the COVID–19 PHE, we looked at using the previous calendar year's home health claims data (CY 2019) to determine if there were significant differences between utilizing 2019 and 2020 claims data. Our analysis showed that there was only a small difference between the wage index budget neutrality factors calculated using CY 2019 and CY 2020 home health claims data.

Therefore, for CY 2022 we decided to continue our practice of using the most recent, complete home health claims data available; that is, we used CY 2020 claims data for the CY 2022 payment rate updates. For CY 2023 rate setting, we do not anticipate significant differences between using pre COVID–19 PHE data (CY 2019 claims) and the most recent claims data at the time of rulemaking (CY 2021 claims). Therefore, we will continue our practice of using the most recent, complete utilization data at the time of rulemaking; that is, we are using CY 2021 claims data for CY 2023 payment rate updates.

To calculate the wage index budget neutrality factor, we first determine the payment rate needed for non-LUPA 30-day periods using the CY 2023 wage index so those total payments are equivalent to the total payments for non-LUPA 30-day periods using the CY 2022 wage index and the CY 2022 national standardized 30-day period payment rate adjusted by the case-mix weights recalibration neutrality factor. Then, by dividing the payment rate for non-LUPA 30-day periods using the CY 2023 wage index with a 5-percent cap on wage index decreases by the payment rate for non-LUPA 30-day periods using the CY 2022 wage index, we obtain a wage index budget neutrality factor of 1.0001. We then apply the wage index budget neutrality factor of 1.0001 to the 30-day period payment rate.

Next, we update the 30-day period payment rate by the CY 2023 home health payment update percentage of 4.0 percent. The CY 2023 national, standardized 30-day period payment rate is calculated in Table 17.

Table 17—CY 2023 National, Standardized 30-Day Period Payment Amount

CY 2022 National Standardized 30-Day Period Payment	CY 2023 Permanent BA Adjustment Factor	CY 2023 Case-Mix Weights Recalibration Neutrality Factor	CY 2023 Wage Index Budget Neutrality Factor	CY 2023 HH Payment Update	CY 2023 National, Standardized 30-Day Period Payment
$2,031.64	0.96075	0.9904	1.0001	1.040	$2,010.69

The CY 2023 national, standardized 30-day period payment rate for a HHA that does not submit the required quality data is updated by the CY 2023 home health payment update of 4.0 percent minus 2 percentage points and is shown in Table 18.

Table 18—CY 2023 National, Standardized 30-Day Period Payment Amount for HHAS That Do Not Submit the Quality Data

CY 2022 National Standardized 30-Day Period Payment	CY 2023 Permanent BA Adjustment Factor	CY 2023 Case-Mix Weights Recalibration Neutrality Factor	CY 2023 Wage Index Budget Neutrality Factor	CY 2023 HH Payment Update Minus 2 Percentage Points	CY 2023 National, Standardized 30-Day Period Payment
$2,031.64	0.96075	0.9904	1.0001	1.020	$1,972.02

(3) CY 2023 National Per-Visit Rates for 30-Day Periods of Care

The national per-visit rates are used to pay LUPAs and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or home health discipline. The six home health disciplines are as follows:

- Home health aide (HH aide).
- Medical Social Services (MSS).
- Occupational therapy (OT).
- Physical therapy (PT).
- Skilled nursing (SN).
- Speech-language pathology (SLP).

To calculate the CY 2023 national per-visit rates, we started with the CY 2022 national per-visit rates. Then we applied a wage index budget neutrality factor to ensure budget neutrality for LUPA per-visit payments. We calculated the wage index budget neutrality factor by simulating total payments for LUPA 30-day periods of care using the CY 2023 wage index with a 5-percent cap on wage index decreases and comparing it to simulated total payments for LUPA 30-day periods of care using the CY 2022 wage index (with no 5-percent cap). By dividing the total payments for LUPA 30-day periods of care using the CY 2023 wage index by the total payments for LUPA 30-day periods of care using the CY 2022 wage index, we obtained a wage index budget neutrality factor of 1.0007. We apply the wage index budget neutrality factor in order to calculate the CY 2022 national per-visit rates.

The LUPA per-visit rates are not calculated using case-mix weights, therefore, no case-mix weights budget neutrality factor is needed to ensure budget neutrality for LUPA payments. Additionally, we are not applying the permanent behavior adjustment to the per-visit payment rates but only the case-mix adjusted payment rate. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit payments for LUPAs are separate from the LUPA add-on payment amount, which is paid for 30-day periods that occur as the only 30-day period or the initial period in a sequence of adjacent 30-day periods. The CY 2023 national per-visit rates for HHAs that submit the required quality data are updated by the CY 2023 home health payment update percentage of 4.0 percent and are shown in Table 19.

Table 19—CY 2023 National Per-Visit Payment Amounts

HH Discipline	CY 2022 Per-Visit Payment Amount	CY 2023 Wage Index Budget Neutrality Factor	CY 2023 HH Payment Update	CY 2023 Per-Visit Payment Amount
Home Health Aide	$71.04	1.0007	1.040	$73.93
Medical Social Services	$251.48	1.0007	1.040	$261.72
Occupational Therapy	$172.67	1.0007	1.040	$179.70
Physical Therapy	$171.49	1.0007	1.040	$178.47
Skilled Nursing	$156.90	1.0007	1.040	$163.29
Speech-Language Pathology	$186.41	1.0007	1.040	$194.00

The CY 2023 per-visit payment rates for HHAs that do not submit the required quality data are updated by the CY 2023 home health payment update percentage of 4.0 percent minus 2 percentage points and are shown in Table 20.

Table 20—CY 2023 National Per-Visit Payment Amounts for HHAS That Do Not Submit the Required Quality Data

HH Discipline	CY 2022 Per-Visit Payment Amount	CY 2023 Wage Index Budget Neutrality Factor	CY 2023 HH Payment Update Minus 2 Percentage Points	CY 2023 National, Standardized 30-Day Period Payment
Home Health Aide	$71.04	1.0007	1.020	$72.51
Medical Social Services	$251.48	1.0007	1.020	$256.69
Occupational Therapy	$172.67	1.0007	1.020	$176.25
Physical Therapy	$171.49	1.0007	1.020	$175.04
Skilled Nursing	$156.90	1.0007	1.020	$160.15
Speech-Language Pathology	$186.41	1.0007	1.020	$190.27

(4) LUPA Add-On Factors

Prior to the implementation of the 30-day unit of payment, LUPA episodes were eligible for a LUPA add-on payment if the episode of care was the first or only episode in a sequence of adjacent episodes. As stated in the CY 2008 HH PPS final rule, the average visit lengths in these initial LUPAs are 16 to 18 percent higher than the average visit lengths in initial non-LUPA episodes (72 FR 49848). LUPA episodes that occur as the only episode or as an initial episode in a sequence of adjacent episodes are adjusted by applying an additional amount to the LUPA payment before adjusting for area wage differences. In the CY 2014 HH PPS final rule (78 FR 72305), we changed the methodology for calculating the LUPA add-on amount by finalizing the use of three LUPA add-on factors: 1.8451 for SN; 1.6700 for PT; and 1.6266 for SLP. We multiply the per-visit payment amount for the first SN, PT, or SLP visit in LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes by the appropriate factor to determine the LUPA add-on payment amount.

In the CY 2019 HH PPS final rule with comment period (83 FR 56440), in addition to finalizing a 30-day unit of payment, we finalized our policy of continuing to multiply the per-visit payment amount for the first skilled nursing, physical therapy, or speech-language pathology visit in LUPA periods that occur as the only period of care or the initial 30-day period of care in a sequence of adjacent 30-day periods of care by the appropriate add-on factor (1.8451 for SN, 1.6700 for PT, and 1.6266 for SLP) to determine the LUPA add-on payment amount for 30-day periods of care under the PDGM. For example, using the proposed CY 2023 per-visit payment rates for HHAs that submit the required quality data, for LUPA periods that occur as the only period or an initial period in a sequence of adjacent periods, if the first skilled visit is SN, the payment for that visit would be $301.29 (1.8451 multiplied by $163.29), subject to area wage adjustment.

(5) Occupational Therapy LUPA Add-On Factor

In order to implement Division CC, section 115, of CAA 2021, CMS finalized changes to regulations at § 484.55(a)(2) and (b)(3) that allowed occupational therapists to conduct initial and comprehensive assessments for all Medicare beneficiaries under the home health benefit when the plan of care does not initially include skilled nursing care, but either PT or SLP (86 FR 62351). This change, led to us establishing a LUPA add-on factor for calculating the LUPA add-on payment amount for the first skilled occupational therapy (OT) visit in LUPA periods that occurs as the only period of care or the initial 30-day period of care in a sequence of adjacent 30-day periods of care.

We stated in the CY 2022 HH PPS final rule (86 FR 62289) that, as there is not sufficient data regarding the average excess of minutes for the first visit in LUPA periods when the initial and comprehensive assessments are conducted by occupational therapists, we will use the PT LUPA add-on factor of 1.6700 as a proxy. We also stated that we would use the PT LUPA add-on factor as a proxy until we have CY 2022 data to establish a more accurate OT add-on factor for the LUPA add-on payment amounts (86 FR 62289).

d. Payments for High-Cost Outliers Under the HH PPS

(1) Background

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the home health payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Under the HH PPS and the previous unit of payment (that is, 60-day episodes), outlier payments were made for 60-day episodes whose estimated costs exceed a threshold amount for each HHRG. The episode's estimated cost was established as the sum of the national wage-adjusted per visit payment amounts delivered during the episode. The outlier threshold for each case-mix group or PEP adjustment defined as the 60-day episode payment or PEP adjustment for that group plus a fixed-dollar loss (FDL) amount. For the purposes of the HH PPS, the FDL amount is calculated by multiplying the home health FDL ratio by a case's wage-adjusted national, standardized 60-day episode payment rate, which yields an FDL dollar amount for the case. The outlier threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and wage-adjusted FDL amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated cost that surpasses the wage-adjusted threshold. The proportion of additional costs over the outlier threshold amount paid as outlier payments is referred to as the loss-sharing ratio.

As we noted in the CY 2011 HH PPS final rule (75 FR 70397 through 70399), section 3131(b)(1) of the Affordable Care Act amended section 1895(b)(3)(C) of the Act to require that the Secretary reduce the HH PPS payment rates such that aggregate HH PPS payments were reduced by 5 percent. In addition, section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5) of the Act by redesignating the existing language as section 1895(b)(5)(A) of the Act and revised the language to state that the total amount of the additional payments or payment adjustments for outlier episodes could not exceed 2.5 percent of the estimated total HH PPS payments for that year. Section 3131(b)(2)(C) of the Affordable Care Act also added section 1895(b)(5)(B) of the Act, which capped outlier payments as a percent of total payments for each HHA for each year at 10 percent.

Beginning in CY 2011, we reduced payment rates by 5 percent and targeted up to 2.5 percent of total estimated HH PPS payments to be paid as outliers. To do so, we first returned the 2.5 percent held for the target CY 2010 outlier pool to the national, standardized 60-day episode rates, the national per visit rates, the LUPA add-on payment amount, and the NRS conversion factor for CY 2010. We then reduced the rates by 5 percent as required by section 1895(b)(3)(C) of the Act, as amended by section 3131(b)(1) of the Affordable Care Act. For CY 2011 and subsequent calendar years we targeted up to 2.5 percent of estimated total payments to be paid as outlier payments, and apply a 10-percent agency-level outlier cap.

In the CY 2017 HH PPS proposed and final rules (81 FR 43737 through 43742 and 81 FR 76702), we described our concerns regarding patterns observed in home health outlier episodes. Specifically, we noted the methodology for calculating home health outlier payments may have created a financial incentive for providers to increase the number of visits during an episode of care in order to surpass the outlier threshold; and simultaneously created a disincentive for providers to treat medically complex beneficiaries who require fewer but longer visits. Given these concerns, in the CY 2017 HH PPS final rule (81 FR 76702), we finalized changes to the methodology used to calculate outlier payments, using a cost-per-unit approach rather than a cost-per-visit approach. This change in methodology allows for more accurate payment for outlier episodes, accounting for both the number of visits during an episode of care and the length of the visits provided. Using this approach, we now convert the national per-visit rates into per 15-minute unit rates. These per 15-minute unit rates are used to calculate the estimated cost of

an episode to determine whether the claim will receive an outlier payment and the amount of payment for an episode of care. In conjunction with our finalized policy to change to a cost-per-unit approach to estimate episode costs and determine whether an outlier episode should receive outlier payments, in the CY 2017 HH PPS final rule we also finalized the implementation of a cap on the amount of time per day that would be counted toward the estimation of an episode's costs for outlier calculation purposes (81 FR 76725). Specifically, we limited the amount of time per day (summed across the six disciplines of care) to 8 hours (32 units) per day when estimating the cost of an episode for outlier calculation purposes.

In the CY 2017 HH PPS final rule (81 FR 76724), we stated that we did not plan to re-estimate the average minutes per visit by discipline every year. Additionally, the per unit rates used to estimate an episode's cost were updated by the home health update percentage each year, meaning we would start with the national per visit amounts for the same calendar year when calculating the cost-per-unit used to determine the cost of an episode of care (81 FR 76727). We will continue to monitor the visit length by discipline as more recent data becomes available, and may propose to update the rates as needed in the future.

In the CY 2019 HH PPS final rule with comment period (83 FR 56521), we finalized a policy to maintain the current methodology for payment of high-cost outliers upon implementation of PDGM beginning in CY 2020 and calculated payment for high-cost outliers based upon 30-day period of care. Upon implementation of the PDGM and 30-day unit of payment, we finalized the FDL ratio of 0.56 for 30-day periods of care in CY 2020. Given that CY 2020 was the first year of the PDGM and the change to a 30-day unit of payment, we finalized to maintain the same FDL ratio of 0.56 in CY 2021 as we did not have sufficient CY 2020 data at the time of CY 2021 rulemaking to proposed a change to the FDL ratio for CY 2021. In the CY 2022 HH PPS final rule (86 FR 62292), we estimated that outlier payments would be approximately 1.8 percent of total HH PPS final rule payments if we maintained an FDL of 0.56 in CY 2022. Therefore, in order to pay up to, but no more than, 2.5 percent of total payments as outlier payments we finalized an FDL of 0.40 for CY 2022.

(2) FDL Ratio for CY 2023

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of periods that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio, and therefore, increase outlier payments for qualifying outlier periods. Alternatively, a lower FDL ratio means that more periods can qualify for outlier payments, but outlier payments per period must be lower.

The FDL ratio and the loss-sharing ratio are selected so that the estimated total outlier payments do not exceed the 2.5 percent aggregate level (as required by section 1895(b)(5)(A) of the Act). Historically, we have used a value of 0.80 for the loss-sharing ratio, which, we believe preserves incentives for agencies to attempt to provide care efficiently for outlier cases. With a loss-sharing ratio of 0.80, Medicare pays 80 percent of the additional estimated costs that exceed the outlier threshold amount. Using CY 2021 claims data (as of March 21, 2022) and given the statutory requirement that total outlier payments do not exceed 2.5 percent of the total payments estimated to be made under the HH PPS, we proposed an FDL ratio of 0.44 for CY 2023. We noted that we would update the FDL, if needed, in the final rule once we have more complete CY 2021 claims data. Using more complete CY 2021 claims data (as of July 15, 2022), the final FDL ratio for CY 2023 would need to be 0.35 to pay up to, but no more than, 2.5 percent of the total payment as outlier payments in CY 2023.

Final Decision: We did not receive any public comments on the proposed FDL ratio. We are finalizing the fixed-dollar loss ratio of 0.35 for CY 2023, in order to ensure that total outlier payments do not exceed 2.5 percent of the total aggregate payments, as required by section 1895(b)(5)(A) of the Act. As noted previously, this updated ratio is based on more complete CY 2021 claims data than was used to determine the proposed FDL ratio.

K. Comment Solicitation on the Collection of Data on the Use of Telecommunications Technology Under the Medicare Home Health Benefit

Even prior to the COVID–19 PHE, CMS acknowledged the importance of technology in allowing HHAs the flexibility of furnishing services remotely. In the CY 2019 HH PPS final rule with comment (83 FR 56406), for purposes of the Medicare home health benefit, we finalized the definition of ''remote patient monitoring'' in regulation at 42 CFR 409.46(e) as the collection of physiologic data (for example, electrocardiogram (ECG), blood pressure, glucose monitoring) digitally stored and/or transmitted by the patient and/or caregiver to the HHA. In the CY 2019 HH PPS final rule with comment period, we also finalized in regulation at § 409.46(e) that the costs of remote patient monitoring are considered allowable administrative costs (operating expenses) if remote patient monitoring is used by the HHA to augment the care planning process (83 FR 56527).

With the declaration of the COVID–19 PHE in early 2020, the use of telecommunications technology has become more prominent in the delivery of healthcare in the United States. Anecdotally, many beneficiaries preferred to stay home than go to physician's offices and outpatient centers to seek care, while also limiting the number and frequency of care providers furnishing services inside their homes to avoid exposure to COVID–19. Accordingly, CMS implemented additional policies under the HH PPS to make providing and receiving services via telecommunications technology easier. In the first COVID–19 PHE interim final rule with comment period (IFC) (85 FR 19230), we changed the plan of care requirements at § 409.43(a) on an interim basis, for the purposes of Medicare payment, to state that the plan of care must include any provision of remote patient monitoring or other services furnished via a telecommunications system. The plan of care must also describe how the use of such technology is tied to the patient-specific needs as identified in the comprehensive assessment and will help to achieve the goals outlined on the plan of care. The amended plan of care requirements at § 409.43(a) also state that these services cannot substitute for a home visit ordered as part of the plan of care and cannot be considered a home visit for the purposes of patient eligibility or payment, in accordance with section 1895(e)(1)(A) and (B) of the Act. The CY 2021 HH PPS final rule (85 FR 70298) finalized these changes on a permanent basis, as well as amended § 409.46(e) to include not only remote patient monitoring, but other communication or monitoring services consistent with the plan of care for the individual, on the home health cost report as allowable administrative costs.

Sections 1895(e)(1)(A) and (B) of the Act specify that telecommunications services cannot substitute for in-person home health services ordered as part of the plan of care certified by a physician and are not considered a home health visit for purposes of eligibility or payment under Medicare. Though the

use of telecommunications technology is not to be used as a substitute for in-person home health services, as ordered on the plan of care, and services provided through the use of telecommunications technology (rather than in-person) are not considered a home health visit, anecdotally we have heard that HHAs are using telecommunication services during the course of a 30-day period of care and as a result of the COVID–19 PHE, as described previously. In the first COVID–19 PHE IFC, we provided an example describing a situation where the use of technology is not a substitute for the provision of in-person visits as ordered on the plan of care, rather the plan of care is updated to reflect a change in the frequency of the in-person visits and to include ''virtual visits'' as part of the management of the home health patient (85 FR 19248).

Currently, the collection of data on the use of telecommunications technology is limited to overall cost data on a broad category of telecommunications services as a part of an HHA's administrative costs on line 5 of the HHA Medicare cost reports.[26] As we noted in the CY 2019 HH PPS proposed rule, these costs would then be factored into the costs per visit. Factoring the costs associated with telecommunications systems into the costs per visit has important implications for assessing home health costs relevant to payment, including HHA Medicare margin calculations (83 FR 32426). Data on the use of telecommunications technology during a 30-day period of care at the beneficiary level is not currently collected on the home health claim. While the provision of services furnished via a telecommunications system must be included on the patient's plan of care, CMS does not routinely review plans of care to determine the extent to which these services are actually being furnished.

Collecting data on the use of telecommunications technology on home health claims would allow CMS to analyze the characteristics of the beneficiaries utilizing services furnished remotely, and will give us a broader understanding of the social determinants that affect who benefits most from these services, including what barriers may potentially exist for certain subsets of beneficiaries. Furthermore, in their March 2022 Report to the Congress: Medicare Payment Policy, MedPAC recommended tracking the use of telehealth in the home health care benefit on home health claims in order to improve payment accuracy.[27] As such, to collect more complete data on the use of telecommunications technology in the provision of home health services, we solicited comments on the collection of such data on home health claims, which we aim to begin collecting by January 1, 2023 on a voluntary basis by HHAs, and will begin to require this information be reported on claims by July of 2023. Specifically, we solicited comments on the use of three new G-codes identifying when home health services are furnished using synchronous telemedicine rendered via a real-time two-way audio and video telecommunications system; synchronous telemedicine rendered via telephone or other real-time interactive audio-only telecommunications system; and the collection of physiologic data digitally stored and/or transmitted by the patient to the home health agency, that is, remote patient monitoring. We would capture the utilization of remote patient monitoring through the inclusion of the start date of the remote patient monitoring and the number of units indicated on the claim. This may help us understand in general how long remote monitoring is used for individual patients and for which conditions. Although we plan to begin collecting this information beginning with these three G-codes on January 1, 2023, we are interested in comments on whether there are other common uses of telecommunications technology under the home health benefit that would warrant additional G-codes that would be helpful in tracking the use of such technology in the provision of care.

In accordance with section 40.2 in Chapter 10 of the Medicare Claims Processing Manual (Pub. L. 100–04), we plan to issue instructions that these forthcoming G-codes are to be used to report services in line item detail and each service must be reported as a separate line under the appropriate revenue code (04x—Physical Therapy, 043x—Occupational Therapy, 044x—Speech-Language Pathology, 055x—Skilled Nursing, 056x—Medical Social Services, or 057x—Home Health Aide). While we do not plan on limiting the use of these G-codes to any particular discipline, we would not anticipate use of such technology would be reported under certain revenue codes such as 027x or 0623—Medical Supplies, or revenue code 057x—Home Health Aide. We requested comments from the public on our reasoning that, due to the hands-on nature of home health aide services, the use of telecommunications technology would generally not be appropriate for such services. We reminded interested parties that if there is a service that cannot be provided through telecommunications technology (for example, wound care that requires in-person, hands-on care from a skilled nurse), the HHA must make an in-person visit to furnish such services (85 FR 39428). We also requested comments regarding the appropriateness of such technology for particular services in order to more clearly delineate when the use of such technology is appropriate. This may help inform how we use this analysis, for instance, connecting how such technology is impacting the provision of care to certain beneficiaries, costs, quality, and outcomes, and determine if further requirements surrounding the use of telecommunications technology are needed.

We also solicited comments on future refinement of these G-codes beginning July 1, 2023. Specifically, whether the codes should differentiate the type of clinician performing the service via telecommunications technology, such as a therapist versus therapist assistant; and whether new G-codes should differentiate the type of service being performed through the use of telecommunications technology, such as: skilled nursing services performed for care plan oversight (for example, management and evaluation or observation and assessment) versus teaching; or physical therapy services performed for the establishment or performance of a maintenance program versus other restorative physical therapy services.

We will issue program instruction outlining the use of new codes for the purposes of tracking the use of telecommunications technology under the home health benefit with sufficient notice to enable HHAs to make the necessary changes in their electronic health records and billing systems. As stated previously, we will begin collecting this information on home health claims by January 1, 2023, on a voluntary basis by HHAs, and will require this information be reported on home health claims beginning in July 2023. We would issue further program instruction prior to July 1, 2023, if the G-code description changes between January 1, 2023, and July 1, 2023, based on comments from the CY 2023 HH PPS

[26] Found in Ch47 of the Provider Reimbursement Manual at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021935*.

[27] Medicare Payment Advisory Commission (MedPAC), Report to the Congress: Medicare Payment Policy. March 2022, P. 271. found at *https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_SEC.pdf*.

proposed rule. However, we reiterate that the collection of information on the use of telecommunications technology does not mean that such services are considered ''visits'' for purposes of eligibility or payment. In accordance with section 1895(e)(1)(A) and (B) of the Act, such data will not be used or factored into case-mix weights, or count towards outlier payments or the LUPA threshold per payment period.

Comment: We received approximately 44 comments on the discussion regarding the collection of telehealth data on home health claims. The majority of commenters agreed that the collection and analysis of data on the use of telecommunications technology on home health claims will greatly assist with accurate cost reporting. A few commenters stated they are already collecting this data, are ready to share with CMS and are willing to confer with CMS on downstream analysis of virtual care delivery integration. Several commenters strongly suggested that while CMS should continue to support innovation in telehealth (particularly in rural areas of the country where workforce and geographic considerations limit the number of in-home visits that may be possible), we should also remain cognizant that given the rurality of some regions, robust broadband, electronic devices and even cellular networks are not available in some patient service areas. Still, most commenters acknowledged that integration of telecommunications technology under the home health benefit during the COVID–19 PHE has proven to decrease ED visits, inpatient hospitalizations, and total cost of care for comorbid high-risk populations; therefore, access to digital and audio communication is critical for providing patients and families, education, guidance and reassurance needed to avoid use of emergency services and hospitals. We received a few comments on states adopting increased scopes of practice for home health aides that could allow them to utilize telecommunications technology, and suggestions that there may be exceptions to when a home health aide might use telecommunications technology to improve patient outcomes and reduce potential avoidable hospitalizations or ED visits. These exceptions could include responding to a question or urgent need of a care recipient or their family caregiver, monitoring a patient remotely for adverse reactions after a visit or playing a critical role in connecting the patient to a specialist via telemedicine. However, most commenters agreed that use of telecommunications technology by home health aides should be rare, as they are generally providing hands-on care. We received comments requesting that CMS provide information and training to ensure that providers are prepared to report the requested data accurately when mandatory reporting begins. Specifically, commenters stated that CMS needs to be clear on differentiating between telecommunications technology, telehealth services, communication technology-based services (for example, virtual check-ins, e-visits), and clarify the types of remote patient monitoring that will be allowable under the new G-Codes to ensure that remote patient monitoring is adding to the value of care and not simply tracking steps from a wearable product like a smart watch. Several commenters urged CMS to develop a list of services and care that are appropriate for telehealth and those that should not be provided via virtual care and suggested that telehealth does not translate well to, and may in fact cause patient harm, services related to wound care, physical/occupational/speech therapy, and when patients have sensory impairments with hearing or vision. Conversely, commenters strongly supported that telehealth services may translate well for patients in need of chronic disease management, post-surgical care, mental health and isolation checks, medication management, and those patients with the inability to accurately collect and communicate health-related data, etc. The majority of commenters supported the development of a mechanism to refine the collection of visit details for the type of clinician and service provided. However, while some commenters supported the implementation of three new G-codes to report telecommunications technology on home health claims, several commenters stated that new G-codes are not needed. Instead, these commenters suggested it would be less cumbersome to use appended modifiers for existing G-codes to identify each type of telecommunications technology by clinician and service provided, as the creation of multiple G-codes may lead to confusion and result in inappropriate assignment of the G-codes on claims. We received comments that support further analysis of the collected data on the use of telecommunications technology as it relates to beneficiary characteristics and utilization patterns, including information related to those beneficiaries who cannot use telecommunications technology because of technological limitations or other factors. Further information such as geographic, racial, ethnic, socioeconomic, sex, and gender identify identifiers, could be collected to identify whether disparities in telehealth usage vary in diverse populations. Further, several commenters stated that CMS' analysis should include surveys of Medicare beneficiaries using home health services and their family caregivers (as appropriate) and the study of beneficiary appeals as they relate to services furnished via telecommunications technology should also be considered as part of this assessment.

Response: CMS appreciates all of the comments and suggestions received regarding the collection of data on the use of telecommunications technology on home health claims. We also acknowledge commenter statements and concerns as they relate to the availability of technology and broadband in some regions of the country. While CMS maintains that the use of telecommunications technology would generally not be appropriate for home health aide services, at this time, we will not limit the use of these G-codes to any particular discipline.

However, we would like to remind commenters that if a service requires in-person, hands-on care from a skilled nurse or other provider, an in-person visit must be made by the HHA to furnish such services (85 FR 39428). We readily recognize and support the on-going integration of telecommunications technology under the home health benefit within the confines of the statute, and anticipate that the collection of data related to the furnishing of these services will increase our knowledge of how HHAs and beneficiaries benefit from its use. As noted previously, the primary goal of collecting the data on use of telecommunication technology under the home health benefit is to allow CMS to analyze the characteristics of the beneficiaries utilizing services furnished remotely, so that we have a broader understanding of the social determinants that affect who benefits most from these services, and what barriers may potentially exist for certain subsets of beneficiaries. Moreover, we appreciate the additional suggestions for analyzing the collected data on the use of telecommunication technology under the home health benefit in a more granular manner; we will consider these suggestions to help us connect how such technology is impacting the provision of care to certain beneficiaries, costs, quality, and outcomes, and determine if further

requirements surrounding the use of telecommunications technology are needed. As stated previously, program instruction will be issued outlining the use of new codes for the purposes of tracking the use of telecommunications technology under the home health benefit with sufficient notice to enable HHAs to make the necessary changes in their electronic health records and billing systems. Additionally, although we plan to begin collecting this data on home health claims by January 1, 2023, it will initially be collected on a voluntary basis by HHAs. Further program instruction on the voluntary reporting (beginning in January 2023) and required reporting (requirement will be effectuated in July 2023) will be issued in January 2023.

III. Home Health Quality Reporting Program (HH QRP)

A. Background and Statutory Authority

The HH QRP is authorized by section 1895(b)(3)(B)(v) of the Act. Section 1895(b)(3)(B)(v)(II) of the Act requires that, for 2007 and subsequent years, each home health agency (HHA) submit to the Secretary in a form and manner, and at a time, specified by the Secretary, such data that the Secretary determines are appropriate for the measurement of health care quality. To the extent that an HHA does not submit data in accordance with this clause, the Secretary shall reduce the home health market basket percentage increase applicable to the HHA for such year by 2 percentage points. As provided at section 1895(b)(3)(B)(vi) of the Act, depending on the market basket percentage increase applicable for a particular year, as further reduced by the productivity adjustment (except in 2018 and 2020) described in section 1886(b)(3)(B)(xi)(II) of the Act, the reduction of that increase by 2 percentage points for failure to comply with the requirements of the HH QRP may result in the home health market basket percentage increase being less than 0.0 percent for a year, and may result in payment rates under the Home Health PPS for a year being less than payment rates for the preceding year. The HH QRP regulations can be found at 42 CFR 484.245 and 484.250.

B. General Considerations Used for the Selection of Quality Measures for the HH QRP

For a detailed discussion of the considerations we historically use for measure selection for the HH QRP quality, resource use, and other measures, we refer readers to the CY 2016 HH PPS final rule (80 FR 68695 through 68696). In the CY 2019 HH PPS final rule with comment period (83 FR 56548 through 56550) we finalized the factors we consider for removing previously adopted HH QRP measures.

C. Quality Measures Currently Adopted for the CY 2023 HH QRP

The HH QRP currently includes 20 measures for the CY 2023 program year, as described in Table C1.

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Table C1—Measures Currently Adopted for the CY 2023 HH QRP

Short Name	Measure Name & Data Source
QM Name	**OASIS-based**
Ambulation	Improvement in Ambulation/Locomotion (NQF #0167).
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674).
Application of Functional Assessment	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).
Bathing	Improvement in Bathing (NQF #0174).
Bed Transferring	Improvement in Bed Transferring (NQF # 0175).
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues- Post Acute Care (PAC) HH QRP.
Dyspnea	Improvement in Dyspnea.
Influenza	Influenza Immunization Received for Current Flu Season
Oral Medications	Improvement in Management of Oral Medications (NQF #0176).
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care
Timely Care	Timely Initiation Of Care (NQF #0526).
TOH - Provider	Transfer of Health Information to Provider-Post-Acute Care[1]
TOH - Patient	Transfer of Health Information to Patient-Post-Acute Care[1]
QM Name	**Claims-based**
ACH	Acute Care Hospitalization During the First 60 Days of HH (NQF #0171).
DTC	Discharge to Community-Post Acute Care (PAC) Home Health (HH) Quality Reporting Program (QRP) (NQF #3477)
ED Use	Emergency Department Use without Hospitalization During the First 60 Days of HH (NQF #0173).
MSPB	Total Estimated Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) HH QRP.
PPR	Potentially Preventable 30-Day Post-Discharge Readmission Measure for HH Quality Reporting Program.
PPH	Home Health Within Stay Potentially Preventable Hospitalization
QM Name	**HHCAHPS-based**
CAHPS Home Health Survey	CAHPS® Home Health Care Survey (experience with care) (NQF #0517)[2] - How often the HH team gave care in a professional way. - How well did the HH team communicate with patients. - Did the HH team discuss medicines, pain, and home safety with patients. - How do patients rate the overall care from the HHA. - Will patients recommend the HHA to friends and family.

NOTES:

1 Data collection delayed due to the COVID-19 public health emergency for the TOH-Patient and TOH-Provider.

2 The HHCAHPS has five components that together are used to represent one NQF-endorsed measure.

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D. End of the Suspension of OASIS Data Collection on Non-Medicare/Non-Medicaid HHA Patients and Requirement for HHAs To Submit All-Payer OASIS Data for Purposes of the HH QRP, Beginning With the CY 2027 Program Year

In the CY 2023 HH PPS proposed rule, we noted for background that in 1987, Congress added a new section 1891(d) to the Act (section 4021(b) of Pub. L. 100–203 (December 22, 1987)). The statute required the Secretary to develop a comprehensive assessment for Medicare-participating HHAs. In 1993, CMS (then known as HCFA) developed an assessment instrument that identified each patient's need for home care and the patient's medical, nursing, rehabilitative, social and discharge planning needs. As part of this assessment, Medicare-certified HHAs were required to use a standard core assessment data set, the ''Outcome and Assessment Information Set'' (''OASIS''). Section 1891(d) of the Act requires, as part of the home health assessment, a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care provided by the HHA. OASIS is the designated assessment instrument for use by an HHA in complying with the requirement. In the January 25,1999 final rule titled, ''Medicare and Medicaid Programs: Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies,'' we also required HHAs to submit the data collected by the OASIS assessment to HCFA as an HHA condition of participation (64 FR 3772).

Early on, privacy concerns were raised by HHAs around the collection of all-payer data and the release of personal health information. As we indicated in the study, any new collection requirements such as this typically raise concerns and OASIS was no exception. In response to the privacy concerns, CMS took steps to mask the personal health information before the data was transmitted to the Quality Improvement and Evaluation System (QIES). In the study, we collected information from HHAs and the industry including the surveying of Agencies by one of the trade organizations and note that the privacy concerns initially raised were not raised as an ongoing concern. Based upon this feedback, we conclude that the privacy issues raised initially are no longer a concern.

Subsequently, Congress enacted section 704 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which suspended the legal authority of the Secretary to require HHAs to report OASIS information on non-Medicare/non-Medicaid patients until at least 2 months after the Secretary published final regulations on CMS's collection and use of those data following the submission of a report to Congress on the study required under section 704(c) of the MMA. This study required the Secretary to examine the use of non-Medicare/non-Medicaid OASIS data by large HHAs, including whether there were unique benefits from the analysis of that information that CMS could not obtain from other sources, and the value of collecting such data by small HHAs versus the administrative burden of collection. In conducting the study, the Secretary was also required to obtain recommendations from quality assessment experts on the use of such information and the necessity of HHAs collecting such information.[28]

The Secretary conducted the study required under section 704 of the MMA from 2004 to 2005 and submitted it to Congress in December 2006 *https://www.cms.gov/files/document/cms-oasis-study-all-payer-data-submission-2006.pdf.* The study made the following key findings:

- There are significant differences between private pay and Medicare/Medicaid patients in terms of diagnosis, patient characteristics, and patient outcomes. Within-agency correlation between Medicare/Medicaid and private pay patient outcomes was low, indicating that outcomes based on Medicare/Medicaid patient data cannot be generalized to serve as a proxy for private pay patients.
- Risk adjustment models at the time did not account for all of the sources of variation in outcomes across different payer groups and as a result, measures could produce misleading information.
- Requiring OASIS data collection on private pay patients at Medicare-certified HHAs could increase staff and patient burden and would require CMS to develop a mechanism for these agencies to receive reports from CMS on their private pay patients.
- A change to all-payer assessment data collection would strengthen CMS's ability to assess and report indicators of the quality of care furnished by HHAs to their entire patient population.

After considering the study's findings, the Secretary noted that the suspension of OASIS collection from non-M/non-Medicaid patients would continue because ''it would be unfair to burden the providers with the collection of OASIS at this time since the case mix and outcomes reports are not designed to include private pay patients.'' The Secretary also noted that it would be inappropriate for CMS to collect the private pay OASIS data and not use it. The Secretary further stated that ''if funding for the development of HHA patient outcome and case mix reports for private pay patients is identified as a priority function, CMS would not hesitate to call for the removal of the suspension of OASIS for private pay patients.''

In the November 9, 2006 final rule titled, ''Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2007 and Deficit Reduction Act of 2005 Changes to Medicare Payment for Oxygen Equipment and Capped Rental Durable Medical Equipment'' we finalized our policy that the agency would continue to suspend collection of OASIS all-payer data (71 FR 65883 and 65889).

Since 2006, CMS has laid the groundwork for the resumption of all-payer data submission because we want to represent overall care being provided to all patients in an HHA. CMS implemented the QIES and iQIES provider data reporting systems to securely transfer and manage assessment data across QRPs, including the HH QRP. These systems can now support an extensive range of provider reports, including case-mix reports for private pay patients. The HH QRP expanded quality domains to include HH CAHPS and new assessment and claims-based quality measures. We sought and received public comment on several occasions regarding data reporting on all HHA patients, regardless of payer type. In February 2012, the NQF-convened MAP also issued a report that encouraged establishing a data collection and transmission infrastructure for all payers that would work across PAC settings.[29] In the July 28, 2017 and November 7, 2017 proposed and final rules titled ''Home Health Prospective Payment System Rate Update and CY 2018 Case-Mix Adjustment Methodology Refinements; Home Health Value-Based Purchasing Model; and

[28] *https://www.govinfo.gov/content/pkg/PLAW-108publ173/pdf/PLAW-108publ173.pdf.*

[29] National Quality Forum. MAP Coordination Strategy for Post-Acute Care and Long-Term Care Performance Measurement. February 2012. Available at *https://www.qualityforum.org/Publications/2012/02/MAP_Coordination_Strategy_for_Post-Acute_Care_and_Long-Term_Care_Performance_Measurement.aspx.* Accessed March 21, 2022.

Home Health Quality Reporting Requirements'' (82 FR 35372 through 35373 and 82 FR 51736 through 51737, respectively) and in the July 18, 2019 and November 8, 2019 proposed and final rules titled, ''Medicare and Medicaid Programs; CY 2020 Home Health Prospective Payment System Rate Update'' (84 FR 34686 and 84 FR 60478, respectively), we sought and responded to input on whether we should require quality data reporting on all HHA patients, regardless of payer source, to ensure representation of the quality of the services provided to the entire HHA population. In the ''CY 2018 Home Health Prospective Payment System Rate Update and CY 2019 Case-Mix Adjustment Methodology Refinements; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements'' final rule, some commenters shared that there would be increased burden from requiring all-payer data submissions. A few commenters also raised the issue of whether it would be appropriate to collect and report private pay data, given that private payers may have different care pathways, approval, and authorization processes. In the CY 2020 HH PPS proposed rule, we also sought input on whether collection of quality data used in the HH QRP should include all HHA patients, regardless of their payer source (84 FR 60478). Several commenters supported expanding the HH QRP to include collection of data on all patients regardless of payer. Several commenters noted that this expanded data collection would not be overly burdensome because the majority of HHAs already complete the OASIS on all patients, regardless of payer status. Commenters were concerned that the usefulness of all-payer data collection to CMS's health policy development would not outweigh the additional reporting burden. Several commenters supporting all-payer data collection stated that expansion of the data collection would align the HH QRP's data collection policy with that of hospices and long-term care hospitals (LTCHs), as well as the data collection policy under the Merit-based Incentive Payment System. Other reasons cited by commenters who supported the expanded data collection included more accurate representation of the quality of care furnished by HHAs to the entire HH population, the ability of such data to better guide quality improvement activities, and the reduction of current administrative efforts made by HHAs to ensure that only OASIS data for Medicare and Medicaid patients are reported to CMS.

In the CY 2023 HH PPS proposed rule, we stated our belief that collecting OASIS data on all HHA patients, regardless of payer, would align our data collection requirements under the HH QRP with the data collection requirements for the LTCH QRP and Hospice QRP. We also believe that the most accurate representation of the quality of care furnished by HHAs is best captured by calculating the assessment-based measures rates using OASIS data submitted on all HHA patients receiving skilled care, regardless of payer. New risk adjustment models with all-payer data would better represent the full spectrum of patients receiving care in HHAs. The submission of all-payer OASIS data would also enable us to meaningfully compare performance on quality measures across PAC settings. For example, the Changes in Skin Integrity Post-Acute Care quality measure is currently reported by different PAC payers on different denominators of payer populations, which greatly inhibits our ability to compare performance on this measure across PAC settings. Standardizing the denominator for cross setting PAC measures to include all skilled-care patients will enable us to make these comparisons, which we believe will realize our goal of establishing consistent measures of quality across PAC settings.

We stated in the CY 2023 HH PPS proposed rule that the concerns raised surrounding privacy outlined previously have been mitigated. We also stated that we take the privacy and security of individually identifiable health information of all patients very seriously. CMS data systems conform to all applicable federal laws, regulations and standards on information security and data privacy. The systems limit data access to authorized users and monitor such users to help protect against unauthorized data access or disclosures. CMS anticipates updating the current provider data reporting system in iQIES to address the addition of private payer patients.

For these reasons, we proposed in the CY 2023 HH PPS proposed rule to end the suspension of non-Medicare/non-Medicaid OASIS data collection and to require HHAs to submit all-payer OASIS data for purposes of the HH QRP beginning with the CY 2025 HH QRP program year. We would use the OASIS data to calculate all measures for which OASIS is a data source. Although the 2006 report recommended that the suspension continue, the subsequent passage of the IMPACT Act (Pub. L. 113–185) in 2014, requiring us to create a uniform quality measurement system which would allow us to compare outcomes across post-acute care providers, requires us to revisit the policy. We have established such a uniform quality measurement system, based on standardized patient assessment data leading us to propose OASIS data collection on non-Medicare/non-Medicaid patients. There are now cross-setting quality measures in place that should have consistent reporting parameters but currently do not have consistent reporting parameters because they currently have only Medicare and Medicaid populations. The goal of CMS is to have these measures reported for all patients for all payer sources. The iQIES system utilized by providers is robust enough to make feasible the generation of outcome and case mix reports for private pay patients, whereas the 2006 QIES system lacked this functionality. The HH QRP also has a more robust measure set, including patient reported outcomes, a criteria of importance for CMS to move forward with all-payer collection. We stated in the CY 2023 HH PPS proposed rule that the maturation of the HH QRP as described previously argues for the collection of OASIS all-payer data. It will improve the HH QRP's ability to assess HHA quality and allow the HH QRP to foster better quality care for patients, regardless of payer source. It will also support CMS's ability to compare standardized outcome measures across PAC settings.

Consistent with the two-quarter phase-in that we typically use when adopting new reporting requirements for the HHAs, we proposed that for the CY 2025 HH QRP, the expanded reporting would be required for patients discharged between January 1, 2024 and June 30, 2024. After consideration of the comments on this proposal, we are finalizing that the new OASIS data reporting will be required beginning with the CY 2027 program year, with data for that program year required for patients discharged between July 1, 2025 and June 30, 2026. Consistent with the two-quarter phase-in that we typically use, HHAs will have an opportunity to begin submitting this data for patients discharged between January 1, 2025 through June 30, 2025, but we will not use that data to make a compliance determination. Beginning with the CY 2027 program year, HHAs will be required to report OASIS data on all patients, regardless of payer, for the applicable 12-month performance period (which for the CY 2027 program year, would be patients discharged between July 1, 2025 and June 30, 2026).

We stated in the CY 2023 HH PPS proposed rule that while we appreciate

that submitting OASIS data on all HHA patients regardless of payer source may create additional burden for HHAs, we note that the current practice of separating and submitting OASIS data on only Medicare beneficiaries has clinical and workflow implications with an associated burden. As noted previously, we also understand that it is common practice for HHAs to collect OASIS data on all patients, regardless of payer source. Requiring HHAs to report OASIS data on all patients will provide CMS with the most robust, accurate reflection of the quality of care delivered to Medicare beneficiaries as compared with non-Medicare patients.

We solicited comments on this proposal. The following is a summary of the public comments received and our responses.

Comment: Several commenters supported the proposal to require quality data collection for all patients receiving skilled care from HHAs, regardless of payer source. Commenters agreed with the CMS' conclusion that this proposal would help standardize data across PAC settings. Supporters of the policy also noted that the implementation of all-payer data collection would be critical in establishing health equity standards, regardless of payment type for patients. Commenters further agreed that CMS is in a strong position to address privacy concerns regarding non-Medicare/non-Medicaid OASIS data collection and that the infrastructure to support reporting non-Medicare/Medicaid data has steadily improved.

Response: We appreciate the feedback and support for this proposal to end the suspension of non-Medicare/non-Medicaid data collection and to require HHAs to submit all-payer OASIS data for the HH QRP.

Comment: Some commenters supported the proposal to require quality data reporting and collection for HHA patients with all payer sources, but also suggested modifications for improvement. A few commenters recommended delaying implementation of the policy until CY 2025 or at least until a year after the close of the current public health emergency. Others shared the need to specify any populations that should be excluded from OASIS data collection, including pediatric and maternal patients. A commenter supported the all-payer collection proposal but stated that it should also be implemented for Home Health Care Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) data. Some commenters supported the proposal but requested that CMS increase payments to offset the burden of implementation of this policy.

Response: We thank the commenters for their feedback. We believe that requiring the collection of all-payer quality measure data for which the data source is OASIS will further inform our quality work at CMS by allowing us to gain a more complete picture of the quality of care furnished at HHAs. We will take the commenter's suggestion to expand our all-payer policy to the collection of HHCAHPS data into consideration for future rulemaking. We have considered the concerns raised by commenters on the burden of this new reporting requirement and, in response to those comments, will delay this requirement until the CY 2027 program year. Under the new implementation schedule, we are finalizing, the new reporting requirement will be effective beginning with the CY 2027 program year. For that program year, HHAs will be required to submit all payer OASIS data for discharges from July 1, 2025 through and including June 30, 2026. We continue to believe that a two-quarter phase-in period for this new reporting, along with the current systems in place to collect OASIS data, will give HHAs enough time to prepare to implement it. The two-quarter phase-in period is consistent with the phase-in schedule that we typically adopt for all new HH QRP reporting requirements. We appreciate feedback from commenters about the need to specify any populations that should be excluded from the new OASIS data collection. The policy would not change the current patient exemptions for OASIS, which are as follows: patients under the age of 18; patients receiving maternity services; and patients receiving only personal care, housekeeping, or chore services. With respect to the commenter's request that we increase payment to HHAs to assist them financially in implementing this new requirement, we do not have authority under section 1895(b)(3)(B)(v) of the Act to provide bonuses or otherwise increase payment to HHAs that comply with the requirements of the HH QRP.

Comment: Many commenters opposed this proposal. Additionally, some commenters noted that CMS should not implement proposals that may add burden while HHAs are still impacted by the ongoing public health emergency (PHE). Other commenters questioned whether the benefits of implementation would outweigh the cost of implementation, including costs attributable to the burden associated with completing the new reporting and the costs of HHA staffing. A few commenters opposed the proposal and believe that CMS underestimated the burden both in terms of time for completion and costs of HHA staffing.

Response: We acknowledge that HHAs may continue to be impacted by the PHE and that collecting quality data on all patients regardless of payer may create additional burden for some HHAs. However, there are factors that limit the scope of the associated burden. For example, Medicare certified HHAs already have processes in place to collect OASIS data for Medicare/Medicaid patients which will limit the overall financial impact of this new reporting requirement. Additionally, our understanding is that many HHAs already collect all-payer OASIS data for other purposes. We continue to believe that the benefits of collecting data on patients regardless of payer source outweigh the costs related to the resumption of collection and submission requirements. Regarding concerns that we underestimated the national impact of this proposal, we have utilized a consistent process used for the estimate of burden in each HH Final rule for time spent and labor costs associated with the implementation of OASIS E, the version of the OASIS that would be used with the implementation of this proposal. This process includes establishing an estimate for time required to submit each assessment item on the OASIS for each time point in which the item is collected, estimating the costs related to item submission based on bureau of labor statistics HHA staff labor costs, and calculating an overall estimate of burden based on the number of active HHAs. For further details on burden calculations, please reference Section VI of this final rule. We have properly estimated the burden being established for this proposal in compliance with ongoing processes established for regulatory impact.

Comment: Many commenters who opposed the proposal cited concerns related to the burden of implementation implementing at a time when HHAs are concerned about an overall reduction in payments by Medicare.

Response: We note that while there is a permanent adjustment to the national, standardized 30-day payment rate in CY 2023 to account for actual behavior change upon implementation of the PDGM, the overall impact in CY 2023 is a net increase of 0.7% in home health payments. Furthermore, we believe given that delaying the implementation of this new reporting requirement until the CY 2027 program year will provide HHAs with ample time to incorporate this policy into their business operations.

Comment: Some commenters opposed the proposal and questioned CMS' authority to require collection of patient data from all-payer sources.

Response: Congress enacted section 704 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which ''suspended'' the legal authority of the Secretary to require HHAs to report OASIS information on non-Medicare/non-Medicaid patients until at least 2 months after the Secretary published final regulations on CMS's collection and use of those data following the submission of a report to Congress on the study required under section 704(c) of the MMA. We have complied with the statutory requirements to end the suspension in this published final regulation in submitting the aforementioned report. We continue to believe that the collection of all payer OASIS data will provide a more complete and accurate picture of the quality of care furnished by HHAs. We also believe that the collection of all-payer OASIS data will enable us to calculate measure rates in the HH setting that can be more meaningfully compared with rates on those same measures in the LTCH, IRF, and SNF settings.

Comment: Some commenters raised privacy concerns regarding non-Medicare/non-Medicaid data collection and submission.

Response: We safeguard all OASIS data in a secure data system (iQIES) that limits data access to authorized users and monitors such users to ensure against unauthorized data access or disclosures. This data system conforms to all applicable Federal laws and regulations, as well as Federal government, HHS, and CMS policies and standards as they relate to information security and data privacy.

Comment: Some commenters raised a concern that including non-Medicare/non-Medicaid patients in the OASIS data collection would significantly affect HHA outcome results because these patients could have a different case-mix profile. Some commenters raised concerns related to this issue especially for HHAs that have a high percentage of non-Medicare/non-Medicaid patients whose requirements for care are not mandated by CMS but by other payers. Some suggested that this proposal could result in HHAs limiting their care to non-Medicare/non-Medicaid patients to limit the potential impact on their HHA.

Response: We acknowledge that the collection of non-Medicare/non-Medicaid OASIS data could change the measure results for HHAs. However, we believe it is in the public's best interest, and more representative of the quality of care provided by HHAs, to collect data on all HHA patients. We believe that the collecting and reporting of the quality data will in time improve quality for all patients regardless of payer source. We intend to monitor and evaluate the impacts of this policy as necessary and consider modifications, if warranted, through future notice and comment rulemaking.

After consideration of the public comments we received, we are finalizing the End of the Suspension of OASIS Data Collection on non-Medicare/non-Medicaid HHA Patients and the Requirement for HHAs to Submit All-Payer OASIS Data for Purposes of the HH QRP, Beginning with the CY 2027 Program Year.

E. Technical Changes

We proposed to amend the regulation text in § 484.245(b)(1) as a technical change to consolidate the statutory references to data submission to § 484.245(b)(1)(i) and 484.245(b)(1)(ii). We also proposed to modify § 484.245(b)(1)(iii) to describe additional requirements specific to HHCAHPS to make it clear that A through E only apply to HHCAHPS.

In this technical change, we specifically proposed to move quality data required under section 1895(b)(3)(B)(v)(II) from § 484.245(b)(1)(iii) to § 484.245(b)(1)(i).[30] Specifically, the proposed § 484.245(b)(1)(i) would state, ''Data on measures specified under sections 1895(b)(3)(B)(v)(II), 1899B(c)(1), and 1899B(d)(1) of the Act.'' The proposed § 484.245(b)(1)(iii) would state, ''For purposes of HHCAHPS survey data submission, the following additional requirements apply:''.

We invited but did not receive public comments on this proposal. We have modified § 484.245(b)(1)(i) to clarify that HHAs must report to CMS data—(1) that is required under section 1895(b)(3)(B)(v)(II) of the Act, including HHCAHPS survey data; and (2) on measures specified under sections 1899B(c)(1) and 1899B(d)(1) of the Act.

F. Codification of the HH QRP Measure Removal Factors

In the CY 2019 HH PPS final rule with comment period (83 FR 56548 through 56550), we adopted eight measure removal factors that we consider when determining whether to remove measures from the HH QRP measure set:

- Factor 1. Measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.
- Factor 2. Performance or improvement on a measure does not result in better patient outcomes.
- Factor 3. A measure does not align with current clinical guidelines or practice.
- Factor 4. A more broadly applicable measure (across settings, populations, or conditions) for the particular topic is available.
- Factor 5. A measure that is more proximal in time to desired patient outcomes for the particular topic is available.
- Factor 6. A measure that is more strongly associated with desired patient outcomes for the particular topic is available.
- Factor 7. Collection or public reporting of a measure leads to negative unintended consequences other than patient harm.
- Factor 8. The costs associated with a measure outweigh the benefit of its continued use in the program.

To align the HH QRP with similar quality reporting programs (that is SNF QRP, IRF QRP, and LTCH QRP) we proposed to amend 42 CFR 484.245 to add eight HH QRP measure removal factors in a new paragraph (b)(3).

We invited public comments on this proposal.

Comment: Most commenters expressed support for this proposal, citing the importance of alignment across quality reporting programs and the value of transparency in the process of measure removal and additions from the HH QRP.

Response: We thank commenters for their support.

Comment: A few commenters supported this proposal and raised a few additional considerations. A commenter noted that the expert panels that provide input into measure additions or removals often lack sufficient therapy staff participation. They encouraged CMS to increase feedback from multiple disciplines in the process of considering measure removals.

Response: These comments are outside the scope of this proposal to amend 42 CFR 484.245.

Comment: A commenter generally supported this proposal but opposed the inclusion of measure removal factor #8 because they believe this removal factor will be misused by providers. They were concerned providers would advocate removal of measures of value to the public simply because they do not

[30] Section 1895(b)(3)(B)(v)(II) of the Act requires data submission for HHCAHPS.

want to collect the underlying assessment data required for the calculation of the measure.

Response: This comment is outside the scope of this proposal to amend 42 CFR 484.245.

After consideration of the public comments we received, we are finalizing the proposal to codify the HH QRP measure removal factors.

G. Request for Information: Health Equity in the HH QRP

In the CY 2023 HH PPS proposed rule, we stated that CMS defines health equity as the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes.[31] We noted in the CY 2023 proposed rule that CMS is working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are underserved, and providing the care and support that our enrollees need to thrive.[32] CMS' goals are in line with Executive Order 13985, on the Advancement of Racial Equity and Support for the Underserved Communities, which can be found at: *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

We outlined in the CY 2023 proposed rule that belonging to an underserved community is often associated with worse health outcomes.[33] [34] [35] [36] [37] [38] [39] [40] [41] Such disparities in health outcomes are the result of multiple factors. Although not the sole determinants, poor access to care and provision of lower quality health care are important contributors to health disparities notable for CMS programs. Prior research has shown that home health agencies serving higher proportions of Black and low-income older adults furnish lower quality care than those with lower proportions of such patients.[42] It is unclear why this relationship exists, but some evidence suggests that these outcomes are the result of reduced access to home health agencies with the highest scores for quality and health outcomes measures reported (subsequently referred to as high-quality HHAs).[43] Research in long term care access has shown that neighborhoods with larger proportions of Black, Hispanic, and low-income residents have lower access to a range of high-quality care including hospitals, primary care physicians, nursing homes, and community-based long-term services.[44] [45] [46] A recent study found that Black and Hispanic home health patients were less likely to use high quality home health agencies than White patients who lived in the same neighborhoods.[47] This difference in use of high quality HHAs persisted even after adjusting for patient health status, suggesting disparity in access to higher-quality home health agency was present. Disparities exist within neighborhoods, where Black, Hispanic, and lower-income home health patients that live in a neighborhood with higher-quality home health agencies still have less access to these HHAs.[48] Disparities also persist across neighborhoods where the researchers found that 40–77 percent of disparities in high-quality agency use was attributable to neighborhood-level factors.[49] The issue of disparity in access is especially critical to address currently with the COVID–19 public health emergency (PHE). The PHE has increased demand for home health services instead of nursing home care for many patients seeking post-acute care.[50] Factors outside of neighborhood effects that could affect inequities in home health care and access to care may include a provider's selection of patients with higher socioeconomic status (SES) who are perceived to have a lower likelihood of reducing provider quality ratings [51] or a provider's biased perception of a patient's risk behavior and adherence to care plans.[52] These findings suggest the need to address issues related to care and access when striving to improve health equity.

We are committed to achieving equity in health care outcomes for beneficiaries by supporting providers in quality improvement activities to reduce health disparities, enabling beneficiaries to make more informed decisions, and promoting provider accountability for health care disparities.[53] [54] CMS is committed to closing the equity gap in CMS quality programs.

We thank commenters for their previous input to our request for information on closing the health equity gap in home health care in the CY 2022 HH PPS final rule (86 FR 62240). Many commenters shared that relevant data collection and appropriate stratification

[31] *https://www.cms.gov/pillar/health-equity.*

[32] CMS Framework for Health Equity 2022–2032.

[33] Joynt KE, Orav E, Jha AK. Thirty-Day Readmission Rates for Medicare Beneficiaries by Race and Site of Care. JAMA. 2011; 305(7):675–681.

[34] Lindenauer PK, Lagu T, Rothberg MB, et al. Income Inequality and 30 Day Outcomes After Acute Myocardial Infarction, Heart Failure, and Pneumonia: Retrospective Cohort Study. British Medical Journal. 2013; 346.

[35] Trivedi AN, Nsa W, Hausmann LRM, et al. Quality and Equity of Care in U.S. Hospitals. New England Journal of Medicine. 2014; 371(24):2298–2308.

[36] Polyakova, M., et al. Racial Disparities In Excess All-Cause Mortality During The Early COVID–19 Pandemic Varied Substantially Across States. Health Affairs. 2021; 40(2): 307–316.

[37] Rural Health Research Gateway. Rural Communities: Age, Income, and Health Status. Rural Health Research Recap. November 2018.

[38] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[39] *www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm.*

[40] Poteat TC, Reisner SL, Miller M, Wirtz AL. COVID–19 Vulnerability of Transgender Women With and Without HIV Infection in the Eastern and Southern U.S. Preprint. medRxiv. 2020;2020.07.21.20159327. Published 2020 Jul 24. doi:10.1101/2020.07.21.20159327.

[41] Milkie Vu et al. Predictors of Delayed Healthcare Seeking Among American Muslim Women, Journal of Women's Health 26(6) (2016) at 58; S.B. Nadimpalli, et al., The Association between Discrimination and the Health of Sikh Asian Indians Health Psychol. 2016 Apr; 35(4): 351–355.

[42] Joynt Maddox KE, Chen LM, Zuckerman R, Epstein AM. Association between race, neighborhood, and Medicaid enrollment and outcomes in Medicare home health care. J Am Geriatr Soc. 2018;66(2):239–46.

[43] Ibid.

[44] Smith DB, Feng Z, Fennell ML, Zinn J, Mor V. Racial disparities in access to long-term care: the illusive pursuit of equity. J Health Polit Policy Law. 2008;33(5):861–81.

[45] Gaskin DJ, Dinwiddie GY, Chan KS, McCleary R. Residential segregation and disparities in health care services utilization. Med Care Res Rev. 2012;69(2):158–75.

[46] Rahman M, Foster AD. Racial segregation and quality of care disparity in U.S. nursing homes. J Health Econ. 2015;39:1–16.

[47] Fashaw-Walters, SA. Rahman, M., Gee, G. et al. Out Of Reach: Inequities In The Use Of High-Quality Home Health Agencies. Health Affairs 2022 41(2):247–255.

[48] Ibid.

[49] Fashaw-Walters, SA. Rahman, M., Gee, G. et al. Out Of Reach: Inequities In The Use Of High-Quality Home Health Agencies. Health Affairs 2022 41(2):247–255.

[50] Werner RM, Bressman E. Trends in post-acute care utilization during the COVID–19 pandemic. J Am Med Dir Assoc. 2021;22(12):2496–9.

[51] Werner RM, Asch DA. The unintended consequences of publicly reporting quality information. JAMA. 2005;293(10):1239–44.

[52] Davitt JK, Bourjolly J, Frasso R. Understanding inequities in home health care outcomes: staff views on agency and system factors. Res Gerontol Nurs. 2015;8(3):119–29.

[53] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/CMS-Quality-Strategy.pdf.*

[54] Report to Congress: Improving Medicare PostAcute Care Transformation (IMPACT) Act of 2014 Strategic Plan for Accessing Race and Ethnicity Data. January 5, 2017. Available at *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Research-Reports-2017-Report-to-Congress-IMPACT-ACT-of-2014.pdf.*

are very important in addressing any health equity gaps. These commenters noted that CMS should consider potential stratification of health outcomes. Stakeholders, including providers, also shared their strategies for addressing health disparities, noting that this was an important commitment for many health provider organizations. Commenters also shared recommendations for additional social determinants of health (SDOH) data elements that could strengthen their assessment of disparities and issues of health equity. SDOH are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.[55] Many commenters suggested capturing information related to food insecurity, income, education, transportation, and housing. We will continue to take all comments and suggestions into account as we work to develop policies on this important topic. We appreciate home health agencies and other stakeholders sharing their support and commitment to addressing health disparities and offering meaningful comments for consideration. As we continue to consider health equity within the HH QRP, we solicited public comment in the CY 2023 HH PPS proposed rule on the following questions:

- What efforts does your HHA employ to recruit staff, volunteers, and board members from diverse populations to represent and serve underserved populations? How does your HHA attempt to bridge any cultural gaps between your personnel and beneficiaries/clients? How does your HHA measure whether this has an impact on health equity?
- How does your HHA currently identify barriers to access to care in your community or service area?
- What are the barriers to collecting data related to disparities, SDOH, and equity? What steps does your HHA take to address these barriers?
- How does your HHA collect self-reported demographic information such as information on race and ethnicity, disability, sexual orientation, gender identity, veteran status, socioeconomic status, and language preference?
- How is your HHA using collected information such as housing, food security, access to interpreter services, caregiving status, and marital status to inform its health equity initiatives?

In addition, we stated in the CY 2023 HH PPS proposed rule that we were considering the adoption of a structural composite measure for the HH QRP, which could include organizational activities to address access to and quality of home health care for underserved populations. The composite structural measure concept could include HHA reported data on HHA activities to address underserved populations' access to home health care. An HHA could receive a point (for a total of three points for the three domains) for each domain where data are submitted to a CMS portal, regardless of the action in that domain.

HHAs could submit information such as documentation, examples, or narratives to qualify for the measure numerator. The domains under consideration for the measure, as well as how an HHA could satisfy each of those domains and earn a point for that domain, are the following:

Domain 1: HHAs' commitment to reducing disparities is strengthened when equity is a key organizational priority. Candidate domain 1 could be satisfied if an HHA submits data on actions it is taking with respect to health equity and community engagement in their strategic plan. HHAs could report data in the reporting year about their actions in each of the following areas, and submission of data for all elements could be required to qualify for the measure numerator.

- HHAs attest to whether their strategic plan includes approaches to address health equity in the reporting year.
- HHAs report community engagement and key stakeholder activities in the reporting year.
- HHAs report on any attempts to measure input they solicit from patients and caregivers about care disparities they may experience as well as recommendations or suggestions for improvement.

Domain 2: Training HHA board members, HHA leaders, and other HHA staff in culturally and linguistically appropriate services (CLAS),[56] health equity, and implicit bias is an important step the HHA can take to provide quality care to underserved populations. Candidate domain 2 could focus on HHAs' diversity, equity, inclusion training for board members and staff by capturing the following reported actions in the reporting year. Submission of relevant data for all elements could be required to qualify for the measure numerator.

- HHAs attest as to whether their employed staff were trained in culturally sensitive care mindful of (SDOH in the reporting year and report data relevant to this training, such as documentation of specific training programs or training requirements.
- HHAs attest as to whether they provided resources to staff about health equity, SDOH, and equity initiatives in the reporting year and report data such as the materials provided or other documentation of the learning opportunities.

Domain 3: HHA leaders and staff can improve their capacity to address health disparities by demonstrating routine and thorough attention to equity and setting an organizational culture of equity. This candidate domain could capture activities related to organizational inclusion initiatives and capacity to promote health equity. Examples of equity-focused factors include proficiency in languages other than English, experience working with diverse populations in the service area, and experience working with individuals with disabilities. Submission of relevant data for all elements could be required to qualify for the measure numerator.

- HHAs attest as to whether they considered equity-focused factors in the hiring of HHA senior leadership, including chief executives and board of trustees, in the applicable reporting year.
- HHAs attest as to whether equity-focused factors were included in the hiring of direct patient care staff (for example, therapists, nurses, social workers, physicians, or aides) in the applicable reporting year.
- HHAs attest as to whether equity focused factors were included in the hiring of indirect care or support staff (for example, administrative, clerical, or human resources) in the applicable reporting year.

We also stated in the CY 2023 HH PPS proposed rule that we[?] are interested in developing health equity measures based on information collected by HHAs not currently available on claims, assessments, or other publicly available data sources to support development of future quality measures. We solicited public comment on the conceptual domains and quality measures described in this section. Furthermore, we solicited public comment on publicly reporting a composite structural health equity quality measure; displaying descriptive information on Care Compare from the data HHAs provide to support health equity

[55] Healthy People 2030, U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion. Retrieved 06/09/22.

[56] *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/CLAS-Toolkit-12-7-16.pdf.*

measures; and the impact of the domains and quality measure concepts on organizational culture change.

The following is a summary of the comments we received in response to this RFI:

Commenters broadly applauded CMS for seeking to address health equity in home health. Many noted that health equity is critical to address in home health and requires attention from CMS and providers. Many commenters representing organizations outlined some work they were engaged in to address health equity. Many commenters provided specific feedback on components of the quality measure concept along with broad-based feedback. Commenters suggested using a scale relative to responses in the measure concept rather than a yes/no approach. Some commenters noted that it would be critical to solicit direct input from HH patients on health equity issues in addition to soliciting that input from HHAs. Others shared that it is critical that CMS provide HHAs with a range of ways to address health equity needs that would be unique to the populations they serve. Others suggested different issues that could be addressed with health equity measures, such as premature discharge, counteracting the impacts of HHAs coverage relative to the area deprivation index, and considerations of how disability is addressed when assessing health equity. A number of commenters shared their support for CMS pursuing other ways to aid HHAs in understanding health equity issues that may exist by providing stratified data to providers.

Some commenters did not support the health equity quality measure because it would be compelling HHAs to improperly adopt CMS' approach to organizational culture changes. Other commenters shared concerns that a major issue related to health equity in home health is access to home health benefits and that CMS does not have a sufficiently robust approach to address scenarios in which access to home health is denied. Some commenters raised concerns that the health equity quality measure would add burden to the workload of HHAs and suggested that CMS utilize data currently available to address disparities and other health equity concerns. Other commenters addressed more broad-based issues related to health equity. Others suggested CMS provide funding to address health equity issues and additionally consider supporting trainings for providers. Multiple commenters recommended using the terms ''health related social needs'' for individual health equity factors and ''social determinants of health'' for community health equity factors. Commenters raised the need to address issues such as expanding gender categorizations and updating race categories for some groupings.

We appreciate the comments we received on this RFI. Public input is very valuable for the continuing development of CMS' health equity quality measurement efforts and our broader commitment to health equity; a key pillar of our strategic vision as further described here, *https://www.cms.gov/files/document/health-equity-fact-sheet.pdf.* We will take these comments into consideration in our future policy development.

G. Advancing Health Information Exchange

We are removing this section and note that it was erroneously included in this section of the CY 2023 HH PPS proposed rule. We also note that this section of the proposed rule was duplicative of section I.B. of the proposed rule.

IV. Expanded Home Health Value-Based Purchasing (HHVBP) Model

A. Background

As authorized by section 1115A of the Act and finalized in the CY 2016 HH PPS final rule (80 FR 68624), the Center for Medicare and Medicaid Innovation (Innovation Center) implemented the Home Health Value-Based Purchasing (HHVBP) Model (''original Model'') in nine states on January 1, 2016. The design of the original HHVBP Model leveraged the successes and lessons learned from other CMS value-based purchasing programs and demonstrations to shift from volume-based payments to a model designed to promote the delivery of higher quality care to Medicare beneficiaries. The specific goals of the original HHVBP Model were to—

- Provide incentives for better quality care with greater efficiency;
- Study new potential quality and efficiency measures for appropriateness in the home health setting; and
- Enhance the current public reporting process.

The original HHVBP Model resulted in an average 4.6 percent improvement in HHAs' total performance scores (TPS) and an average annual savings of $141 million to Medicare without evidence of adverse risks.[57] The evaluation of the original model also found reductions in unplanned acute care hospitalizations and skilled nursing facility (SNF) stays, resulting in reductions in inpatient and SNF spending. The U.S. Secretary of Health and Human Services determined that expansion of the original HHVBP Model would further reduce Medicare spending and improve the quality of care. In October 2020, the CMS Chief Actuary certified that expansion of the HHVBP Model would produce Medicare savings if expanded to all states.[58]

On January 8, 2021, CMS announced the certification of the HHVBP Model for expansion nationwide, as well as the intent to expand the Model through notice and comment rulemaking.[59]

In the CY 2022 HH PPS final rule (86 FR 62292 through 62336) and codified at 42 CFR part 484 subpart F, we finalized the decision to expand the HHVBP Model to all Medicare certified HHAs in the 50 States, territories, and District of Columbia beginning January 1, 2022. We finalized that the expanded Model will generally use benchmarks, achievement thresholds, and improvement thresholds based on CY 2019 data to assess achievement or improvement of HHA performance on applicable quality measures and that HHAs will compete nationally in their applicable size cohort, smaller-volume HHAs or larger-volume HHAs, as defined by the number of complete unique beneficiary episodes for each HHA in the year prior to the performance year. All HHAs certified to participate in the Medicare program prior to January 1, 2022, will be required to participate and will be eligible to receive an annual Total Performance Score based on their CY 2023 performance.

We finalized the quality measure set for the expanded Model, as well as policies related to the removal, modification, and suspension of applicable measures, and the addition of new measures and the form, manner and timing of the OASIS-based, Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) survey-based, and claims-based measures submission in the applicable measure set beginning CY 2022 and subsequent years. We also finalized an appeals process, an extraordinary circumstances exception policy, and public reporting of annual performance data under the expanded Model.

[57] *https://innovation.cms.gov/data-and-reports/2020/hhvbp-thirdann-rpt.*

[58] *https://www.cms.gov/files/document/certificationhome-health-value-based-purchasing-hhvbpmodel.pdf.*

[59] *https://www.cms.gov/newsroom/press-releases/cms-takes-action-improve-home-health-care-seniors-announces-intent-expand-home-health-value-based.*

Additionally in the CY 2022 HH PPS proposed rule (86 FR 35929), we solicited comments on the challenges unique to value-based purchasing frameworks in terms of health equity and ways in which we could incorporate health equity goals into the expanded HHVBP Model. We received comments related to the use of stabilization measures to promote access to care for individuals with chronic illness or limited ability to improve; collection of patient level demographic information for existing measures; and stratification of outcome measures by various patient populations to determine how they are affected by social determinants of health (SDOH). In the CY 2022 HH PPS final rule (86 FR 62312), we summarized and responded to these comments received.

In the CY 2023 HH PPS proposed rule (87 FR 37667 through 37671), we proposed to replace the term *baseline year* with the terms *HHA baseline year* and *Model baseline year* and to change the calendar years associated with each of those baseline years, and solicited comment on future approaches to health equity in the expanded HHVBP Model.

B. Changes to the Baseline Years and New Definitions

1. Definitions

a. Background

Benchmarks, achievement thresholds, and improvement thresholds are used to assess achievement or improvement of HHA performance on applicable quality measures. As codified at § 484.345, *baseline year* means the year against which measure performance in a performance year will be compared. As discussed in the CY 2022 HH PPS final rule (86 FR 62300), we finalized our proposal to use CY 2019 (January 1, 2019 through December 31, 2019) as the baseline year for the expanded HHVBP Model. In that rule, we also codified at § 484.350(b), that for a new HHA that is certified by Medicare on or after January 1, 2019, the baseline year is the first full calendar year of services beginning after the date of Medicare certification, with the exception of HHAs certified on January 1, 2019 through December 31, 2019, for which the baseline year is CY 2021, and the first performance year is the first full calendar year (beginning with CY 2023) following the baseline year.

b. Amended Definitions

Since that final rule, it has come to our attention that there could be some confusion and we would like to explain our terminology more clearly by differentiating between two types of baseline years used in the expanded HHVBP Model. The Model baseline year is used to determine the benchmark and achievement threshold for each measure for all HHAs. For example, as finalized, CY 2019 data is used in the calculation of the achievement thresholds and benchmarks for all applicable measures for both the small cohort and for the large cohort. The HHA baseline year is used to determine the HHA improvement threshold for each measure for each individual competing HHA. For example, if an HHA is certified in CY 2021, CY 2022 data would be used in the calculation of the improvement thresholds for all applicable measures for that HHA.

Therefore, we proposed to amend § 484.345 to remove the existing *baseline year* definition: means the year against which measure performance in a performance year will be compared. In its place, we proposed to define: (1) *HHA baseline year* as the calendar year used to determine the improvement threshold for each measure for each individual competing HHA; and (2) *Model baseline year* as the calendar year used to determine the benchmark and achievement threshold for each measure for all competing HHAs. In line with these proposed definitions, we proposed to make conforming revisions to the definitions of *achievement threshold* and *benchmark* to indicate that they are calculated using the Model baseline year, and the definition of *improvement threshold* to indicate that it is calculated using the HHA baseline year. Additionally, we proposed to amend paragraph (a) of § 484.370 to remove the phrase ''for the baseline year'' because the calculation of the TPS using the applicable benchmarks and achievement thresholds (determined using the Model baseline year) and improvement thresholds (determined using the HHA baseline year) is described at § 484.360.

We invited public comments on these proposals.

Comment: A few commenters supported the proposed addition of the definitions of *HHA baseline year* and *Model baseline year,* and the associated proposal to modify the definitions of *achievement threshold* and *benchmark.*

Response: We appreciate the commenters' support for these provisions.

We did not receive comments on the proposed amendments to § 484.360 or to paragraph (a) of § 484.370. After consideration of the public comments received, we are finalizing the provisions at § 484.345, § 484.360, and § 484.370 without modification.

2. Change of HHA Baseline Years

a. Background—New and Existing HHAs Baseline Years

As previously discussed, in the CY 2022 HH PPS final rule (86 FR 62300), we finalized our proposal to use CY 2019 as the baseline year for the expanded HHVBP Model. Our intent was that the Model baseline year used to determine achievement thresholds and benchmarks is CY 2019 for all HHAs and the HHA baseline year used to determine an individual HHA's improvement threshold is 2019 for HHAs certified prior to January 1, 2019. As discussed in the section IV.B.1.b. of this rule, we proposed to replace the term *baseline year* with the terms *Model baseline year* and *HHA baseline year* to differentiate between two types of baseline years used in the expanded HHVBP Model.

As mentioned earlier, in that same rule (86 FR 62423), we codified at § 484.350(b), that for a new HHA that is certified by Medicare on or after January 1, 2019, the baseline year is the first full calendar year of services beginning after the date of Medicare certification, with the exception of HHAs certified on January 1, 2019 through December 31, 2019, for which the baseline year is CY 2021, and the first performance year is the first full calendar year (beginning with CY 2023) following the baseline year. Table D1 depicts what was finalized in the CY 2022 HH PPS final rule.

Table D1—New and Existing HHAS Baseline Years as Finalized and Illustrated in Table 23 of the CY 2022 HH PPS Final Rule (86 FR 62301)

Medicare-certification Date	Baseline Year	Performance Year	Payment Year
Prior to January 1, 2019	2019	2023	2025
On January 1, 2019 – December 31, 2019	2021	2023	2025
On January 1, 2020 – December 31, 2020	2021	2023	2025
On January 1, 2021 – December 31, 2021	2022	2023	2025

b. Change to the HHA Baseline Year for New and Existing HHAs

As discussed in the CY 2022 final rule, we stated that we may conduct analyses of the impact of using various baseline periods and consider any changes for future rulemaking (86 FR 62300). Due to the continuing effects of the COVID–19 public health emergency (PHE), we conducted a measure-by-measure comparison of performance for CY 2019 to CY 2021 for the expanded HHVBP Model's measure set relative to the historical trends of those measures. We found that, while performance scores on the five applicable HHCAHPS measures and the OASIS-based ''Discharged to Community'' remained stable from CY 2019 to CY 2021, there was a general trend upwards following historical trends for four of the five applicable OASIS-based measures. These trends were consistent with the historical national data that CMS used to monitor the original HHVBP Model beginning 2015.

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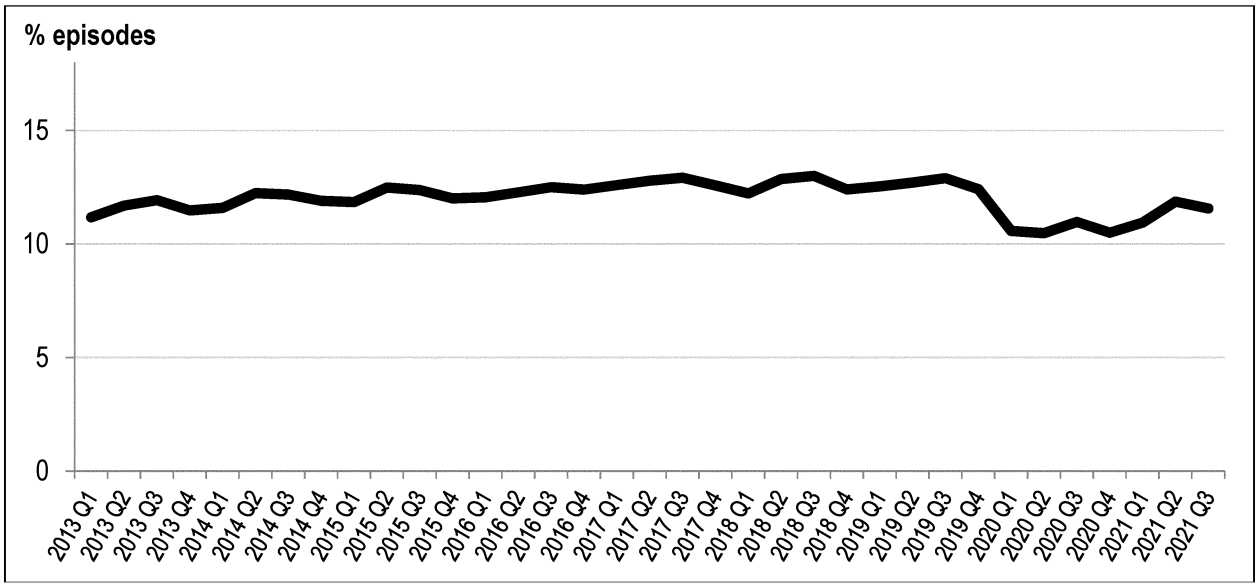
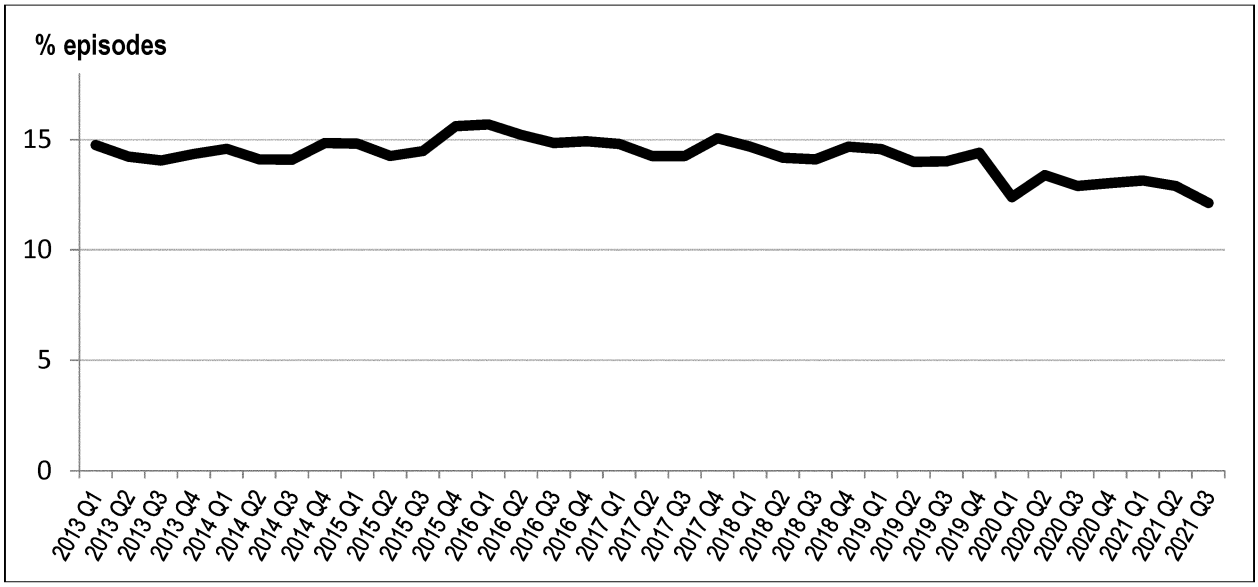
FIGURE D1: ED USE WITHOUT HOSPITALIZATION DURING THE FIRST 60 DAYS OF HOME HEALTH, NATIONALLY, 2013-2021



Notes: This figure shows observed rates of ED Use without Hospitalization During the First 60 Days of Home Health, without risk adjustment. HHAs with fewer than 20 episodes for the claims-based measures within a given calendar year were excluded from analysis for year. For 2021, episodes from 2020 Q4 – 2021 Q3 were used to determine whether HHAs had at least 20 episodes, because 2021 Q4 data was not available at the time the analysis was conducted.

FIGURE D2: ACUTE CARE HOSPITALIZATION DURING THE FIRST 60 DAYS OF HOME HEALTH USE, NATIONALLY, 2013-2021



Notes: This figure shows observed rates of Acute Care Hospitalization During the First 60 Days of Home Health Use, without risk adjustment. HHAs with fewer than 20 episodes for the claims-based measures within a given calendar year were excluded from analysis for year. For 2021, episodes from 2020 Q4 – 2021 Q3 were used to determine whether HHAs had at least 20 episodes, because 2021 Q4 data was not available at the time the analysis was conducted.

In contrast, Figures D1 and D2 that were derived from the archived HH quality data from *CMS.data.gov*[60] illustrate the trend of average national performance on the Acute Care Hospitalization During the First 60 Days of Home Health Use measure and the Emergency Department Use without Hospitalization During the First 60 Days of Home Health measure deviated significantly, with a drop of 9 percent and 15 percent in CY 2020, respectively, relative to CY 2019 (Table D2) and remained lower in CY 2021 as compared to historic trends that occurred prior to the pandemic. In the 5 years prior to 2020, both measures demonstrated stable trends, varying +/− 5 percent from year to year, which highlights the significance of the change from CY 2019 to CY 2020 compared to CY 2015 to CY 2019.

[60] Derived from data at *https://data.cms.gov/provider-data/archived-data/home-health-services.*

Table D2—Average National Performance on Applicable Measures CY 2019–CY 2021

Measures	2019	2020	2021
OASIS-Based Measures			
Improvement in Dyspnea	73.9	76.8	79.0
Improvement in Oral Meds	82.7	83.8	85.2
Discharged to Community (OASIS)	72.8	72.7	72.9
Total Normalized Composite Change in Self-Care	0.69	0.73	0.76
Total Normalized Composite Change in Mobility	1.89	2.04	2.12
Claims-Based Measures [a]			
Acute Care Hospitalization During the First 60 Days of Home Health Use	15.5	14.1	14.1
ED Use without Hospitalization During the First 60 Days of Home Health	13.1	11.2	11.8
HHCAHPS Survey-based Measures [b]			
Care of Patients	88.3	88.3	88.1
Communications between Providers and Patients	85.7	85.6	85.3
Specific Care Issues	82.8	81.6	80.9
Overall Rating of Home Health Care	84.3	84.5	84.2
Willingness to Recommend the Agency	78.8	78.8	78.4

Notes: All measures are risk-adjusted and presented as average HHA-level performance, weighted by the number of OASIS episodes for each HHA.

Includes HHAs indicated as active (not terminated) at the beginning of each year in the December 2021 Provider of Services file with at least one SOC/ROC/EOC assessment submitted during the year and reportable measures for at least five of the 12 measures.

[a] Medicare FFS claims-based measures for 2021 used data from October 1, 2020 through September 30, 2021, due to data availability.

[b] HHCAHPS-based measures for 2021 used data from July 1, 2020 through June 30, 2021, due to data availability.

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We note that for HHAs with sufficient data on each of the 12 applicable measures, performance on the two claims-based measures (Acute Care Hospitalization During the First 60 Days of Home Health Use and Emergency Department Use without Hospitalization During the First 60 Days of Home Health) makes up 35 percent of the total performance score used to determine payment adjustments under the Model. While average national performance on these measures in CY 2021 was similar to average national performance in CY 2020, CY 2022 is the first year where the vast majority of beneficiaries are vaccinated; as of January 27, 2022, 95 percent of Americans ages 65 years or older had received at least one dose of vaccine and 88.3 percent were fully vaccinated.[61] In addition, there were viable treatments available and healthcare providers had nearly 2 years of experience managing COVID–19 patients. We believe that more recent data from the CY 2022 time period is more likely to be aligned with performance years' data under the expanded Model, and provide a more appropriate baseline for assessing HHA improvement for all measures under the Model as compared to both the pre-PHE CY 2019 data, as previously finalized for existing HHAs, and the CY 2021 data, as previously finalized for new HHAs certified between January 1, 2019 and December 31, 2020. Use of CY 2022 data for the HHA baseline year for all measures under the expanded Model would also allow all HHAs certified by Medicare prior to CY 2022 to have the same baseline period, based on the most recent available data, beginning with the CY 2023 performance year. Accordingly, we proposed to change the HHA baseline year for HHAs certified prior to January 1, 2019 and for HHAs certified during January 1, 2019–December 31, 2021 for all applicable measures used in the expanded Model, from CY 2019 and 2021 respectively, to CY 2022 beginning with the CY 2023 performance year. Additionally, we proposed that for any new HHA certified on or after January 1, 2022, the HHA baseline year is the first full calendar year of services beginning after the date of Medicare certification and the first performance year is the first full calendar year following the HHA baseline year.

As discussed in the CY 2022 HH PPS final rule, we understand that HHAs want to have time to examine their baseline data as soon as possible, and we stated that we anticipated making available baseline reports using the CY 2019 baseline year data in advance of the first performance year under the expanded Model (CY 2023). If we were to finalize this proposal to instead use CY 2022 data for the HHA baseline year, we would intend to continue to make these baseline data available as soon as administratively possible, and would anticipate providing HHAs with their final individual improvement thresholds in the summer of CY 2023. We note that this would be consistent with the original HHVBP Model, for which improvement thresholds using CY 2015 data were made available to HHAs in the first IPR in the summer of the first performance year (CY 2016).

The proposed provision was made in conjunction with the proposed addition of the definition of the term HHA baseline year discussed previously. We believe that this proposed provision would allow all eligible HHAs, starting with the CY 2023 performance year, to compete on a level playing field with all HHA baseline data being after the peak of the pandemic. Accordingly, we proposed to amend § 484.350(b) to reflect that for a new HHA, specifically an HHA that is certified by Medicare on or after January 1, 2022, the HHA baseline year is the first full calendar year of services beginning after the date of Medicare certification, and to add § 484.350(c) to reflect that for an existing HHA, specifically an HHA that is certified by Medicare before January 1, 2022, the HHA baseline year is CY 2022. Table D3 depicts these proposed provisions.

Table D3—Example: Proposed HHA Baseline Years, Performance Year and Payment Year for HHAs Certified Through December 31, 2023

[61] *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/01282022.html.*

Medicare-certification Date	HHA Baseline Year	Performance Year	Payment Year
Prior to January 1, 2019	2022	2023	2025
January 1, 2019 – December 31, 2021	2022	2023	2025
January 1, 2022 – December 31, 2022	2023	2024	2026
January 1, 2023 – December 31, 2023	2024	2025	2027

In developing the proposal, we considered changing the HHA baseline year to CY 2021 for all HHAs for all of the applicable measures or, alternatively, not changing the HHA baseline year for any of the applicable measures. We decided against those alternatives for the reasons explained previously in support of our proposed change the HHA baseline year to CY 2022. We also considered changing the HHA baseline for only some of the applicable measures. For example, we considered changing the HHA baseline to CY 2022 only for the claims-based measures and using the HHA baseline of CY 2019 or CY 2021 (see Table D1) for applicable HHAs for the OASIS-based and HHCAHPS-based measures. However, for the reasons previously discussed, we proposed to change the HHA baseline year to CY 2022 for all applicable measures used in the expanded HHVBP Model, which would allow all HHAs certified by Medicare prior to CY 2022 to have the same baseline period for all measures, using the most recent available data, for the performance year beginning CY 2023.

We invited public comments on these proposals.

Comment: A few commenters supported the proposal to establish the HHA baseline year for HHAs certified by Medicare prior to CY 2022 to have the same baseline period, CY 2022, for all measures, using the most recent available data, for the performance year beginning CY 2023. A commenter stated that they also observed variation in outcome performance, and believes that utilization of CY 2019 as the HHA baseline year would not be comparable to current agency performance or outcome trends, as it preceded both the transition to PDGM as well as the COVID–19 pandemic. Another commenter, encouraged CMS to expedite the typical reporting cycle to provide preliminary HHA baseline measures to each agency by the end of Q1 2023.

Response: We thank those who expressed support for this provision. We believe most commenters that did not distinguish between HHA baseline year and the Model baseline year were referring to the Model baseline year because they often referenced the availability of benchmarks and achievement thresholds, and those comments are included in section IV.B.3 of this final rule. To help provide feedback to HHAs, we plan to make the most current HHA-specific performance data for the applicable measures available to each HHA in iQIES. We intend for this to include current performance relative to other HHAs nationally as soon as administratively possible and before the start of the CY 2023 performance year and again before the first IPR scheduled for July 2023.

After consideration of the public comments received, we are finalizing our proposals without modification.

3. Change to the Model Baseline Year

As mentioned earlier, under the policy finalized in the CY 2022 HH PPS final rule (86 FR 62300), we previously adopted CY 2019 as the Model baseline year for the expanded HHVBP Model for all HHAs. This baseline year is used to determine the benchmarks and achievement threshold for each measure for all HHAs.

Consistent with our proposal to update the HHA baseline year to CY 2022 for all HHAs that are certified by Medicare before January 1, 2022, and in conjunction with our proposed change to more clearly define the Model baseline year in section IV.B.1.b. of the proposed rule, we also proposed to change the Model baseline year from CY 2019 to CY 2022 for the CY 2023 performance year and subsequent years. This would enable us to measure competing HHAs' performance using benchmarks and achievement thresholds that are based on the most recent data available. This would also allow the benchmarks and achievement thresholds to be set using data from after the most acute phase of the COVID–19 PHE, which we believe would provide a more appropriate basis for assessing performance under the expanded Model than the CY 2019 pre-PHE period. As previously discussed, CY 2022 is the first year where the vast majority of beneficiaries are vaccinated, there are viable treatments available and healthcare providers had nearly 2 years of experience managing COVID–19 patients. We anticipate that this more recent data from the CY 2022 time period would more likely be aligned with performance years' data under the expanded Model. As discussed in connection with our proposal to use CY 2022 data for the HHA baseline year, if we were to finalize our proposal to use CY 2022 rather than CY 2019 data for the Model baseline year, we would anticipate providing HHAs with the final achievement thresholds and benchmarks in the July 2023 IPR in the summer of CY 2023. This would be consistent with the rollout of the original HHVBP Model in which benchmarks and achievement thresholds using 2015 data were made available to HHAs during the summer of the first performance year (CY 2016).

We invited public comments on this proposal.

Comment: Several commenters support our rationale to use the most recent data available to establish the ''baseline'' years. A few of these stakeholders suggested that CMS move the Model baseline year forward annually as is done in other value-based purchasing programs.

Response: We thank commenters for their support. We believe that updating the Model baseline year to CY 2022 enables us to measure competing HHAs' performance using benchmarks and achievement thresholds that are based on the most recent data available. And, that it allows the benchmarks and achievement thresholds to be set using data from after the most acute phase of the COVID–19 PHE, which we believe would provide a more appropriate basis for assessing performance under the expanded Model than the CY 2019 pre-PHE period. CMS will consider the possibility of moving the Model baseline year forward annually. However, this consideration would need to be proposed in future rulemaking.

Comment: Multiple commenters submitted concerns about changing the ''baseline year'' from CY 2019 to CY 2022 for the CY 2023 performance year. Commenters were concerned that the quality improvement efforts they have made in preparation for the Model would be negated or ''expunged'' if the Model baseline year was updated to CY

2022. A few of these commenters were from States in the original Model.

Response: We interpret commenters to be referring to the Model baseline year as opposed to the HHA baseline year, because they often referenced the availability of benchmarks and achievement thresholds and not the improvement thresholds. We recognize that changing the Model baseline year from CY 2019 to CY 2022 will affect individual HHAs differently based on their quality performance efforts over the last year. The expanded HHVBP Model performance scoring methodology rewards progress in raising quality scores not only through improvement points, but also through achievement points. Under the expanded Model, achievement is prioritized relative to improvement. Quality improvement efforts undertaken by HHAs that show impact on performance year quality scores may be recognized through achievement points, regardless of when those efforts were initiated. For example, an HHA that has improved their overall quality will potentially get more achievement points attributed to their TPS than from improvement points and would potentially result in the same payment adjustment if we had not changed the baseline.

Comment: Multiple commenters asked that we keep the baseline as CY 2019. One commenter suggested that we change the baseline year to CY 2021. Another commenter stated that it will take years for HHAs to pivot appropriately and have that reflected in their scores and suggested that usage of the CY 2019 data until the fully updated CY 2022 data is available would be more appropriate.

Response: We continue to believe that updating the Model baseline year to CY 2022 enables us to measure competing HHAs' performance using benchmarks and achievement thresholds that are based on the most recent data available. And, that it allows the benchmarks and achievement thresholds to be set using data from after the most acute phase of the COVID–19 PHE, which we believe would provide a more appropriate basis for assessing performance under the expanded Model than the CY 2019 pre-PHE period.

Comment: A few commenters suggested that if we move the Model baseline year, that we postpone the first performance year to CY 2024 or until the CY 2022 data is available.

Response: The applicable measures (including the components of the TNC measures) are familiar to HHAs as they are used in the HH QRP. To help provide feedback, we plan to make the most current HHA-specific performance data for the applicable measures to each HHA available in iQIES. We intend for this to include current performance relative to other HHAs nationally as soon as administratively possible and before the start of the CY 2023 performance year and again periodically before the first IPR scheduled for July 2023. Thus, CMS does not believe that it is necessary to postpone the first performance year.

Comment: Commenters expressed concern that they would not have baseline data until July 2023 (half-way through the first performance year). Some cautioned that 2022 data cannot be analyzed quickly enough to be accurately applied in 2023, with some stating it would prevent them from establishing improvement goals or understanding the metrics against which Model participants are being judged, as well as an inability to plan financially or benchmark against any data until the CY 2022 data is released. These commenters asked that we provide baseline data prior to the start of each performance year; a few asked that we provide baseline data prior to April 2023; and, a commenter requested that CMS provide baseline data by January 31, 2023.

Response: We encourage HHAs to use current performance data in iQIES and the performance data on the Care Compare website which includes the OASIS-based measures (including those included in the TNC measures), claims-based measures, and HHCAHPS-based measures applicable to the expanded HHVBP Model. The data specific to each individual HHA as well as the state and national averages (similar to the HHVBP achievement thresholds) can help HHAs determine where they are currently performing to continue to establish quality improvement goals. To help provide feedback, we plan to make the most current HHA-specific performance data for the applicable measures to each HHA available in iQIES. We intend for this to include current performance relative to other HHAs in their assigned cohort as soon as administratively possible and before the start of the CY 2023 performance year and again periodically before the first IPR scheduled for July 2023.

Comment: Commenters expressed concern about a compounding effect of changing the Model baseline year and the proposed Medicare payment adjustments described in the proposed rule (87 FR 37616 through 37620), claiming that it will be difficult for HHAs to demonstrate improvement going forward. These commenters believe that the proposed payment adjustments threaten the quality improvement gains demonstrated in the HHVBP Model, and if finalized, may severely limit the capacity for the Expanded HHVBP Model to produce the results and savings currently projected.

Response: Quality improvement efforts undertaken by HHAs that show impact on performance year quality scores may be recognized through achievement points, regardless of when those efforts were initiated. For example, an HHA that has improved their overall quality will potentially get more achievement points attributed to their TPS than from improvement points and would potentially result in the same payment adjustment if we had not changed the baseline. The payment adjustment being finalized in section II.B.4. of this final rule is estimated to result in an estimated net increase in home health payments of 0.7 percent for CY 2023 ($125 million). For details, see Table F5: Estimated HHA Impacts by Facility Type and Area of The Country, CY 2023.

After consideration of the public comments received, we are finalizing our proposal as proposed.

C. Request for Comment on a Future Approach to Health Equity in the Expanded HHVBP Model

Significant and persistent inequities in healthcare outcomes exist in the United States. Belonging to a racial or ethnic minority group; living with a disability; being a member of the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community; living in a rural area; being a member of a religious minority; or being near or below the poverty level, is often associated with worse health outcomes.[62] [63] [64] [65] [66] [67] [68] [69] [70] In line with

[62] Joynt KE, Orav E, Jha AK. (2011). Thirty-day readmission rates for Medicare beneficiaries by race and site of care. JAMA, 305(7):675–681.

[63] Lindenauer PK, Lagu T, Rothberg MB, et al. (2013). Income inequality and 30 day outcomes after acute myocardial infarction, heart failure, and pneumonia: Retrospective cohort study. *British Medical Journal,* 346.

[64] Trivedi AN, Nsa W, Hausmann LRM, et al. (2014). Quality and equity of care in U.S. hospitals. *New England Journal of Medicine,* 371(24):2298–2308.

[65] Polyakova, M., et al. (2021). Racial disparities in excess all-cause mortality during the early COVID–19 pandemic varied substantially across states. *Health Affairs,* 40(2): 307–316.

[66] Rural Health Research Gateway. (2018). Rural communities: age, income, and health status. *Rural Health Research Recap. https://www.ruralhealthresearch.org/assets/2200-8536/rural-communities-age-incomehealth-status-recap.pdf.*

[67] *https://www.minorityhealth.hhs.gov/assets/PDF/Update_HHS_Disparities_Dept-FY2020.pdf.*

[68] *www.cdc.gov/mmwr/volumes/70/wr/mm7005a1.htm.*

[69] Milkie Vu et al. Predictors of Delayed Healthcare Seeking Among American Muslim

Executive Order 13985 of January 20, 2021 ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,[71] [72]'' CMS defines health equity as the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes.[73] We are working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our enrollees need to thrive. Over the past decade we have established a suite of programs and policies aimed at reducing health care disparities including the CMS Mapping Medicare Disparities Tool,[74] the CMS Innovation Center's Accountable Health Communities Model,[75] the CMS Disparity Methods stratified reporting program,[76] and efforts to expand social risk factor data collection, such as the collection of Standardized Patient Assessment Data Elements in the post-acute care setting,[77] and the CMS Framework for Health Equity 2022–2023.[78]

As we continue to leverage our value-based purchasing initiatives to improve the quality of care furnished across healthcare settings, we are interested in exploring the role of health equity in creating better health outcomes for all populations in our programs and models. As the March 2020 ASPE Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program notes, it is important to implement strategies that cut across all programs and health care settings to create aligned incentives that drive providers to improve health outcomes for all beneficiaries.[79] We are interested in stakeholder feedback on specific actions the expanded HHVBP Model can take to address healthcare disparities and advance health equity.

As we continue to develop policies for the expanded HHVBP Model, we requested public comments on policy changes that we should consider on the topic of health equity. We specifically requested comments on whether we should consider incorporating adjustments into the expanded HHVBP Model to reflect the varied patient populations that HHAs serve around the country and tie health equity outcomes to the payment adjustments we make based on HHA performance under the Model. These adjustments could be made at the measure level in forms such as stratification (for example, based on dual status or other metrics), or we could propose to adopt new measures of social determinants of health (SDOH). These adjustments could also be incorporated at the scoring level in forms such as modified benchmarks, points adjustments, or modified payment adjustment percentages (for example, peer comparison groups based on whether the HHA includes a high proportion of dual eligible beneficiaries or other metrics). We requested commenters' views on which of these adjustments, if any, would be most effective for the expanded HHVBP Model.

Comment: Commenters encouraged our efforts to advance health equity within the expanded HHVBP Model. Additionally, commenters provided specific comments, concerns, and requests related to the expanded HHVBP Model falling into the following themes:

Commenters believe that applying health equity to payments may create disincentives to admit some patients and create unintended consequences and requests to examine strategies to reduce the risks for unintended consequence prior to implementing health equity adjustments to the expanded HHVBP Model; particularly, commenters requested CMS ensure that incorporating health equity into the Model does not unintentionally disadvantage any HHAs serving communities with notably low levels of diversity and does not undermine access to care for beneficiaries.

Commenters suggested that prior to adding new measures to value-based purchasing initiatives, measures should first be included in its related quality reporting program.

Commenters believed that payment should not be tied to measure performance until a measure is thoroughly tested, evaluated, and has NQF-endorsement. They believe that measure methodology and implementation of individual measures should be sufficiently vetted prior to inclusion, and specifically part of the HH QRP prior to advancing to the expanded HHVBP Model.

Commenters requested that CMS select measures that are reliable, reflect true differences in performance and are not attributable to random variation; and, consider outcome measures for the expanded Model related to beneficiary access and outcomes, as well as costs.

Commenters requested that CMS use existing data sources for data collection and not require HHAs to collect additional data to support incorporating health equity into the expanded HHVBP Model. Commenters requested that CMS expand the use of and leveraging existing tools that are used to document existing equity data, including data on social determinants of health, specifically Z codes.

Commenters requested that CMS reconsider incorporating health equity in the expanded HHVBP Model and instead work to incorporate an evidence-based tool into the Patient-Driven Groupings Model in order to properly incentivize HHAs serving communities where health inequities exist.

Commenters requested that CMS apply health equity principals to homecare differently from inpatient settings.

Commenters pointed out that the Evaluation of the Home Health Value-Based Purchasing (HHVBP) Model Fifth

Women, Journal of Women's Health 26(6) (2016) at 58; S.B. Nadimpalli, et al., The Association between Discrimination and the Health of Sikh Asian Indians Health Psychol. 2016 Apr; 35(4): 351–355.

[70] Poteat TC, Reisner SL, Miller M, Wirtz AL. (2020). COVID–19 vulnerability of transgender women with and without HIV infection in the Eastern and Southern U.S. preprint. *medRxiv.* 2020;2020.07.21. 20159327. doi:10.1101/2020.07.21.20159327.

[71] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

[72] Executive Order June 15, 2022 ''Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals'' changes LGBTQ+ to LGBTI+ (*https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/15/executive-order-on-advancing-equality-for-lesbian-gay-bisexual-transgender-queer-and-intersex-individuals/*).

[73] *https://www.cms.gov/pillar/health-equity.*

[74] *https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH-Mapping-Medicare-Disparities.*

[75] *https://innovation.cms.gov/innovation-models/ahcm.*

[76] *https://qualitynet.cms.gov/inpatient/measures/disparity-methods.*

[77] *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/-IMPACT-Act-Standardized-Patient-Assessment-Data-Elements.*

[78] *https://www.cms.gov/sites/default/files/2022-04/CMS%20Framework%20for%20Health%20Equity_2022%2004%2006.pdf.*

[79] Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services. Second Report to Congress on Social Risk Factors and Performance in Medicare's Value-Based Purchasing Program. 2020. *https://aspe.hhs.gov/social-risk-factors-and-medicares-value-basedpurchasing-programs.*

Annual Report indicated that there were disparities among the Medicaid population for acute care hospitalizations and functional measures and suggest that these are particularly important to rural providers in underserved areas who have a disproportionate share of patients with social and economic challenges.

Commenters suggested that CMS incorporate patient-level data like race and ethnicity or the proportion of dually eligible patients served by an agency into the development of the HHVBP cohorts to create more level playing fields for agencies in historically marginalized areas to improve as the current cohort designations do not consider the diversity of patient population and have the potential to negatively impact providers in underserved areas.

Commenters suggested that CMS apply a stronger risk adjustment model as some HHAs care for much sicker and more complex populations than others. And, any advancements within the expanded HHVBP Model that account for pre-existing health disparities and population differences upon the start of care will help ensure agencies are compared fairly and that incentives are aligned to accommodate those requiring more complex care and those for individuals with maintenance goals whom some believe are not sufficiently weighted in the Model to incentivize HHAs to serve beneficiaries whose conditions may not improve, especially in the context of payment, quality reporting, and auditing policies and practices that favor beneficiaries with strong rehabilitation potential.

Commenters suggested that CMS adjust payments based on a provider's performance compared with its peers; provider performance compared to providers with similar mixes of patients to determine rewards or penalties based on performance; and, performance relative to national performance scales and the shares of beneficiaries at high social risk.

Commenters suggested that CMS convene a Technical Expert Panel for stakeholder input to ensure that metrics for health equity and the application to the expanded HHVBP Model are determined through evidence-based research.

Commenters had varying opinions about stratifying by dual eligible status, ranging from its importance to concerns that dual status does not reflect many other SDOHs that impact health outcomes or discrimination which affect access to care.

Response: We appreciate the comments that we received on this request for information. We are not responding to individual specific comments submitted in response to this RFI in this final rule, but we will take this feedback into consideration as we develop our policies for the future.

V. Home Infusion Therapy Services: Annual Payment Updates for CY 2023

In accordance with section 1834(u)(3) of the Act and 42 CFR 414.1550, our national home infusion therapy (HIT) services payment rates for the initial and subsequent visits in each of the home infusion therapy payment categories for CY 2023 are required to be the CY 2022 rate adjusted by the percentage increase in the Consumer Price Index (CPI) for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year reduced by a productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act as the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity. Section 1834(u)(3) of the Act further states that the application of the productivity adjustment may result in a percentage being less than 0.0 for a given year, and may result in payment being less than such payment rates for the preceding year. The CPI–U for the 12-month period ending in June of 2022 is 9.1 percent and the corresponding productivity adjustment is 0.4 percent based on IHS Global Inc.'s third-quarter 2022 forecast of the CY 2023 productivity adjustment (which reflects the 10-year moving average of changes in annual economy-wide private nonfarm business TFP for the period ending June 30, 2022). Therefore, the final home infusion therapy payment rate update for CY 2023 is 8.7 percent. We note that § 414.1550(d) does not permit any exercise of discretion by the Secretary.

The single payment amounts are also adjusted for geographic area wage differences using the geographic adjustment factor (GAF). We remind stakeholders that the GAFs are a weighted composite of each Physician Fee Schedule (PFS) localities work, practice expense (PE) and malpractice (MP) expense geographic practice cost indices (GPCIs). The periodic review and adjustment of the GPCIs is mandated by section 1848(e)(1)(C) of the Act. At each update, the proposed GPCIs are published in the PFS proposed rule to provide an opportunity for public comment and further revisions in response to comments prior to implementation. The GPCIs and the GAFs are updated triennially with a 2-year phase in and were last updated in the CY 2020 PFS final rule. For discussion regarding the next full update to the GPCIs and the GAFs see the CY 2023 PFS proposed rule (87 FR 46004). The CY 2023 final GAFs will be posted as an addendum on the PFS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched.*

We also apply a GAF budget neutrality factor to home infusion therapy payments whenever there are changes to the GAFs in order to eliminate the aggregate effect of variations in the GAFS. The CY 2023 GAF standardization factor that will be used in updating the final HIT payment amounts for CY 2023 is not available for this final rule, but will be posted once the CY 2023 GAFs are finalized. The final GAFs, GAF standardization factor, national home infusion therapy payment rates, and locality-adjusted home infusion therapy payment rates will be posted on CMS' Home Infusion Therapy Services web page [80] once these rates are finalized. In the future, we will no longer include a section in the HH PPS rule on home infusion therapy if no changes are being proposed to the payment methodology. Instead, the rates will be updated each year in a Change Request and posted on the website. For more in-depth information regarding the finalized policies associated with the scope of the home infusion therapy services benefit and conditions for payment, we refer readers to the CY 2020 HH PPS final rule with comment period (84 FR 60544).

VI. Collection of Information Requirements

A. Statutory Requirement for Solicitation of Comments

Under the Paperwork Reduction Act of 1995, we are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.

[80] Home Infusion Therapy Services Billing and Rates. *https://www.cms.gov/medicare/home-infusion-therapy-services/billing-and-rates.*

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

B. Information Collection Requirements (ICRs)

In the CY2023 HH PPS rule, we solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

1. ICRs for HH QRP

In section III. of this final rule, we are finalizing our proposal to end the temporary suspension of OASIS data on non-Medicare and non-Medicaid patients and to require HHAs to submit all-payer OASIS data for purposes of the HH QRP, beginning with the CY 2026 program year. We believe that the burden associated with this proposal is the time and effort associated with the submission of non-Medicare and non-Medicaid OASIS data. The submission of OASIS data on HH patients regardless of payer source will ensure that CMS can appropriately assess the quality of care provided to all patients receiving care by all Medicare-certified HHAs that participate in the HH QRP. As of January 1, 2022, there are approximately 11,354 HHAs reporting OASIS data to CMS under the HH QRP.

The OASIS is completed by RNs or PTs, or very occasionally by occupational therapists (OT) or speech language pathologists (SLP/ST). Data from 2020 show that the SOC/ROC OASIS is completed by RNs (approximately 76.50 percent of the time), PTs (approximately 20.78 percent of the time), and other therapists, including OTs and SLP/STs (approximately 2.72 percent of the time). Based on this analysis, we estimated a weighted clinician average hourly wage of $79.41, inclusive of fringe benefits, using the hourly wage data in Table F1. Individual providers determine the staffing resources necessary.

For purposes of calculating the costs associated with the information collection requirements, we obtained mean hourly wages for these from the U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates (*https://www.bls.gov/oes/current/oes_nat.htm*). To account for overhead and fringe benefits (100 percent), we have doubled the hourly wage. These amounts are detailed in Table F1.

Table F1—U.S. Bureau of Labor Statistics' May 2020 National Occupational Employment and Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage ($/hr)	Fringe Benefit (100%) ($/hr)	Adjusted Hourly Wage ($/hr)
Registered Nurse (RN)	29-1141	$38.47	$38.47	$76.94
Physical therapists HHAs	29-1123	$44.08	$44.08	$88.16
Speech-Language Pathologists (SLP)	29-1127	$40.02	$40.02	$80.04
Occupational Therapists (OT)	29-1122	$42.06	$42.06	$84.12
Medical Dosimetrists, Medical Records Specialists, and Health Technologists and Technicians	29-2098	$23.21	$23.21	$46.42

We estimate that this new requirement will result in HHAs having to increase by 30 percent the number of assessments they complete at each timepoint, with a corresponding 30 percent increase in their estimated hourly burden and estimated clinical cost.[81] For purposes of estimating burden, we utilize item-level burden estimates for OASIS-E that will be released on January 1, 2023.

Table F2 shows the total number of OASIS assessments that HHAs actually completed in CY 2020, as well as how those numbers would have increased if non-Medicare and non-Medicaid OASIS assessments had been required at that time.

Table F2—CY 2020 OASIS Submissions by Time Point

Time Point	CY 2020 Assessments Completed	CY 2020 Assessments Completed for Non-Medicare/Medicaid Patients	CY 2020 Assessments Completed for all Payer Sources
Start of Care	6,393,366	1,918,009	8,311,375
Resumption of Care	930,910	279,273	1,210,183
Follow-up	3,652,940	1,095,882	4,748,822
Transfer to an inpatient facility	1,796,827	539,048	2,335,875
Death at Home	50,493	15,147	65,640
Discharge from agency	5,206,230	1,561,869	6,768,099
TOTAL	18,030,766	5,409,228	23,439,994

Table F3 summarizes the estimated clinician hourly burden for Medicare only, non-Medicare, and all-payer patients receiving HH care for each OASIS assessment type using CY 2020 assessment totals.

Table F3—Summary of Estimated Clinician Hourly Burden

[81] As estimated by CMS analysis of payer source indicators in CY20 HH Cost report data compared to the CY20 HH OASIS data file.

OASIS Assessment Type	Clinician Estimated Hourly Burden – Medicare/Medicaid Only	Clinician Estimated Hourly Burden – Non-Medicare/Medicaid	Clinician Estimated Hourly Burden – All Payer
SOC	6,105,664	1,831,699	7,937,363
ROC	744,728	223,418	968,146
FU	675,793	202,739	878,532
TOC	197,650	59,291	256,941
DAH	2,272	681	2,953
DC	3,488,174	1,046,452	4,534,626
TOTAL	11,214,281	3,364,285	14,578,561

The calculations we used to estimate the total all-payer hourly burden with CY 2020 assessment totals and OASIS-E data elements at each time point of OASIS data collection are as follows:

Start of Care

Estimated Time Spent per Each OASIS-E SOC Assessment/Patient = 57.3 Clinician Minutes

203 data elements × 0.15 − 0.3 minutes per data element = 57.3 minutes of clinical time spent to complete data entry for the OASIS-E SOC assessment

- 21 DE counted as 0.15 minutes/DE (3.15)
- 9 DE counted as 0.25 minutes/DE (2.25)
- 173 DE counted as 0.30 minutes/DE (51.9)

Clinician Estimated Hourly Burden for All HHAs (11,354) for OASIS-E SOC Assessments = 7,937,363 Hours

57.3 clinician minutes per SOC assessment × 8,311,375 assessments = 476,241,787 minutes/60 minutes per hour = 7,937,363 hours for all HHAs

Resumption of Care

Estimated Time Spent per Each OASIS-D ROC Assessment/Patient = 48 Minutes

172 data elements × 0.15 − 0.3 minutes per data element = 48 minutes of clinical time spent to complete data entry for the OASIS–D ROC assessment

- 21 DE counted as 0.15 minute/DE (3.15)
- 9 DE counted as 0.25 minute/DE (2.25)
- 142 DE counted as 0.30 minute/DE (42.6)

Clinician Estimated Hourly Burden for All HHAs for OASIS-E ROC Assessments = 968,146 Hours

48 clinician minutes per ROC assessment × 1,210,183 ROC assessments = 58,088,784 minutes/60 minutes = 968,146 hours for all HHAs

Follow Up

Estimated Time Spent per Each OASIS-E FU Assessment/Patient = 11.1 Minutes

37 data elements × 0.3 minutes per data element = 11.1 minutes of clinical time spent to complete data entry for the OASIS–D FU assessment

- 37 DE counted as 0.30 minutes/DE

Clinician Estimate Hourly Burden for All HHAs for OASIS–E FU Assessments = 878,532 Hours

11.1 clinician minutes for OASIS-E FU assessments × 4,748,822 FU assessments = 52,711,924 minutes/60 minutes = 878,532 hours for all HHAs

Transfer of Care

Estimated Time Spent per Each OASIS-E TOC Assessment/Patient = 6.6 Minutes

22 data elements × 0.15–0.3 minutes per data element = 6.6 minutes of clinical time spent to complete data entry for the OASIS-D TOC assessment

- 22 DE counted as 0.30 minutes/DE

Clinician Estimated Hourly Burden for All HHAs for OASIS-E TOC Assessments = 256,941 Hours

6.6 clinician minutes × 2,335,875 TOC assessments = 15,416,775 minutes/60 minutes = 256,941 hours

Death at Home

Estimated Time Spent per Each OASIS–E DAH Assessment/Patient = 2.7 Minutes

9 data elements × 0.15–0.3 minutes per data element = 2.7 minutes of clinical time spent to complete data entry for the OASIS–E DAH assessment

- 9 DE counted as 0.30 minutes/DE

Clinician Estimated Hourly Burden for All HHAs for OASIS–E DAH Assessments = 2,953 Hours

2.7 clinician minutes × 65,640 DAH assessments = 177,228 minutes/60 minutes = 2,953 hours

Discharge

Estimated Time Spent per Each OASIS–E DC Assessment/Patient = 40.2 Minutes

146 data elements × 0.15–0.3 minutes per data element = 40.2 minutes of clinical time spent to complete data entry for the OASIS–E DC assessment

- 21 DE counted as 0.15 minutes/DE
- 9 DE counted as 0.25 minutes/DE
- 116 DE counted as 0.30 minutes/DE

Clinician Estimated Hourly Burden for All HHAs for OASIS–E DC Assessments = 4,534,626 Hours

40.2 clinician minutes × 6,768,099 DC assessments = 272,077,580 minutes/60 minutes = 4,534,626 hours

Table F4 summarizes the estimated clinician costs for the completion of the OASIS–E assessment tool for Medicare only, non-Medicare, and all-payer patients receiving HH care for each OASIS assessment type using CY2020 assessment and cost data.

Table F4. Summary of Estimated Clinician Costs

OASIS Assessment Type	Clinician Estimated Cost – Medicare/Medicaid Only	Clinician Estimated Cost– Non-Medicare/Medicaid	Clinician Estimated Cost – All Payer
SOC	$484,850,778.24	145,455,217.59	$630,305,995.83
ROC	$59,138,850.48	$17,741,623.38	$76,880,473.86
FU	53,664,793.6	16,099,432.5	$69,764,226.1
TOC	$15,695,483.53	$4,708,598.33	$20,404,081.86
DAH	$180,434.61	$54,063.12	$234,497.73
DC	$276,995,905.28	$83,098,745.38	$360,094,650.66
TOTAL*	$890,526,245.74	$267,157,680.3	$1,157,683,926.04

*The totals in this table published in the CY 2023 HH PPS proposed rule (87 FR 37675) included an error to Medicare/Medicaid estimated costs that created an error in the overall costs. We have updated these totals in this final rule.

Outlined later are the calculation for estimates used to derive total all-payer costs with OASIS–E data elements for each OASIS assessment type using CY2020 assessment and cost data:

Start of Care

Estimated Cost for All HHAs for OASIS–E SOC Assessments = $630,305,995.83 for All HHAs

$79.41/hour × 7,937,363 hours for all HHAs = $630,305,995.83 for all HHAs

Resumption of Care

Estimated Cost for All HHAs for OASIS–E ROC Assessments =$76,880,473.86 for All HHAs

$79.41/hour × 968,146 hours = $76,880,473.86 for all HHAs

Follow Up

Estimated Costs for All HHAs for OASIS–E FU Assessments = $82,962,803.4 for All HHAs

$79.41/hour × 878,532hours = $69,764,226 for all HHAs

Transfer of Care

Estimated Costs for All HHAs for All OASIS–E TOC Assessments = $20,404,081.86 for All HHAs

$79.41/hour × 256,946 hours = $20,404,081.86 for all HHAs

Death at Home

Estimated Costs for All HHAs for OASIS–E DAH Assessments = $234,497.73 for All HHAs

$79.41 × 2,953 hours = $234,497.73 for all HHAs

Discharge

Estimated Costs for All HHAs for OASIS–E DC Assessments = $360,094,650.66 for All HHAs

$79.41/hour × 4,534,626 hours = $360,094,650.66 for all HHAs

Based on the data in Tables F1 to F3 for the 11,354 active Medicare-certified HHAs, we estimate the total increase in costs associated with the changes in the HH QRP to be approximately 23,529.82 per HHA annually or $267,157,680.3 all HHAs. This corresponds to an estimated increase in clinician burden associated with the changes to the HH QRP of approximately 296.3 hours per HHA or approximately 3,364,285 hours for all HHAs. This additional burden would begin with January 1, 2025 HHA discharges

C. Submission of PRA-Related Comments

We have submitted a copy of this final rule to OMB for its review of the rule's information collection requirements. The requirements are not effective until they have been approved by OMB.

We invited public comments on these information collection requirements.

Comment: A few commenters outlined opposition to the proposal based on CMS's underestimate of the burden both in terms of time for completion and current costs of HHA staffing.

Response: Regarding concerns that we underestimated the burden of this proposal, we have utilized a consistent process for time spent and labor costs associated with the implementation of updates to OASIS, including OASIS E, the version of the OASIS that would be used with the implementation of this proposal. There are also factors that limit the scope of the associated burden. As we noted in our response to the policy proposal, providers already have processes in place to collect OASIS data for Medicare/Medicaid patients which limit the broader impact of the resumption of collection to include patients of all payer sources. Another factor is that when CMS surveyed providers, they shared that there are already cases in which OASIS data is collected on non-Medicare/Medicaid patients but not submitted to CMS. As this policy is focused on HHAs with systems in place to collect and submit OASIS data, the economy of scale is anticipated to limit the impacts on staffing or other burden issues.

After consideration of the public comments received, and as addressed in section III.D. of this final rule, we are finalizing the proposal to end the suspension of non-Medicare/non-Medicaid OASIS data collection and to require HHAs to submit all-payer OASIS data for purposes of the HH QRP beginning with the CY 2027 HH QRP program year.

VII. Regulatory Impact Analysis

A. Statement of Need

1. HH PPS

Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare. In addition, section 1895(b) of the Act requires: (1) the computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary; (2) the prospective payment amount under the HH PPS to be an appropriate unit of service based on the number, type, and duration of visits provided within that unit; and (3) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act requires the standard prospective payment amount

be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level. Section 1895(b)(3)(B)(iv) of the Act provides the Secretary with the authority to implement adjustments to the standard prospective payment amount (or amounts) for subsequent years to eliminate the effect of changes in aggregate payments during a previous year or years that were the result of changes in the coding or classification of different units of services that do not reflect real changes in case-mix. Section 1895(b)(5) of the Act provides the Secretary with the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. Section 50208 of the BBA of 2018 (Pub. L. 115–123) required the Secretary to implement a new methodology used to determine rural add-on payments for CYs 2019 through 2022. This methodology used to determine rural add-on payments has expired and will not affect payments for CY 2023.

Sections 1895(b)(2) and 1895(b)(3)(A) of the Act, as amended by section 51001(a)(1) and 51001(a)(2) of the BBA of 2018 respectively, required the Secretary to implement a 30-day unit of service, for 30-day periods beginning on and after January 1, 2020. Section 1895(b)(3)(D)(i) of the Act, as added by section 51001(a)(2)(B) of the BBA of 2018, requires the Secretary to annually determine the impact of differences between assumed behavior changes, as described in section 1895(b)(3)(A)(iv) of the Act, and actual behavior changes on estimated aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Section 1895(b)(3)(D)(ii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more permanent increases or decreases to the standard prospective payment amount (or amounts) for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Additionally, 1895(b)(3)(D)(iii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more temporary increases or decreases to the payment amount for a unit of home health services for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. The HH PPS wage index utilizes the wage adjustment factors used by the Secretary for purposes of sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act for hospital wage adjustments.

2. HH QRP

Section 1895(b)(3)(B)(v) of the Act authorizes the HH QRP, which requires HHAs to submit data in accordance with the requirements specified by CMS. Failure to submit data required under section 1895(b)(3)(B)(v) of the Act with respect to a program year will result in the reduction of the annual home health market basket percentage increase otherwise applicable to an HHA for the corresponding calendar year by 2 percentage points.

3. Expanded HHVBP Model

In the CY 2022 HH PPS final rule (86 FR 62292 through 62336) and codified at 42 CFR part 484 subpart F, we finalized our policy to expand the HHVBP Model to all Medicare certified HHAs in the 50 States, territories, and District of Columbia beginning January 1, 2022. CY 2022 was designated as a pre-implementation year during which CMS will provide HHAs with resources and training. This pre-implementation year was intended to allow HHAs time to prepare and learn about the expectations and requirements of the expanded HHVBP Model without risk to payments.

We also finalized that the expanded Model will use a baseline year to establish the benchmarks and achievement thresholds for each cohort on each measure for HHAs. The baseline year is currently 2019. In this rule, we are finalizing the establishment of a separate HHA baseline year to determine HHA improvement thresholds by measure for each individual agency to assess achievement or improvement of HHA performance on applicable quality measures. As codified at § 484.350(b), for an HHA that is certified by Medicare on or after January 1, 2019, the baseline year is the first full calendar year of services beginning after the date of Medicare certification, with the exception of HHAs certified on January 1, 2019 through December 31, 2019, for which the baseline year is calendar year 2021, and the first performance year is the first full calendar year (beginning with CY 2023) following the baseline year. As discussed in that final rule, we stated that we may conduct analyses of the impact of using various baseline periods and consider any changes for future rulemaking.

Due to the continuation of the COVID–19 PHE through CY 2021 and its effects on the quality measures in the expanded HHVBP Model used to determine payment adjustments for eligible HHAs (as described in section IV.B.2.b. of this final rule), we believe an HHA's baseline year that would be CY 2021 should be adjusted to CY 2022. This policy aligns with similar proposals in the Hospital VBP and SNF VBP Programs to account for the continued effects of the COVID–19 PHE on measures in 2021. Additionally, amending the HHA baseline year (and defining this term) for HHAs certified prior to 2022 starting in the CY 2023 performance year as well as changing the Model baseline year (and defining this term) to CY 2022 starting in the CY 2023 performance year allows eligible HHAs to be scored on measure data that is more current and is intended to compare HHAs to a base year that is 2 years after the peak of the pandemic.

4. Medicare Coverage of Home Infusion Therapy

Section 1834(u)(1) of the Act, as added by section 5012 of the 21st Century Cures Act, requires the Secretary to establish a home infusion therapy services payment system under Medicare. This payment system requires a single payment to be made to a qualified home infusion therapy supplier for items and services furnished by a qualified home infusion therapy supplier in coordination with the furnishing of home infusion drugs. Section 1834(u)(1)(A)(ii) of the Act states that a unit of single payment is for each infusion drug administration calendar day in the individual's home. The Secretary shall, as appropriate, establish single payment amounts for types of infusion therapy, including to consider variation in utilization of nursing services by therapy type. Section 1834(u)(1)(A)(iii) of the Act provides a limitation to the single payment amount, requiring that it shall not exceed the amount determined under the Physician Fee Schedule

(under section 1848 of the Act) for infusion therapy services furnished in a calendar day if furnished in a physician office setting, except such single payment shall not reflect more than 5 hours of infusion for a particular therapy in a calendar day. Section 1834(u)(1)(B)(i) of the Act requires that the single payment amount be adjusted by a geographic wage index. Finally, section 1834(u)(1)(C) of the Act allows for discretionary adjustments which may include outlier payments and other factors as deemed appropriate by the Secretary, and are required to be made in a budget neutral manner. Section 1834(u)(3) of the Act specifies that annual updates to the single payment are required to be made beginning January 1, 2022, by increasing the single payment amount by the percentage increase in the CPI–U for all urban consumers for the 12-month period ending with June of the preceding year, reduced by the productivity adjustment. The unit of single payment for each infusion drug administration calendar day, including the required adjustments and the annual update, cannot exceed the amount determined under the fee schedule under section 1848 of the Act for infusion therapy services if furnished in a physician's office, and the single payment amount cannot reflect more than 5 hours of infusion for a particular therapy per calendar day.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting 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) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Therefore, we estimate that this rule is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that presents our best estimate of the costs and benefits of this rule.

C. Detailed Economic Analysis

This rule finalizes updates to Medicare payments under the HH PPS for CY 2023. The net transfer impact related to the changes in payments under the HH PPS for CY 2023 is estimated to be 125 million (0.7 percent). The $125 million increase in estimated payments for CY 2023 reflects the effects of the proposed CY 2023 home health payment update percentage of 4.0 percent ($725 million increase), an estimated 3.5 percent decrease that reflects the effects of the permanent behavioral adjustment ($635 million decrease) and an estimated 0.2 percent increase that reflects the effects of an updated FDL ($35 million increase).

We use the latest data and analysis available, however, we do not adjust for future changes in such variables as number of visits or case-mix. This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based primarily on Medicare claims data for periods that ended on or before December 31, 2021. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table F5 represents how HHA revenues are likely to be affected by the finalized policy changes for CY 2023. For this analysis, we used an analytic file with linked CY 2021 OASIS assessments and home health claims data for dates of service that ended on or before December 31, 2021. The first column of Table F5 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the number of facilities in the impact analysis. The third column shows the payment effects of the permanent behavioral adjustment on all payments. The fourth column shows the payment effects of the recalibration of the case-mix weights offset by the case-mix weights budget neutrality factor. The fifth column shows the payment effects of updating to the CY 2023 wage index with a 5-percent cap on wage index decreases. The sixth column shows the payment effects of the final CY 2023 home health payment update percentage. The seventh column shows the payment effects of the new FDL, and the last column shows the combined effects of all the finalized provisions.

Overall, it is projected that aggregate payments in CY 2023 would increase by 0.7 percent which reflects the 3.5 percent decrease from the permanent behavioral adjustment, the 4.0 payment update percentage increase, and the 0.2 percent increase from lowering the FDL. As illustrated in Table F5, the combined effects of all of the changes vary by specific types of providers and by location. We note that some individual HHAs within the same group may experience different impacts on payments than others due to the distributional impact of the CY 2023 wage index, the percentage of total HH PPS payments that were subject to the LUPA or paid as outlier payments, and the degree of Medicare utilization.

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Table F5—Estimated HHA Impacts by Facility Type and Area of the Country, CY 2023

	Number of Agencies	Permanent BA Adjustment	CY 2023 Case-Mix Weights Recalibration Neutrality Factor	CY 2023 Updated Wage Index	CY 2023 Proposed HH Payment Update Percentage	Fixed-Dollar Loss (FDL) Update	Total
All Agencies	**9,504**	**-3.5%**	**0.0%**	**0.0%**	**4.0%**	**0.2%**	**0.7%**
Facility Type and Control							
Free-Standing/Other Vol/NP	929	-3.4%	0.1%	-0.2%	4.0%	0.3%	0.7%
Free-Standing/Other Proprietary	7,743	-3.6%	0.0%	0.1%	4.0%	0.2%	0.7%
Free-Standing/Other Government	173	-3.5%	0.3%	0.1%	4.0%	0.3%	1.2%
Facility-Based Vol/NP	466	-3.3%	0.2%	-0.1%	4.0%	0.4%	1.1%
Facility-Based Proprietary	48	-3.5%	0.1%	-0.1%	4.0%	0.2%	0.7%
Facility-Based Government	145	-3.5%	0.1%	-0.2%	4.0%	0.3%	0.7%
Subtotal: Freestanding	8,845	-3.6%	0.0%	0.0%	4.0%	0.2%	0.7%
Subtotal: Facility-based	659	-3.4%	0.2%	-0.1%	4.0%	0.3%	1.1%
Subtotal: Vol/NP	1,395	-3.4%	0.1%	-0.2%	4.0%	0.3%	0.8%
Subtotal: Proprietary	7,791	-3.6%	0.0%	0.1%	4.0%	0.2%	0.7%
Subtotal: Government	318	-3.5%	0.2%	-0.1%	4.0%	0.3%	0.9%
Facility Type and Control: Rural							
Free-Standing/Other Vol/NP	221	-3.5%	0.2%	-0.2%	4.0%	0.3%	0.8%
Free-Standing/Other Proprietary	786	-3.7%	0.0%	0.0%	4.0%	0.2%	0.5%
Free-Standing/Other Government	118	-3.4%	0.3%	0.0%	4.0%	0.3%	1.2%
Facility-Based Vol/NP	204	-3.4%	0.3%	-0.3%	4.0%	0.4%	1.0%
Facility-Based Proprietary	16	-3.7%	0.2%	0.5%	4.0%	0.2%	1.2%
Facility-Based Government	107	-3.4%	0.3%	-0.4%	4.0%	0.3%	0.8%
Facility Type and Control: Urban							
Free-Standing/Other Vol/NP	708	-3.4%	0.1%	-0.2%	4.0%	0.3%	0.7%
Free-Standing/Other Proprietary	6,957	-3.6%	0.0%	0.1%	4.0%	0.2%	0.7%
Free-Standing/Other Government	55	-3.5%	0.3%	0.2%	4.0%	0.2%	1.2%
Facility-Based Vol/NP	262	-3.3%	0.2%	-0.1%	4.0%	0.3%	1.1%
Facility-Based Proprietary	32	-3.5%	0.1%	-0.3%	4.0%	0.3%	0.6%
Facility-Based Government	38	-3.5%	0.0%	-0.1%	4.0%	0.2%	0.6%
Facility Location: Urban or Rural							
Rural	1,452	-3.6%	0.1%	-0.1%	4.0%	0.2%	0.6%
Urban	8,052	-3.5%	0.0%	0.0%	4.0%	0.2%	0.7%
Facility Location: Region of the Country (Census Region)							
New England	329	-3.4%	0.0%	-0.7%	4.0%	0.3%	0.2%
Mid Atlantic	414	-3.5%	0.2%	0.1%	4.0%	0.3%	1.1%
East North Central	1,562	-3.5%	-0.2%	-0.4%	4.0%	0.2%	0.1%
West North Central	612	-3.4%	-0.1%	-0.3%	4.0%	0.3%	0.5%
South Atlantic	1,573	-3.6%	0.0%	-0.4%	4.0%	0.2%	0.2%
East South Central	363	-3.7%	0.0%	-0.2%	4.0%	0.1%	0.3%
West South Central	2,138	-3.6%	0.0%	0.4%	4.0%	0.2%	1.0%
Mountain	697	-3.5%	-0.1%	0.0%	4.0%	0.3%	0.7%
Pacific	1,773	-3.6%	0.0%	0.7%	4.0%	0.2%	1.4%
Outlying	43	-3.6%	1.2%	-0.2%	4.0%	0.2%	1.6%
Facility Size (Number of 30-day Periods)							
< 100 periods	1,943	-3.5%	0.2%	0.0%	4.0%	0.3%	1.0%
100 to 249	1,365	-3.5%	0.2%	0.1%	4.0%	0.3%	1.1%
250 to 499	1,681	-3.5%	0.0%	0.1%	4.0%	0.3%	0.8%
500 to 999	1,944	-3.6%	0.0%	0.2%	4.0%	0.2%	0.9%
1,000 or More	2,571	-3.5%	0.0%	0.0%	4.0%	0.2%	0.7%

Source: CY 2021 Medicare claims data for periods with matched OASIS records ending in CY2021 (as of July 15, 2022).

Notes:
1.The permanent BA adjustment impact reflected in column 3 does not equal the finalized -3.925 percent permanent BA adjustment. The -3.5 percent reflected in column 3 includes all payments while the finalized -3.925 percent BA adjustment only applies to the national, standardized 30-Day period payments and does not impact payments for 30-day periods which are LUPAs.
2.The CY 2023 home health payment update percentage reflects the home health productivity adjusted market basket update of 4.0 percent as described in section II.B.3.a of this final rule.

REGION KEY:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Middle Atlantic=Pennsylvania, New Jersey, New York
South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin
East South Central-Alabama, Kentucky, Mississippi, Tennessee
West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West South Central=Arkansas, Louisiana, Oklahoma, Texas
Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming
Pacific=Alaska, California, Hawaii, Oregon, Washington
Other=Guam, Puerto Rico, Virgin Islands

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2. Impacts for the HH QRP for CY 2023

Failure to submit HH QRP data required under section 1895(b)(3)(B)(v) of the Act with respect to a program year will result in the reduction of the annual home health market basket percentage increase otherwise applicable to an HHA for the corresponding calendar year by 2 percentage points. For the CY 2022 program year, 1,169 of the 11,128 active Medicare-certified HHAs, or approximately 10.5 percent, did not receive the full annual percentage increase because they did not meet assessment submission requirements. The 1,169 HHAs that did not satisfy the reporting requirements of the HH QRP for the CY 2022 program year represent $437 million in home health claims payment dollars during the reporting period out of a total $17.3 billion for all HHAs.

As discussed in section III. of this final rule, we are ending the temporary suspension on our collection of non-Medicare/non-Medicaid data under section 704 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and, in accordance with section 1895(b)(3)(B)(v) of the Act, requiring HHAs to report all-payer OASIS data for purposes of the HH QRP, beginning with the CY 2026 program year.

Section III. of this final rule provides a detailed description of the net increase in burdens associated with the proposed changes. We proposed that HHAs would be required to begin reporting all-payer OASIS data beginning with January 1, 2025 discharges. The cost impact of this proposed changes was estimated to be a net increase of $267,157,680.3 in annualized cost to HHAs, discounted at 7 percent relative to year 2020, over a perpetual time horizon beginning in CY 2026. We described the estimated burden and cost reductions for these measures in section V1.B.1. of this final rule. In summary, the submission of data on non-Medicare/Medicaid patients for the HH QRP is estimated to increase the burden on HHAs to $23,529.82 per HHA annually, or $267,157,680.3 for all HHAs annually.

3. Impacts for the Expanded HHVBP Model

In the CY 2022 HH PPS final rule (86 FR 62402 through 62410), we estimated that the expanded HHVBP Model would generate a total projected 5-year gross FFS savings for CYs 2023 through 2027 of $3,376,000,000. We are finalizing our proposed changes to the baseline years and note that it will not change those estimates because they do not change the number of HHAs in the Model or the payment methodology.

4. Impact of the CY 2023 Payment for Home Infusion Therapy Services

We did not propose any changes related to payments for home infusion therapy services in CY 2023. The CY 2023 home infusion therapy service payments will be updated by the CPI–U reduced by the productivity adjustment and geographically adjusted in a budget neutral manner using the GAF standardization factor. The overall economic impact of the statutorily-required HIT payment rate updates is an estimated increase in payments to HIT suppliers of 8.7 percent ($600,000) for CY 2023 based on the CPI–U for the 12-month period ending in June of 2022 of 9.1 percent and the corresponding productivity adjustment is 0.4 percent

D. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with the regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on this year's proposed rule will be the number of reviewers of this final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed this year's proposed rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of commenters would be a fair estimate of the number of reviewers of this rule. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this final rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $115.22 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/current/oes_nat.htm.* Assuming an average reading speed, we estimate that it would take approximately 2.54 hours for the staff to review half of this final rule. For each entity that reviews the rule, the estimated cost is $292.33 (2.54 hours × $115.22). Therefore, we estimate that the total cost of reviewing this regulation is $ 263,389.33 ($292.33 × 901) [901 is the number of estimated

reviewers, which is based on the total number of unique commenters from this year's proposed rule].

E. Alternatives Considered

1. HH PPS

For the CY 2023 HH PPS final rule, we considered alternatives to the provisions articulated in section II.B.2. of this final rule. Specifically, we considered other potential methodologies recommended by commenters to determine the difference between assumed versus actual behavior change on estimated aggregate expenditures in response to the comment solicitation in the CY 2022 HH PPS proposed rule (86 FR 35892). However, most of the recommended alternate methodologies controlled for certain actual behavior changes (for example, the reduction in therapy visits or LUPA visits) and this is not in alignment with our interpretation of the statute at section 1895(b)(3)(D)(i) of the Act, which requires CMS to examine actual behavior change and make temporary and permanent adjustments to the standardized payment amounts. Therefore, any method that would control for an actual behavior change affecting payment would be contrary to what is required by the Social Security Act. Additionally, we considered alternative approaches to the implementation of the permanent and temporary behavior assumption adjustments. As described in section II.B.2. of this rule, to help prevent future over or underpayments, we calculated a permanent prospective adjustment of −7.85 percent by determining what the 30-day base payment amount should have been in CYs 2020 and 2021 in order to achieve the same estimated aggregate expenditures as obtained from the simulated 60-day episodes and are finalizing half of the determined adjustment which is −3.925 percent for CY 2023. One alternative to the −3.925 percent permanent payment adjustment included taking the full −7.85 percent adjustment for CY 2023. However, due to the potential hardship to some providers of implementing the full −7.85 percent at once, we decided it would be more appropriate to take half the adjustment resulting in a −3.925 percent permanent payment adjustment for CY 2023. However, we note the permanent adjustment to account for actual behavior changes in CYs 2020 and 2021 should be −7.85 percent. Therefore, applying a −3.925 percent permanent adjustment to the CY 2023 30-day payment rate would not adjust the rate fully to account for differences in behavior changes on estimated aggregate expenditures during those years. We would have to account for that difference, and any other potential adjustments needed to the base payment rate, to account for behavior change based on data analysis in future rulemaking. Another alternative would be to delay the full permanent adjustment to a future year. However, we conclude that delaying the full permanent adjustment would not be appropriate, as this would further impact budget neutrality and likely lead to a compounding effect creating the need for a much larger reduction to the payment rate in future years.

2. HHQRP

We did not consider any alternatives in this final rule.

3. Expanded HHVBP Model

We discuss the alternative we considered to the finalized change to the HHA baseline year for each applicable measure in the expanded HHVBP Model in section IV.B.2.b. of this final rule.

4. Home Infusion Therapy

We did not consider any alternatives in this final rule.

F. Accounting Statements and Tables

1. HH PPS

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf,* in Table F7, we have prepared an accounting statement showing the classification of the transfers and benefits associated with the CY 2023 HH PPS provisions of this rule.

Table F7—Accounting Statement: HH PPS Classification of Estimated Transfers and Benefits, From CY 2022 to 2023

Category	Transfers
Annualized Monetized Transfers	$125 million
From Whom to Whom?	Federal Government to HHAs

2. HHQRP

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table F8, we have prepared an accounting statement showing the classification of the expenditures associated with this final rule as they relate to HHAs. Table F8 provides our best estimate of the increase in burden for OASIS submission.

Table F8—Accounting Statement: Classification of Estimated Costs of Oasis Item Collection, From CY 2026 to CY 2027

Category	Costs
Annualized Net Monetary Burden for HHAs' Submission of the OASIS	$267,157,680.30

3. Expanded HHVBP Model

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table F9, we have prepared an accounting statement Table F9 provides our best estimate of the decrease in Medicare payments under the expanded HHVBP Model.

Table F9—Accounting Statement: Expanded HHVBP Model Classification of Estimated Transfers for CYs 2023–2027

Category	Transfers	Discount Rate	Period Covered
Annualized Monetized Transfers	-$662.4 Million	7%	CYs 2023-2027
Annualized Monetized Transfers	-$669.7 Million	3%	CYs 2023-2027
From Whom to Whom?	Federal Government to Hospitals and SNFs		

G. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. In addition, HHAs and home infusion therapy suppliers are small entities, as that is the term used in the RFA. Individuals and States are not included in the definition of a small entity.

The North American Industry Classification System (NAICS) was adopted in 1997 and is the current standard used by the Federal statistical agencies related to the U.S. business economy. We utilized the NAICS U.S. industry title ''Home Health Care Services'' and corresponding NAICS code 621610 in determining impacts for small entities. The NAICS code 621610 has a size standard of $16.5 million [82] and approximately 96 percent of HHAs and home infusion therapy suppliers are considered small entities. Table F10 shows the number of firms, revenue, and estimated impact per home health care service category.

Table F10—Number of Firms, Revenue, and Estimated Impact of Home Health Care Services by NAICS Code 621610

NAICS Code	NAICS Description	Enterprise Size	Number of Firms	Receipts ($1,000)	Estimated Impact ($1,000) per Enterprise Size
621610	Home Health Care Services	<100	5,861	210,697	$35.95
621610	Home Health Care Services	100-499	5,687	1,504,668	$264.58
621610	Home Health Care Services	500-999	3,342	2,430,807	$727.35
621610	Home Health Care Services	1,000-2,499	4,434	7,040,174	$1,587.77
621610	Home Health Care Services	2,500-4,999	1,951	6,657,387	$3,412.29
621610	Home Health Care Services	5,000-7,499	672	3,912,082	$5,821.55
621610	Home Health Care Services	7,500-9,999	356	2,910,943	$8,176.81
621610	Home Health Care Services	10,000-14,999	346	3,767,710	$10,889.34
621610	Home Health Care Services	15,000-19,999	191	2,750,180	$14,398.85
621610	Home Health Care Services	≥20,000	961	51,776,636	$53,877.87
621610	Home Health Care Services	Total	23,801	82,961,284	$3,485.62

Source: Data obtained from United States Census Bureau table "us_6digitnaics_rcptsize_2017" (SOURCE: 2017 County Business Patterns and Economic Census) Release Date: 5/28/2021: https://www2.census.gov/programs-surveys/susb/tables/2017/
Notes: Estimated impact is calculated as Receipts ($1,000)/Number of firms.

The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of HHAs' visits are Medicare paid visits and therefore the majority of HHAs' revenue consists of Medicare payments. Based on our analysis, we conclude that the policies finalized in this rule would result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of HHAs. Therefore, the Secretary has determined that this HH PPS final rule will have significant economic impact on a substantial number of small entities. We estimate that the net impact of the policies in this rule is approximately $125 million in increased payments to HHAs in CY 2023. The $125 million in increased payments is reflected in the last column of the first row in Table F5 as a 0.7 percent increase in expenditures when comparing CY 2023 payments to estimated CY 2022 payments. The 0.7 percent increase is mostly driven by the impact of the permanent behavior assumption adjustment reflected in the third column of Table F5. Further detail is presented in Table F5, by HHA type and location.

With regards to options for regulatory relief, we note that section 1895(b)(3)(D)(i) of the Act requires CMS to annually determine the impact of differences between the assumed behavior changes finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56455) and actual behavior changes on estimated aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Additionally, section 1895(b)(3)(D)(ii) and (iii) of the Act requires that CMS make permanent and temporary adjustments to the payment rate to offset for such increases or decreases in estimated aggregate expenditures through notice and comment rulemaking. While we find that the −7.85 percent permanent payment adjustment, described in section II.B.2.c. of this final rule, is necessary to offset the increase in estimated aggregate expenditures for CYs 2020 and 2021 based on the impact of the differences between assumed behavior changes and actual behavior changes, we will also continue to reprice claims, per the finalized methodology, and make any additional adjustments at a time and manner deemed appropriate in future rulemaking. As mentioned previously,

[82] *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

we recognize that implementing the full permanent and temporary adjustments to the CY 2023 payment rate may adversely affect HHAs, including small entities. Therefore, due to the potential hardship of implementing the full −7.85 percent at once, we find it would be more appropriate to take half of the adjustment for CY 2023. Therefore, we are finalizing a permanent prospective adjustment of −3.925 percent for CY 2023. We solicited comments on the overall HH PPS RFA analysis and received no comments.

Guidance issued by HHS interpreting the Regulatory Flexibility Act considers the effects economically 'significant' only if greater than 5 percent of providers reach a threshold of 3- to 5-percent or more of total revenue or total costs. Among the over 7,500 HHAs that are estimated to qualify to compete in the expanded HHVBP Model, we estimate that the percent payment adjustment resulting from this rule would be larger than 3 percent, in magnitude, for about 28 percent of competing HHAs (estimated by applying the proposed 5-percent maximum payment adjustment under the expanded Model to CY 2019 data). As a result, more than the RFA threshold of 5-percent of HHA providers nationally would be significantly impacted. We refer readers to Tables 43 and 44 in the CY 2022 HH PPS final rule (86 FR 62407 through 62410) for our analysis of payment adjustment distributions by State, HHA characteristics, HHA size and percentiles.

Thus, the Secretary has certified that this final rule would have a significant economic impact on a substantial number of small entities. Though the RFA requires consideration of alternatives to avoid economic impacts on small entities, the intent of the rule, itself, is to encourage quality improvement by HHAs through the use of economic incentives. As a result, alternatives to mitigate the payment reductions would be contrary to the intent of the rule, which is to test the effect on quality and costs of care of applying payment adjustments based on HHAs' performance on quality measures.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule is not applicable to hospitals. Therefore, the Secretary has certified that this final rule would not have a significant economic impact on the operations of small rural hospitals.

I. Unfunded Mandates Reform Act (UMRA)

Section 202 of UMRA of 1995 UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $165 million. This final rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $165 million in any one year.

J. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under these criteria of Executive Order 13132, and have determined that it would not impose substantial direct costs on State or local governments.

K. Conclusion

In conclusion, we estimate that the provisions in this final rule will result in an estimated net increase in home health payments of 0.7 percent for CY 2023 ($125 million). The $125 million increase in estimated payments for CY 2023 reflects the effects of the CY 2023 home health payment update percentage of 4.0 percent ($725 million increase), a 0.2 percent increase in payments due to the new lower FDL ratio, which will increase outlier payments in order to target to pay no more than 2.5 percent of total payments as outlier payments ($35 million increase) and an estimated 3.5 percent decrease in payments that reflects the effects of the permanent behavior adjustment ($635 million decrease).

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on October 26, 2022.

List of Subjects in 42 CFR Part 484

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 484—HOME HEALTH SERVICES

■ 1. The authority citation for part 484 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 484.220 is amended by adding paragraph (c) to read as follows:

§ 484.220 Calculation of the case-mix and wage area adjusted prospective payment rates.

* * * * *

(c) Beginning on January 1, 2023, CMS applies a cap on decreases to the home health wage index such that the wage index applied to a geographic area is not less than 95 percent of the wage index applied to that geographic area in the prior calendar year. The 5-percent cap on negative wage index changes is implemented in a budget neutral manner through the use of wage index budget neutrality factors.

■ 3. Section 484.245 is amended—

■ a. By revising paragraph (b)(1)(i);

■ b. In paragraph (b)(1)(iii) by removing the sentence ''Quality data required under section 1895(b)(3)(B)(v)(ii) of the Act, including HHCAHPS survey data.''; and

■ c. By adding paragraph (b)(3).

The revision and addition read as follows:

§ 484.245 Requirements under the Home Health Quality Reporting Program (HH QRP).

* * * * *

(b) * * *

(1) * * *

(i) Data—

(A) Required under section 1895(b)(3)(B)(v)(II) of the Act, including HHCAHPS survey data; and

(B) On measures specified under sections 1899B(c)(1) and 1899B(d)(1) of the Act.

* * * * *

(3) *Measure removal factors.* CMS may remove a quality measure from the HH QRP based on one or more of the following factors:

(i) Measure performance among HHAs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.

(ii) Performance or improvement on a measure does not result in better patient outcomes.

(iii) A measure does not align with current clinical guidelines or practice.

(iv) The availability of a more broadly applicable (across settings, populations, or conditions) measure for the particular topic.

(v) The availability of a measure that is more proximal in time to desired patient outcomes for the particular topic.

(vi) The availability of a measure that is more strongly associated with desired patient outcomes for the particular topic.

(vii) Collection or public reporting of a measure leads to negative unintended consequences other than patient harm.

(viii) The costs associated with a measure outweigh the benefit of its continued use in the program.

* * * * *

■ 4. Section 484.345 is amended—

■ a. In the definition of ''Achievement threshold'' removing the phrase ''during a baseline year'' and adding in its place the phrase ''during a Model baseline year'';

■ b. By removing the definition of ''Baseline year'';

■ c. In the definition of ''Benchmark'' removing the phrase ''during the baseline year'' and adding in its place the phrase ''during the Model baseline year'';

■ d. By adding the definition of ''HHA baseline year'' in alphabetical order;

■ e. In the definition of ''Improvement threshold'' removing the phrase ''during the baseline year.'' and adding in its place the phrase ''during the HHA baseline year.''; and

■ f. By adding the definition of ''Model baseline year'' in alphabetical order.

The additions read as follows:

§ 484.345 Definitions.

* * * * *

HHA baseline year means the calendar year used to determine the improvement threshold for each measure for each individual competing HHA.

* * * * *

Model baseline year means the calendar year used to determine the benchmark and achievement threshold for each measure for all competing HHAs.

* * * * *

■ 5. Section 484.350 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 484.350 Applicability of the Expanded Home Health Value-Based Purchasing (HHVBP) Model.

* * * * *

(b) *New HHAs.* A new HHA is certified by Medicare on or after January 1, 2022. For new HHAs, the following apply:

(1) The HHA baseline year is the first full calendar year of services beginning after the date of Medicare certification.

(2) The first performance year is the first full calendar year following the HHA baseline year.

(c) *Existing HHAs.* An existing HHA is certified by Medicare before January 1, 2022 and the HHA baseline year is CY 2022.

§ 484.370 [Amended]

■ 6. Section 484.370(a) is amended by removing the phrase ''Model for the baseline year, and CMS'' and adding in its place the phrase ''Model, and CMS''.

Dated: October 26, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–23722 Filed 10–31–22; 4:15 pm]

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Part III

National Labor Relations Board

29 CFR Part 103
Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships; Proposed Rule

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA22

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: As part of its ongoing efforts to more effectively administer the National Labor Relations Act (the Act or the NLRA) and to further the purposes of the Act, the National Labor Relations Board (the Board) proposes to rescind and replace amendments that the Board made in April 2020 to its rules and regulations governing the filing and processing of petitions for a Board-conducted representation election while unfair labor practice charges are pending, and following an employer's voluntary recognition of a union as the majority-supported collective-bargaining representative of the employer's employees. The Board also proposes to rescind an amendment governing the filing and processing of petitions for a Board-conducted representation election in the construction industry. The Board believes, subject to comments, that these proposed changes will better protect employees' statutory right to freely choose whether to be represented by a labor organization, promote industrial peace, and encourage the practice and procedure of collective bargaining.

DATES: Comments regarding this proposed rule must be received by the Board on or before January 3, 2023. Comments replying to comments submitted during the initial comment period must be received by the Board on or before January 17, 2023. Reply comments should be limited to replying to comments previously filed by other parties. No late comments will be accepted.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.* Follow the instructions for submitting comments.

Delivery—Comments may be submitted by mail or hand delivery to: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Submission of Comments

Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. It is not necessary to mail comments if they have been filed electronically with *regulations.gov.* If you mail comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD). Because of precautions in place due to COVID–19, the Board recommends that comments be submitted electronically or by mail rather than by hand delivery. If you feel you must hand deliver comments to the Board, hand delivery will be accepted by appointment only. Please call (202) 273–1940 to arrange for hand delivery of comments. Please note that there may be a delay in the electronic posting of hand-delivered and mail comments due to the needs for safe handling and manual scanning of the comments. The Board strongly encourages electronic filing over mail or hand delivery of comments.

Only comments submitted through *http://www.regulations.gov,* hand-delivery, or mail will be accepted; *ex parte* communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. ET) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard their information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of their comment.

II. Summary of 2020 Rule

As described more fully below, the Board is proposing to rescind and replace the amendments to its rules and regulations adopted in 2020 governing blocking charges and the voluntary-recognition bar doctrine and to rescind the amendment governing proof of majority support for labor organizations representing employees in the construction industry. See Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships, 85 FR 18366 (April 1, 2020).

First, the April 2020 final rule substantially eliminated the Board's long-established blocking charge policy, under which regional directors had authority to delay processing election petitions in the face of pending unfair labor practice charges alleging conduct that would interfere with employee free choice in an election or conduct that is inherently inconsistent with the election petition itself. Under the final rule, regional directors generally are now required to conduct an election even when an unfair labor practice charge and blocking request have been filed. 85 FR 18370, 18375. Moreover, under the final rule, regional directors generally are further required to immediately open and count the ballots, except in a limited subset of cases where the ballots will be impounded for a maximum of 60 days (unless a complaint issues within 60 days of the election). 85 FR 18369–18370, 18376.[1]

Second, the April 2020 final rule made changes to the voluntary-recognition bar doctrine, which encourages collective bargaining and promotes industrial stability by allowing a union—after being voluntarily and lawfully recognized by an employer—to represent employees for a certain period of time without being subject to challenge. The final rule abandoned *Lamons Gasket Co.,* 357

[1] However, the April 2020 final rule did not disturb the authority of regional directors to dismiss a representation petition, subject to reinstatement, under the Board's long-standing practice of ''merit-determination dismissals.'' See *Rieth-Riley Construction Co., Inc.,* 371 NLRB No. 109 (2022).

NLRB 934 (2011), and returned to the approach taken previously by the Board in *Dana Corp.,* 351 NLRB 434 (2007). Under the final rule, neither an employer's voluntary recognition of a union, nor the first collective-bargaining agreement executed by the parties after recognition, will bar the processing of an election petition, unless: (1) the employer or the union notifies the Board's Regional Office that recognition has been granted; (2) the employer posts a notice ''informing employees that recognition has been granted and that they have a right to file a petition during a 45-day 'window period' beginning on the date the notice is posted''; (3) the employer distributes the notice electronically to employees, if electronic communication is customary; and (4) 45 days from the posting date pass without a properly supported election petition being filed. 85 FR 18370.

Third, the April 2020 final rule made changes to the *Staunton Fuel & Material,* 335 NLRB 717 (2001), doctrine, which defined the minimum requirements for what must be stated in a written recognition agreement or contract clause in order for it to serve as sufficient evidence that a union representing employees in the construction industry has attained 9(a) status, and overruled the Board's decision in *Casale Industries,* 311 NLRB 951 (1993), providing that the Board would not entertain a claim that a union lacked 9(a) status when it was initially granted recognition by a construction employer if more than 6 months had elapsed. 85 FR 18369–18370.[2]

The effect of the instant proposed amendments would be to return the law in each of those areas to that which existed prior to the adoption of the April 1, 2020 final rule, including by rescinding and replacing the portions of the final rule that addressed the blocking charge policy and voluntary-recognition bar doctrine and rescinding the portion of the final rule that addressed proof of majority support for labor organizations representing employees in the construction industry. The Board believes, subject to comments, that these proposed changes to the April 2020 final rule will better protect employees' statutory right of free choice on questions concerning representation, further promote industrial stability, and more effectively encourage the practice and procedure of collective bargaining.[3]

III. Background

Section 1 of the Act sets forth Congressional findings that the denial by some employers of the right of employees to organize and bargain collectively leads to industrial strife that adversely affects commerce. Congress has declared it to be the policy of the United States to mitigate or eliminate those adverse effects by ''encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.'' 29 U.S.C. 151. Further, section 7 of the Act grants employees the right ''to bargain collectively through representatives of their own choosing . . . .'' 29 U.S.C. 157.

As discussed more fully below, Federal labor law recognizes that employees may seek representation for the purpose of bargaining collectively with their employer through either a Board election or by demonstrating majority support for representation. See, *e.g., United Mine Workers* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62, 72 fn. 8 (1956). Voluntary recognition predates the Act, and an employer's voluntary recognition of a majority union ''remains 'a favored element of national labor policy.' '' *NLRB* v. *Creative Food Design Ltd.,* 852 F.2d 1295, 1299 (D.C. Cir. 1988) (citation omitted). An employer is free to voluntarily recognize a union as the designated majority representative of a unit of its employees without insisting on the union's proving its majority status in an election. And, ''once the employer recognizes the Union . . . the employer is bound by that recognition and may no longer seek an election.'' Id. at 1297 (citations omitted). Nevertheless, when employers, employees, and labor organizations are unable to agree on whether the employer should recognize (or continue to recognize) a labor organization as the representative of a unit of employees for purposes of collective bargaining, section 9 of the Act gives the Board authority to determine if a ''question of representation'' exists and, if so, to resolve the question by conducting ''an election by secret ballot.'' 29 U.S.C. 159(c).

Because the Act calls for freedom of choice by employees as to whether to obtain, or retain, union representation, the Board has long recognized that ''[i]n election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.'' *General Shoe Corp.,* 77 NLRB 124, 127 (1948). A Board-conducted election ''can serve its true purpose only if the surrounding conditions enable employees to resister a free and untrammeled choice for or against a bargaining representative.'' Id. at 126. Indeed, as the Supreme Court has recognized, it is the ''duty of the Board . . . to establish 'the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.' '' *NLRB* v. *Savair Mfg. Co.,* 414 U.S. 270, 276 (1973) (emphasis added) (citation omitted). By definition, a critical part of protecting employee free choice is ensuring that employees are able to vote in an atmosphere free of coercion, so that the results of the election accurately reflect the employees' true desires concerning representation. *General Shoe Corp.,* 77 NLRB at 126–127.

The Supreme Court has repeatedly recognized that ''Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.'' *NLRB* v. *A.J. Tower Co.,* 329 U.S. 324, 330 (1946). ''The control of the election proceeding, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.'' *NLRB* v. *Waterman S.S. Corp.,* 309 U.S. 206, 226 (1940); see also *Southern S.S. Co.* v. *NLRB,* 316 U.S. 31, 37 (1942).

Although the Act itself contains only one express limitation on the timing of elections,[4] the Board has instituted

[2] Sec. 8(f) of the Act uses the term ''engaged primarily in the building and construction industry.'' 29 U.S.C. 158(f). Throughout this NPRM, for convenience, and without any intent to define or alter the accepted scope of the term, we use the shorthand ''construction industry'' and ''construction employer.''

[3] Upon consideration of the comments received regarding each of the proposed changes in this NPRM to the April 2020 final rule, the Board may elect to issue a single final rule or separate final rules covering each or any of the proposed amendments. We invite comments as to any advantages or disadvantages of issuing a single final rule versus separate final rules.

[4] Sec. 9(c)(3) provides that ''[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.'' 29 U.S.C. 159(c)(3).

Election petitions filed by labor organizations seeking certification as the collective-bargaining representative of employees are classified as RC petitions. Decertification election petitions filed by an individual employee seeking to oust an incumbent collective-bargaining representative are classified as RD petitions. Petitions for elections filed by employers are classified as RM petitions.

through adjudication several policies that affect the timing of elections in an effort to further other core goals of the Act. For example, the Board, with court approval, precludes electoral challenges to an incumbent union bargaining representative for the first 3 years of a collective-bargaining agreement (the contract bar) in the interests of stabilizing existing bargaining relationships, notwithstanding that it delays employees' ability to choose not to be represented or to select a different representative. See *General Cable Corp.,* 139 NLRB 1123, 1125 (1962); see also *Terrace Gardens Plaza, Inc.* v. *NLRB,* 91 F.3d 222, 227–228 (D.C. Cir. 1996); *Leedom* v. *IBEW Local Union No. 108, AFL–CIO,* 278 F.2d 237, 242 (D.C. Cir. 1960) (noting that ''Congress relied on the Board's expertise to harmonize the competing goals of industrial stability and employee freedom of choice to best achieve the ultimate purposes of the Act.'').[5]

The subject of this rulemaking proceeding concerns three other policies that the Board originally created through adjudication to protect employee free choice in elections and to effectuate the Act's policies favoring stable bargaining relationships: the blocking charge policy; the voluntary-recognition bar doctrine; and the policy governing 9(a) recognition in the construction industry. The Board's April 2020 final rule radically altered each of those policies.

A. Blocking Charge Policy

1. The Board's Historical Blocking Charge Policy

As the Board acknowledged in the notice of proposed rulemaking that culminated in the April 2020 final rule, see 84 FR 39930, 39931, the blocking charge policy dates back to the early days of the Act. See *United States Coal & Coke Co.,* 3 NLRB 398, 399 (1937). Indeed, prior to the April 2020 final rule, and for more than eight decades, the Board had maintained a policy of generally declining to process an election petition over party objections in the face of pending unfair labor practice charges alleging conduct that, if proven, would interfere with employee free choice in an election, until the merits of those charges could be determined.[6]

The rationale for the blocking charge policy was straightforward: it was ''premised solely on the [Board's] intention to protect the free choice of employees in the election process.'' NLRB Casehandling Manual (Part Two), Representation Proceedings Section 11730 (August 2007) (''Casehandling Manual (August 2007)''). ''The Board's policy of holding the petition in abeyance in the face of pending unfair labor practices is designed to preserve the laboratory conditions that the Board requires for all elections and to ensure that a free and fair election can be held in an atmosphere free of any type of coercive behavior.'' *Mark Burnett Productions,* 349 NLRB 706, 706 (2007).

Prior to the effective date of the April 2020 amendments, there were two broad categories of blocking charges. The first, called Type I charges, encompassed charges that alleged conduct that merely interferes with employee free choice. Casehandling Manual Section 11730.1 (August 2007). See also NLRB Casehandling Manual (Part Two), Representation Proceedings Section 11730.1 (January 2017) (''Casehandling Manual (January 2017)''). Examples of Type I charges included allegations of employer threats to retaliate against employees if they vote in favor of union representation or promises of benefits if employees vote against union representation. For many years, the blocking charge policy provided that if the charging party in a pending unfair labor practice case was also a party to a petition, and the charge alleged conduct that, if proven, would interfere with employee free choice in an election (a Type I charge), were one to be conducted, and no exception was applicable, the charge should be investigated and either dismissed or remedied before the petition was processed. Casehandling Manual Section 11730.2 (August 2007).[7]

The policy further provided that if upon completion of the investigation of the charge, the regional director determined that the Type I charge had merit and that a complaint should issue absent settlement, the regional director was to refrain from conducting an election until the charged party took all the remedial action required by the settlement agreement, administrative law judge's decision, Board order, or court judgment. Casehandling Manual Sections 11730.2; 11733, 11734 (August 2007). On the other hand, if upon completion of the investigation of the charge, the regional director determined that the charge lacked merit and should be dismissed absent withdrawal, the regional director was to resume processing the petition and conduct an election where appropriate. Casehandling Manual Sections 11730.2; 11732 (August 2007).

In short, in cases where the Type I charges proved meritorious and there had been conduct that would interfere with employee free choice in an election, the blocking charge policy delayed the election until those unfair labor practices had been remedied and employees could register a free and untrammeled choice for or against a representative. As for the subset of cases where the charges were subsequently found to lack merit, the policy provided for regional directors to resume processing those petitions to elections.

The second broad category of blocking charges, called Type II charges, encompassed charges that alleged conduct that not only interferes with employee free choice, but that is also inherently inconsistent with the petition itself. Casehandling Manual Sections 11730.1, 11730.3 (August 2007). Under the policy, such charges could block a related petition during the investigation of the charges, because a determination of the merit of the charges could also result in the dismissal of the petition. Casehandling Manual Section 11730.3 (August 2007). Examples of Type II charges included allegations that a labor

[5] See generally *Auciello Iron Works, Inc.* v. *NLRB,* 517 U.S. 781, 785 (1996) (''The object of the National Labor Relations Act is industrial peace and stability, fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employees'').

[6] See generally *The Developing Labor* Law 561–63 (John E. Higgins, Jr., 5th edition 2006); 3d NLRB Ann. Rep. 143 (1938) (''The Board has often provided that an election be held at such time as the Board would thereafter direct in cases where the employer has been found to have engaged in unfair labor practices and the Board has felt that the election should be delayed until there has been sufficient compliance with the Board's order to dissipate the effects of the unfair labor practices and to permit an election uninfluenced by the employer's conduct. Similarly, where charges have been filed alleging that the employer has engaged in unfair labor practices, the Board has frequently postponed the election indefinitely pending the investigation and determination of the charges.''); 13th NLRB Ann. Rep. 34 & fn. 90 (1948) (''Unremedied unfair labor practices constituting coercion of employees are generally regarded by the Board as grounds for vacating an election[.] For this reason, the Board ordinarily declines to conduct an election if unfair labor practice charges are pending or if unfair labor practices previously found by the Board have not yet been remedied[.]'').

Throughout this NPRM, in discussing the blocking charge policy as it existed prior to the April 2020 rule, we often cite to editions of the Developing Labor Law and the NLRB Casehandling Manual that were in effect before the enactment of the 2014 rule amending representation case procedures and the subsequent enactment of the 2020 rule. This reference to sources that have been supplemented since those rules is intentional and intended to demonstrate the manner in which the blocking charge policy was interpreted and applied during the course of its long history before those rules.

[7] As discussed below, under the Board's 2014 rule amending representation case procedures, for a Type I charge to block the processing of a petition, the charging party needed to have both filed a request to block accompanied by a sufficient offer of proof and to have promptly made its witnesses available. Casehandling Manual Section 11730.2 (January 2017).

organization's showing of interest was obtained through threats or force, allegations that an employer's representatives were directly involved in the initiation of a decertification petition, and allegations of an employer's refusal to bargain, for which the remedy is an affirmative bargaining order. Casehandling Manual Sections 11730.3(a), (b) (August 2007). For many years, the blocking charge policy provided that regardless of whether the Type II charges were filed by a party to the petition or by a nonparty, and regardless of whether a request to proceed was filed, the charge should be investigated before the petition was processed unless an exception applied. Casehandling Manual Sections 11730.3, 11731, 11731.1(c) (August 2007).

The blocking charge policy further provided that if the regional director determined that the Type II charge had merit, then the regional director could dismiss the petition, subject to a request for reinstatement by the petitioner after final disposition of the unfair labor practice case. A petition was subject to reinstatement if the allegations in the unfair labor practice case which caused the petition to be dismissed were ultimately found to be without merit. Casehandling Manual Section 11733.2. (August 2007).[8] On the other hand, if the director determined that the Type II charge lacked merit, the director was to resume processing the petition and to conduct the election where appropriate. Casehandling Manual Section 11732 (August 2007).

However, the mere filing of an unfair labor practice charge did ''not automatically cause a petition to be held in abeyance'' under the blocking charge policy. Casehandling Manual Sections 11730, 11731 (August 2007). See also Casehandling Manual Sections 11730, 11731 (January 2017); *Veritas Health Services, Inc.* v. *NLRB,* 895 F.3d 69, 88 (D.C. Cir. 2018) (noting that pending unfair labor practice charges do not necessarily preclude processing a representation petition). For example, the Board had long declined to hold a petition in abeyance if the pending unfair labor practice charge did not allege conduct that would interfere with employee free choice in an election. See, *e.g., Holt Bros.,* 146 NLRB 383, 384 (1964) (rejecting party's request that its charge block an election because even if the charge in question were meritorious, it would not interfere with employee free choice in the election). The Board could also decline to block an immediate election despite a party's request that it do so when the surrounding circumstances suggested that the party was using the filing of charges as a tactic to delay an election without cause. See *Columbia Pictures Corp.,* 81 NLRB 1313, 1314–1315 fn. 9 (1949).[9]

2. The Blocking Charge Policy and the Board's 2014 Final Rule Amending Representation Case Procedures

After notice and comment, the Board adopted some 25 amendments to its representation-case procedures in a 2014 final rule, that, among other things, was designed to advance the public interests in free and fair elections and in the prompt resolution of questions concerning representation. See *Representation-Case Procedures,* 79 FR 74308, 74308–74310, 74315, 74341, 74345, 74379, 74411 (December 15, 2014). As the Board acknowledged when adopting the April 2020 final rule (85 FR 18376–18377), the Board also made certain modifications to the blocking charge policy as a part of its 2014 final rule revising the Board's representation-case procedures. In particular, in response to allegations that at times incumbent unions may misuse the blocking charge policy by filing meritless charges to delay decertification elections, the Board imposed a requirement that, whenever any party sought to block the processing of an election petition, it must simultaneously file an offer of proof listing the names of witnesses who will testify in support of the charge and a summary of each witness' anticipated testimony and promptly make its witnesses available. 79 FR 74419; 29 CFR 130.20. The 2014 final rule also provided that if the regional director determined that the party's offer of proof does not describe evidence of conduct that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director would continue to process the petition and conduct the election where appropriate. 79 FR 74419; 29 CFR 103.20. The Board expressed the view that those amendments would protect employee free choice while helping to remove unnecessary barriers to the expeditious resolution of questions of representation by providing the regional director with the information necessary to assess whether the unfair labor practice charges have sufficient support and involve the kind of violations that warrant blocking an election, or whether the charges are filed simply for purposes of delay. 79 FR 74418–74420.

Two Board members dissented from the 2014 final rule. With respect to the blocking charge policy, the dissenting Board members did not propose any changes to the blocking charge policy with respect to Type II charges. However, the two dissenting members advocated a 3-year trial period under which the Board would hold elections—and thereafter impound the ballots—notwithstanding the presence of a request to block (supported by an adequate offer of proof) based on a Type I charge. 79 FR 74456.

The Board majority rejected the dissenters' proposal to conduct elections in all cases involving Type I charges. The 2014 final rule explained that the dissenting Board Members had not identified any compelling reason to abandon a policy continuously applied since 1937. 79 FR 74418–74420, 74429 (''Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election: It advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'').

The courts upheld the 2014 final rule. See *Associated Builders and Contractors of Texas, Inc.* v. *NLRB,* 826 F.3d 215, 229 (5th Cir. 2016) (noting that the Board ''conducted an exhaustive and lengthy review of the issues, evidence, and testimony, responded to contrary arguments, and offered factual and legal support for its final conclusions''); *Chamber of Commerce of the United States of America* v. *NLRB,* 118 F. Supp. 3d 171, 220 (D.D.C. 2015) (''[T]he Board engaged in a comprehensive analysis of a multitude of issues relating to the need for and the propriety of the Final Rule, and it directly addressed the commenters' many concerns[.]''). See also *RadNet Mgmt, Inc.* v. *NLRB,* 992 F.3d 1114, 1123 (D.C. Cir. 2021) (rejecting arbitrary-and-capricious challenge to 2014 final rule).

Accordingly, under the blocking charge policy as it existed prior to the effective date of the April 2020

[8] For either Type I or II charges, parties had the right to request Board review of regional director determinations to hold petitions in abeyance or to dismiss the petitions altogether. See 29 CFR 102.71(b) (2011); Casehandling Manual Sections 11730.7, 11733.2(b) (August 2007).

[9] The Board also directed an immediate election, despite pending charges, in order to hold the election within 12 months of the beginning of an economic strike so as not to disenfranchise economic strikers, *American Metal Products Co.,* 139 NLRB 601, 604–605 (1962), or in order to prevent harm caused to the economy by a strike resulting from an unresolved question of representation, *New York Shipping Association,* 107 NLRB 364, 375–376 (1953). The Casehandling Manual set forth other circumstances in which regional directors could decline to block petitions. Casehandling Manual Section 11731 (August 2007).

amendments, a regional director could not block an election based on the request of a party who had filed an unfair labor practice charge if the party had not first (1) submitted an offer of proof describing evidence that, if proven, would interfere with employee free choice in an election were one to be conducted or conduct that would be inherently inconsistent with the petition itself, (2) listed its witnesses who would testify in support of the charge, and (3) agreed to promptly make its witnesses available. Casehandling Manual Section 11730 (January 2017). Even then, the regional director retained discretion to process the petition if an exception to the blocking charge policy applied. Casehandling Manual Sections 11730, 11730.2, 11730.3, 11730.4, 11731, 11731.1–11731.6 (January 2017).

3. The April 2020 Blocking Charge Amendments

In 2019, the Board issued a Notice of Proposed Rulemaking proposing, in relevant part, to substantially change the blocking charge policy. Under the proposed rule, whenever a party filed unfair labor practice charges that would have blocked processing of the petition under prior doctrine, the Board would instead conduct the election and impound the ballots (absent dismissal of the representation petition, as noted above at fn. 1). See *Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships,* 84 FR 39930, 39930, 39937–39938 (August 12, 2019). If the charge had not been resolved prior to the election, the NPRM proposed that the ballots would remain impounded until the Board made a final determination regarding the charge. 84 FR 39937. The NPRM acknowledged that the ballots would ''never be counted'' in cases where the Board made a final determination that the charge had merit and that the conduct warranted either dismissing the petition or holding a new election. 84 FR 39938.

The NPRM offered several justifications for the proposed amendments, including the arguments that the Board's historical blocking charge policy impeded employee free choice by delaying elections and that there is a potential for incumbent unions to abuse the blocking charge policy by deliberately filing nonmeritorious unfair labor practice charges in the hopes of delaying decertification elections. See, *e.g.,* 84 FR 39931–39933, 39937. The majority prepared appendices and cited them in support of its claims. 84 FR 39933 & fns. 13–14, 39937.

Then-Member McFerran dissented from the NPRM's proposed changes to the blocking charge policy. In her view, the Board majority offered no valid reasons for substantially changing the blocking charge policy that Boards of differing perspectives had adhered to for more than eight decades. 84 FR 39939–39949. Noting that the majority had implicitly conceded that its proposed vote-and-impound procedure would require regional directors to run—and employees, unions, and employers to participate in—elections conducted under coercive conditions that interfere with employee free choice, the dissent argued that the proposed blocking charge amendments would undermine employee rights and the policies of the Act. 84 FR 39940, 39941, 39943, 39945, 39948, 39949. The dissent further argued that because the proposed amendments would require regional directors to run—and employees, unions, and employers to participate in—elections that would not resolve the question of representation, the proposed amendments would impose unnecessary costs on the parties and the Board. 84 FR 39941, 39945, 39948, 39949. The dissent also pointed out inaccuracies in the data relied on by the majority in support of its proposed changes to the blocking charge policy.[10]

The majority did not correct the errors before issuing the NPRM. 84 FR 39930–39939 & fn. 15.[11] As noted, on April 1, 2020, the Board issued a final rule substantially eliminating the blocking charge policy.[12] 85 FR 18366. The final rule differed from the NPRM. Unlike the NPRM, which had proposed a vote *and impound* procedure for *all* cases involving blocking charges until there was a final determination of the merits of the charge, the final rule adopted a vote *and immediately count the ballots* procedure for the vast majority of blocking charge cases (including all cases involving Type I blocking charges and some cases involving Type II blocking charges). 85 FR 18366, 18369–18370, 18374. The final rule also provided that notwithstanding a request to block based on a pending charge alleging certain specified types of Type

[10] Then-Member McFerran also prepared an appendix analyzing FY 2016-and FY 2017-filed RD, RC, and RM petitions that were blocked pursuant to the blocking charge policy. 84 FR 39943 & fn. 63; *https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-7583/member-mcferran-dissent-appendix.pdf.* Then-Member McFerran explained in her dissent that her review of the relevant data for Fiscal Years 2016 and 2017 indicated that ''the overwhelming majority of decertification petitions are never blocked.'' 84 FR 39943–39944 and Dissent Appendix (''Approximately 80 percent of the decertification petitions filed in FY 2016 and FY 2017 were not impacted by the blocking charge policy because only about 20 percent (131 out of 641) of the decertification petitions filed in FY 2016 and FY 2017 were blocked as a result of the policy.''). The dissent further explained that ''[e]ven in the minority of instances when decertification petitions are blocked, most of these petitions are blocked by meritorious charges. Approximately 66% (86 out of 131) of the decertification petitions that were blocked in FY 2016 and FY 2017 were blocked by meritorious charges. See Dissent Appendix, [s]ection 1.'' 84 FR 39944 & fn. 64 (explaining that in determining whether a petition was blocked by a meritorious charge, the dissent ''applied the Office of the General Counsel's long-standing merit definition contained in OM 02–102 available at *https://www.nlrb.gov/news-publications/nlrb-memoranda/operations-management-memos.* Accordingly, a petition was deemed blocked by a meritorious charge if the petition was blocked by a charge that resulted in a complaint, a pre-complaint Board settlement, a pre-complaint adjusted withdrawal, or a pre-complaint adjusted dismissal. Id. at p.4.''). The dissent additionally noted that the Board Chairman and General Counsel in office as of the issuance of the NPRM ''used the same merit definition in their Strategic Plan for FY 2019–FY 2022. See, *e.g.,* Strategic Plan p. 5, attached to GC Memorandum 19–02, available at *https://www.nlrb.gov/news-publications/nlrb-memoranda/general-counsel-memos.*'' 84 FR 39944 fn. 64.

Based on her analysis of the relevant data, then-Member McFerran also pointed out that ''the overwhelming majority of RM petitions are never blocked, and that even in the minority of instances when RM petitions are blocked, most of these petitions are blocked by meritorious charges. See Dissent Appendix, sec. 1.'' 84 FR 39945 fn. 69 (''Indeed, my review of the relevant data indicates that approximately 82 percent of the RM petitions filed during FY 2016 and FY 2017 were not blocked, leaving only about 18 percent (18 out of 99) of the RM petitions filed during FY 2016 and FY 2017 as blocked under the policy. See Dissent Appendix, available at *https://www.nlrb.gov.* And most pointedly, nearly 89 percent (16 out of 18) of the RM petitions blocked during FY 2016 and FY 2017 were blocked by meritorious charges. See Dissent Appendix, sec. 1.''). 84 FR 39945 fn. 69.

The dissent also pointed out numerous errors in the majority's appendices, noting for example that the majority had artificially inflated the length of time periods that their cited cases were blocked, apparently by ''inappropriately aggregat[ing] multiple blocking periods for the same case, even when those periods run concurrently [. . . which . . .] has the rather bizarre effect of listing a case such as *Piedmont Gardens, Grand Lake Gardens,* 32–RC–087995, as having been blocked for more than 12 years—an impossibly high estimate considering that the case was less than 7 years old as of December 31, 2018 (with a petition-filing date of August 24, 2012). See Majority Appendix B Tab 4.'' 84 FR 39946 fn. 71. The dissent also pointed out that the majority had artificially inflated the number of ''blocked petitions pending'' by including in its list cases that had not been blocked due to the blocking charge policy. 84 FR 39946 fn. 71, fn. 74.

[11] In addition to then-Member McFerran's analysis of the data in her dissent, on December 5, 2019, Bloomberg Law published an article entitled, ''Federal Labor Board Used Flawed Data to Back Union Election Rule.'' Alex Ebert and Hassan A. Kanu, ''Federal Labor Board Used Flawed Data to Back Union Election Rule,'' *Bloomberg Law* (Dec. 5, 2019). The article reported on the results of a Bloomberg Law analysis, which found that the NPRM used flawed data in support of the proposed blocking charge amendments. Id. After publication of the Bloomberg Law article, the Board still did not issue a new NPRM correcting the data.

[12] Lauren McFerran was no longer serving on the Board when the final rule issued.

II conduct, the Board will impound the ballots for no more than 60 days (unless a complaint issues on the Type II charge within the 60-day period, in which case the ballots will be remain impounded pending a final determination by the Board). 85 FR 18369–18370, 18374. In short, under the April 2020 final rule, a blocking charge request will never delay any election, and will only rarely delay the count of the ballots. 85 FR 18370, 18375. Nevertheless, the final rule ''clarifie[d] that the certification of results (including, where appropriate, a certification of representative) shall not issue until there is a final disposition of the charge and a determination of its effect, if any, on the election petition.'' 85 FR 18370.

The Board adopted the amendments requiring the Board to refrain from delaying any election involving blocking charges essentially for the reasons contained in the NPRM. 85 FR 18375–18380, 18393. As for its decision to abandon the proposed vote-and-impound procedure and to substitute the requirement that ballots be immediately opened and counted in all cases involving Type I charges and a subset of Type II charges, the Board stated that it had concluded that it would be ''preferable for ballots to be counted immediately after the conclusion of the election . . . with regard to most categories of unfair labor practice charges.'' 85 FR 18380. The final rule agreed with a commenter that:

> [I]mpoundment of ballots does not fully ameliorate the problems with the current blocking charge policy because impoundment fails to decrease a union's incentive to delay its decertification by filing meritless blocking charges; makes it more difficult for parties to settle blocking charges, as they would not know the results of the election during their settlement discussions; and further frustrates and confuses employees waiting, possibly for an extended post-election period, to learn the results of the election.

85 FR 18380.

As noted, however, the Board chose to adopt a vote-and-impound-for-60-days-procedure (with impoundment to last longer if a complaint issued within 60 days of the election) for certain types of Type II unfair labor practice charges. The Board stated in this regard:

> At the same time, however, some types of unfair labor practice charges speak to the very legitimacy of the election process in such a way that warrants different treatment—specifically, those that allege violations of section 8(a)(1) and 8(a)(2) or section 8(b)(1)(A) of the Act and that challenge the circumstances surrounding the petition or the showing of interest submitted in support of the petition, and those that allege that an employer has dominated a union in violation of section 8(a)(2) and that seek to disestablish a bargaining relationship. We believe that in cases involving those types of charges, it is more appropriate to impound the ballots than to promptly count them. Nevertheless, in order to avoid a situation where employees are unaware of the election results indefinitely, we believe it is appropriate to set an outer limit on how long ballots will be impounded. Accordingly, the final rule provides that the impoundment will last for only up to 60 days from the conclusion of the election if the charge has not been withdrawn or dismissed prior to the conclusion of the election, in order to give the General Counsel time to make a merit determination regarding the unfair labor practice charge.

85 FR 18380.

As for the errors in the NPRM pointed out by then-Member McFerran in her dissent to the NPRM and in the Bloomberg law article, supra fn. 11, the Board stated in the final rule that we also acknowledge the claims in the dissent to the NPRM and by some commenters that there were errors in some of the data that the NPRM majority cited to support the proposed rule and that these errors led to exaggeration both of the number of cases delayed and the length of delay involved. Even accepting those claims as accurate, the remaining undisputed statistics substantiate the continuing existence of a systemic delay that supports our policy choice to modify the current blocking-charge procedure that does not, and need not, depend on statistical analysis. As the AFL–CIO candidly acknowledges, ''[b]locking elections delays elections. That is undeniably true and requires no 'statistical evidence' to demonstrate.'' We agree. Furthermore, anecdotal evidence of lengthy blocking charge delays in some cases, and judicial expressions of concern about this, remain among the several persuasive reasons supporting a change that will assure the timely conduct of elections without sacrificing protections against election interference. 85 FR 18377 (footnote omitted).

The April 2020 amendments became effective on July 31, 2020. See 85 FR 20156 (Apr. 10, 2020).

B. The Voluntary-Recognition Bar

1. Historical Development of the Voluntary-Recognition Bar

Since before the NLRA was passed, employers have sometimes chosen to voluntarily recognize labor unions as the collective-bargaining representatives of their employers, and the Act itself clearly contemplated that the practice of voluntary recognition would continue.[13] While the statute provides for Board-conducted representation elections, with winning unions certified by the Board, the Act does not make such elections the only route to union representation under the statute, as the Supreme Court has explained.[14]

Rather, section 8(a)(5) of the Act requires an employer ''to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).'' 29 U.S.C. 158(a)(5). Section 9(a), in turn, refers to ''[r]epresentatives *designated or selected* . . . by the majority of the employees'' in an appropriate unit.[15] Section 9(c)(1)(A), meanwhile, provides for Board-conducted elections when employees seek union representation and file a petition with the Board ''alleging . . . that their employer *declines to recognize* their representative as . . . defined in section 9(a).'' 29 U.S.C. 159(c)(1)(A) (emphasis added). When an employer does *not* ''decline[ ] to recognize'' the designated union, there is no obvious statutory ''question of representation'' under section 9(c) to be resolved by a Board election. A union that has been certified by the Board after winning an election enjoys certain statutory privileges and protections that a voluntarily recognized union does not. Most important, section 9(c)(3) of the Act, in providing that another Board election may not be held for twelve months after a valid election,

[13] Citing the Supreme Court, the Board has previously pointed out that ''[v]oluntary recognition itself predates the National Labor Relations Act and is undisputedly lawful under it.'' *Dana Corp.,* 351 NLRB 434, 436 (2007) (footnote omitted) (citing *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 595–600 (1969)). As the *Dana* Board observed, ''voluntary recognition has been embedded in [s]ection 9(a) from the Act's inception.'' 351 NLRB at 438. See also *Lamons Gasket Co.,* 357 NLRB 739, 741 (2011) (''Congress was well aware of the practice of voluntary recognition when it adopted the Act in 1935, because the practice long predated the Act.'') (citing H.R. Rep. No. 74–969, at 4 (1935), reprinted in 2 Legislative History of the National Labor Relations Act 1935, at 2914 (1949)) (an election is appropriate ''[w]hen an employee organization has built up its membership to a point where it is entitled to be recognized . . . and the employer refuses to accord such recognition'').

[14] See *United Mine Workers of America* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62, 72 fn. 8 (1956) (''A Board election is not the only method by which an employer may satisfy itself as to the union's majority status.''). There, the Supreme Court observed that an employer was free to voluntarily recognize a labor union that did not comply with certain statutory requirements and that could not be certified by the Board as the result of an election. Id. at 71, 74–75.

[15] 29 U.S.C. 159(a) (emphasis added). See *Gissel Packing Co.,* supra, 395 U.S. at 596–598. Sec. 9(a) provides in relevant part that representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

effectively insulates a certified union from an electoral challenge to its representative status for that one-year period.[16]

To be lawful, voluntary recognition pursuant to section 9(a) of the Act must be based on the union's majority support among employees.[17] Such support is often demonstrated by having employees sign cards authorizing the union to represent them in collective bargaining, although the Board recognizes other mechanisms as well.[18] Traditional Board law reflects that under the Act, ''[o]nce voluntary recognition has been granted to a majority union, the [u]nion becomes exclusive collective-bargaining representative of the employees.'' [19] In short, as the Supreme Court has recognized, voluntary recognition is not simply permitted under the Act; it establishes a bargaining relationship between union and employer that must be honored.[20] So long as employees have freely chosen the union to represent them, voluntary recognition clearly promotes the statutory policy of ''encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of . . . designation of representatives of their own choosing.'' [21]

In 1966, a unanimous Board in *Keller Plastics,*[22] an unfair labor practice case, added the voluntary-recognition bar to its previously established bar doctrines, which temporarily insulate a union from challenges to its status as exclusive bargaining representative. The *Keller Plastics* Board rejected a claim that an employer had unlawfully reached a collective-bargaining agreement with a union that had since lost the majority support it enjoyed when it was voluntarily recognized by the employer. The Board held that in cases involving voluntary recognition of a union—as in cases where a bargaining relationship was established by a Board certification, by a Board order in an unfair labor practice case, or by an unfair labor practice settlement—''the parties must be afforded a reasonable time to bargain and to execute the contracts resulting from such bargaining'' because ''negotiations can succeed . . . and the policies of the Act can thereby be effectuated, only if the parties can normally rely on the continuing representative status of the lawfully recognized union for a reasonable period of time.'' [23] Following *Keller Plastics,* the Board quickly and unanimously held in *Sound Contractors,*[24] also decided in 1966, that the voluntary-recognition bar applied in representation cases as well as in unfair labor practice cases, barring election petitions that challenged a voluntarily recognized union's representative status during a reasonable period for bargaining.

2. Dana Corp. and Lamons Gasket

For more than 40 years, the Board consistently applied the voluntary-recognition bar as articulated in *Keller Plastics.*[25] In 2007, however, a divided Board, citing the increased use of voluntary-recognition agreements to establish collective-bargaining relationships, re-examined Board doctrine and adopted a different approach. In *Dana Corp.,*[26] the Board established a novel election procedure in voluntary-recognition cases, through adjudication and not rulemaking. It held that *no* election bar would be imposed after an employer's ''card-based recognition'' of a union, nor would a contract bar be imposed on contracts executed with a voluntarily recognized union, *unless*:

> (1) employees in the bargaining unit receive notice of the recognition and of their right, within 45 days of the notice, to file a decertification petition or to support the filing of a petition by a rival union, and (2) 45 days pass from the date of notice without the filing of a valid petition. If a valid petition supported by 30 percent or more of the unit employees is filed within 45 days of the notice, the petition will be processed.

351 NLRB at 434 (footnote omitted). The *Dana* Board asserted a need to ''provide greater protection for employee free choice,'' id. at 438, and cited two principal reasons for establishing the new procedure. First, it concluded that Board-conducted elections were more reliable than union-authorization cards in determining employee free choice. Id. at 438–440. Second, it found that the rationale for the other election bars established by the Board was ''far less persuasive'' in the context of voluntary recognition. Id. at 440–441. Nevertheless, the *Dana* Board properly acknowledged that ''[s]everal courts of appeals ha[d] endorsed the current recognition-bar doctrine,'' while citing no contrary decisions. Id. at 441 & fn. 31 (collecting cases from District of Columbia Circuit and Second, Third, Sixth, Seventh, and Ninth Circuits). The dissenting Board members in *Dana* rejected both of the principal reasons offered by the majority for the new procedure. They argued that the voluntary-recognition bar served the same purposes as other election bars in giving a bargaining relationship a fair chance to succeed, particularly given that negotiations for a first contract were involved. Id. at 446. The dissenters also pointed out that there was no empirical evidence that the use of authorization cards was a less reliable indicator of employee free choice than an election. Id. at 448.

Four years later, in 2011, the *Dana* decision was overruled by a divided Board in *Lamons Gasket,*[27] which rejected the *Dana* procedure and restored the voluntary-recognition bar

[16] 29 U.S.C. 159(c)(3) (''No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.''). The other statutory advantages of certification are (1) protection against recognitional picketing by rival unions under sec. 8(b)(4)(C); (2) the right to engage in certain secondary and recognitional activity under sec. 8(b)(4)(B) and 7(A); and (3) in certain circumstances, a defense to allegations of unlawful jurisdictional picketing under sec. 8(b)(4)(D). See *Lamons Gasket Co.,* supra, 357 NLRB at 748 & fn. 35; 85 FR 18381 fn. 124.

[17] *Int'l Ladies' Garment Workers' Union* v. *NLRB (Bernhard-Altmann),* 366 U.S. 731, 738 (1961) (employer violated sec. 8(a)(2) of Act by recognizing and bargaining with union that lacked majority support). See, *e.g., Alliant Foodservice, Inc.,* 335 NLRB 695, 695 (2001) (employer violated sec. 8(a)(2) by recognizing union that did not legitimately represent majority of employees in bargaining unit, and union violated sec. 8(b)(1)(A) by accepting recognition).

[18] See *Lamons Gasket,* supra, 357 NLRB at 741 (citing authorization cards, employee statements, and secret-ballot elections conducted by private third parties).

[19] *Brown & Connolly, Inc.,* 237 NLRB 271, 275 (1978), enfd. 593 F.2d 1373 (1st Cir. 1979).

[20] See *Gissel Packing Co.,* supra, 395 U.S. at 596 (''Since § 9(a) . . . refers to the representative as the one 'designated or selected' by a majority of the employees without specifying precisely how that representative is to be chosen, it was early recognized that an employer had a duty to bargain whenever the union representative presented 'convincing evidence of majority support.' '').

[21] National Labor Relations Act, sec. 1, 29 U.S.C. 151.

[22] *Keller Plastics Eastern, Inc.,* 157 NLRB 583 (1966).

[23] 157 NLRB at 587. Among the precedent cited as support for this rule was the Supreme Court's 1944 decision in *Franks Bros. Co.* v. *NLRB,* 321 U.S. 702 (1944). There, the Court upheld the Board's bargaining order against an employer that had unlawfully refused to bargain with a majority union, which then lost majority support. Rejecting the argument that the bargaining order was unfair to employees who opposed the union, the Court observed that the order only temporarily insulated the union from challenge and that a ''bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.'' 321 U.S. at 705.

[24] *Sound Contractors Assn.,* 162 NLRB 364, 365 & fn. 5 (1966) (permitting representation petition to be processed because union seeking to bar petition had not been voluntarily recognized by employer).

[25] Collective-bargaining agreements have also long been subject to a contract-bar period of up to three years, insulating the union from challenges to majority status during that period. See *General Cable Corp.,* 139 NLRB 1123, 1125 (1962).

[26] *Dana Corp.,* 351 NLRB 434 (2007).

[27] *Lamons Gasket Co.,* supra, 357 NLRB at 739.

and for the first time defined benchmarks for measuring the reasonable bargaining period covered by the bar. The Board defined ''a reasonable period of bargaining, during which the recognition bar will apply, to be no less than 6 months after the parties' first bargaining session and no more than 1 year.'' 357 NLRB at 748. ''In determining whether a reasonable period has elapsed in a given case,'' the Board held that it would apply the multifactor test of *Lee Lumber & Building Material Corp.,* 334 NLRB 399 (2001), and would ''impose the burden of proof on the General Counsel to show that further bargaining should be required.'' 357 NLRB at 748 (footnote omitted). As noted by the *Lamons Gasket* Board, the *Lee Lumber* test considers ''(1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse.'' *Lee Lumber,* supra, 334 NLRB at 402.

In overruling *Dana,* the *Lamons Gasket* Board made three principal arguments. First, it argued that empirical data from the period in which the *Dana* procedure was in effect refuted the claim that voluntary recognition did not accurately reflect employee free choice: ''employees decertified the voluntarily recognized union under the *Dana* procedures in only 1.2 percent of the total cases in which *Dana* notices were requested.'' 357 NLRB at 742 (footnote omitted). Second, the Board contended that the *Dana* notice, ''understood in context,'' inappropriately compromised the Board's neutrality by ''suggest[ing] to employees that the Board considers their choice to be represented suspect and signals to employees that their choice should be reconsidered through the filing of a petition.'' Id. at 744. Third, the Board argued that the voluntary-recognition bar, in protecting a newly established bargaining relationship, promoted the same statutory policies advanced by its other bar doctrines. Id. Thus, voluntary recognition reflected the Act's approval of a ''system of private ordering'' in labor relations in which collective bargaining was to be encouraged and labor disputes avoided. Id. at 746. Voluntary recognition was consistent with employee free choice because it required a showing of majority support among all employees in the bargaining unit, not merely a majority of voters (as in a Board election), and because the Act's unfair labor practice provisions enabled improper recognition to be redressed. Id. at 746–747. In the view of the *Lamons Gasket* Board, the *Dana* procedure simply served to create uncertainty around the new bargaining relationship and to interfere unnecessarily in the bargaining process. Id. at 747. The dissenting Board member rejected each of these arguments, contending (among other things) that the same empirical evidence relied on by the majority in fact supported the rationale of *Dana*. Id. at 748–754.

3. The April 2020 Amendments

In 2019, as part of its larger rulemaking culminating in the April 1, 2020 final rule discussed herein, the Board proposed, subject to public comment, to overrule *Lamons Gasket* and to reinstate the *Dana* procedure.[28] As support for the proposed rule, the Board cited the views of the *Dana* Board and the dissenting Board member in *Lamons Gasket*. No intervening judicial decisions had questioned *Lamons Gasket* or its restoration of the longstanding voluntary-recognition bar, nor had a petition for rulemaking addressing the issue been filed with the Board. Then-Member McFerran dissented.[29]

On April 1, 2020, following a public comment period, the Board adopted a final rule that essentially codified the *Dana* procedure.[30] The new rule (''Processing of petitions filed after voluntary recognition'') appears as § 103.21 in the Board's Rules and Regulations, 29 CFR 103.21. Under the rule, neither the employer's voluntary recognition of a union, nor the first collective-bargaining agreement executed by the parties after recognition, will bar the processing of an election petition, unless: (1) the employer or the union notifies the Board's Regional Office that recognition has been granted; (2) the employer posts a prescribed notice of recognition ''informing employees that recognition has been granted and that they have a right to file a petition during a 45-day 'window period' beginning on the date the notice is posted''; (3) the employer distributes the notice electronically to employees, if electronic communication is customary; and (4) 45 days from the posting date pass without a properly supported election petition being filed. The Board noted that it did ''not rely on any data, or analysis of data, other than that discussed in *Dana* and in *Lamons Gasket,* which [it had] fully considered.'' [31]

In explaining the reasons for the new rule, the Board essentially repeated the rationale of the *Dana* decision, advancing arguments that had been rebutted by the *Lamons Gasket* decision.[32] Thus, the Board characterized Board elections as the ''Act's preferred method for resolving questions of representation,'' citing the Act's election-year bar (under section 9(c)(3), after a valid Board election is held, another election may not be directed for one year) and the specific statutory protections granted only to a Board-certified union.[33] The Board asserted that ''secret-ballot elections are better than voluntary recognition at protecting employees' [s]ection 7 freedom to choose, or not choose, a bargaining representative.'' [34] It noted that the Board ''does not supervise voluntary recognitions'' and rejected the notion that the Act's unfair labor practice provisions were sufficient to address coercive conduct related to voluntary recognition.[35] A Board election was deemed superior to voluntary recognition because ''it presents a clear picture of employee voter preference at a single moment.'' [36] Rejecting criticism of the proposed rule, the Board insisted that it does not ''restrict the lawful voluntary establishment of majority-supported bargaining relationships, nor does it limit the immediate statutory rights and responsibilities that ensue upon commencement of those relationships.'' [37] According to the Board, the rule was also supported by the need to protect employees' ability to challenge the union's majority status from the possibility that voluntary recognition immediately triggering an election bar might be followed by a

[28] NLRB, *Representation Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships,* Notice of Proposed Rulemaking, 84 FR 39930, 39938, 39958 (Aug. 12, 2019).

[29] Id. at 39949–39951.

[30] NLRB, *Representation Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships,* Final Rule, 85 FR 18366, 18367–18368, 18370, 18380–18388, 18399–183400 (April 1, 2020). At the time the final rule was adopted, the Board member who had dissented from the proposed rule (then-Member McFerran) was not serving on the Board.

[31] 85 FR 18373.

[32] 85 FR 18380–18388.

[33] Id. at 18381.

[34] Id.

[35] Id.

[36] Id.

[37] Id. at 18382.

collective-bargaining agreement, which would trigger its own, separate bar.[38]

The Board also addressed experience under the *Dana* procedure, as described in the *Lamons Gasket* decision, by echoing the arguments of the dissenting Board member in *Lamons Gasket*.[39] It acknowledged that ''only 7.65 percent of *Dana* notice requests resulted in election petitions, only 4.65 percent of *Dana* notices resulted in actual elections, and employees decertified the voluntarily recognized union in only 1.2 percent of the total cases in which *Dana* notices were requested.''[40] In expressing the view that ''the fact that only a small percentage of all *Dana* notices resulted in ending continued representation by the voluntarily recognized union does not mean that the post-recognition open period procedure was unnecessary and should not be restored,'' the Board pointed to the fact that in the (rare) instances where a *Dana* election was held, the union was decertified about one-quarter of the time.[41] As for the overwhelming majority of cases where no *Dana* election was held, the Board asserted that it knew ''nothing about the reliability of the proof of majority support that underlay recognition in each of these cases,'' nor ''why no petition was filed.''[42] In turn, the Board cited the absence of evidence that the *Dana* procedure had produced negative effects, such as discouraging voluntary recognition or discouraging or delaying collective bargaining.[43] The Board acknowledged the possibility that the ''existence of a pending election petition will cause unions to spend more time campaigning or working on election-related matters rather than doing substantive work on behalf of employees,'' but concluded ''that this is a reasonable trade-off for protecting employees' ability to express their views in a secret-ballot election.''[44]

The new election procedure established by the Board's rule went into effect on June 1, 2020. In response to a series of Freedom of Information Act requests, the Board has compiled and disclosed data that reflects its experience under the rule.[45] That experience has been entirely consistent with the Board's experience under the *Dana* procedure, during the 2007–2011 period. The new data, which has been assembled incrementally by the Board's FOIA officer in response to successive information requests, show as follows.[46] First, for the calendar year 2020, the data show that 32 requests for voluntary recognition notices were filed with the Board. In those cases, no election petitions were filed.[47] For the period from January 1, 2021 through June 30, 2021, the data shows that 39 requests for notices were filed, and no subsequent petitions were filed. For the period from July 1, 2021 through September 30, 2021, 31 requests for notices were filed. One decertification petition was subsequently filed, after which the union disclaimed interest. For the period from October 1, 2021 through December 31, 2021, 53 requests were filed, and no subsequent petitions were filed. For the period from January 1, 2022 through March 31, 2022, the data shows that 51 requests for notices were filed, and no subsequent petitions were filed. For the period from April 1, 2022 through June 30, 2022, the data shows that 54 requests for notices were filed, and no subsequent petitions were filed. As a whole, then, the data thus far show that since the effective date of § 103.21, 260 requests for recognition notices were filed with the Board. In those cases, one election petition was subsequently filed, and no elections were held—although the union in the one case where a petition was filed disclaimed interest after its filing. Thus, only 0.4 percent of recognition notice requests resulted in election petitions, 0 percent of notices resulted in actual elections, and (if we count the disclaimer as an effective proxy for the de-selection of the union in the sole case where a petition was filed), employees opted not to retain the voluntarily recognized union in only 0.4 percent of the total cases in which recognition notices were requested. In over 99 percent of notice cases, employees appear to have affirmed their choice to be represented by a union.

As we explain below, the Board's preliminary view, subject to comments, is that the voluntary-recognition bar as articulated in *Lamons Gasket* better serves the policies of the National Labor Relations Act than does the current rule.

C. Section 9(a) Recognition in the Construction Industry

1. Overview

In the construction industry, employees often work for their employer for only a relatively brief period until the completion of a discrete project, at which time they may have begun working on a new project for a different employer.[48] This sporadic and temporary feature of much construction-industry work complicates a union's effort to demonstrate majority support among employees whose time with any one employer may be fleeting. At the same time, the widespread use of the project bid process means that construction employers need to know their labor costs, and thus, the terms of a collective-bargaining agreement, even before they hire their first employee.[49] The employer has to be able to forecast its labor costs to submit a contract bid and have available a pool of skilled craft workers ready for quick referral.[50]

Consequently, construction employers and unions frequently negotiate and enter into prehire collective-bargaining

[38] Id. at 18382–18383.

[39] Id. at 18383–18384.

[40] Id. at 18383.

[41] Id.

[42] Id.

[43] Id. at 18384.

[44] Id. at 18385.

[45] The data cited here can be found at *https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NLRB-2021-000944&type=request; https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NLRB-2021-001133&type=request; https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NLRB-2022-000090&type=Request; https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NLRB-2022-000354&type=Request; https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NLRB-2022-000844&type=Request; and https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NLRB-2022-001456&type=Request.*

[46] In a few instances, the FOIA compilations show that a petition was filed, but further inquiry shows that the petition was an RC petition filed prior to voluntary recognition and later withdrawn. Those cases have not been counted as examples of cases where a subsequent petition was filed. In six cases, the FOIA spreadsheets indicate that a petition was filed, but follow-up research in the Board's recordkeeping system discloses no such petition, thus suggesting that the registry of a petition was in error. Those cases also have not been counted as examples of cases where a subsequent petition was filed. A few cases (none of which involved petitions) appear duplicative and have only been counted once. One case, in which a notice was requested but no pertinent information was supplied even after it was requested, has also not been counted in the analysis of petitions filed in response to voluntary recognition notice requests.

In yet another case, which has not been counted in this analysis, voluntary recognition was, according to the FOIA compilations, extended after the filing of a petition, but case records suggest that in fact the union won an election and no voluntary recognition was involved.

[47] However, in one case, after an initial faulty notice posting, the union subsequently disclaimed interest for unknown reasons. No petition was filed. Given the ambiguity, this case has not been counted in our analysis at all.

[48] *John Deklewa & Sons,* 282 NLRB 1375, 1380 (1987) (quoting S. Rep. No. 86–187, reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (Leg. Hist.), at 423, and H. Rep. No. 86–741, reprinted in 1 NLRB, Leg. Hist., at 777–778), enfd. sub nom. *Iron Workers Local 3* v. *NLRB,* 843 F.2d 770 (3d Cir. 1988).

[49] Id. (quoting S. Rep. No. 86–187, reprinted in 1 NLRB, Leg. Hist., at 424).

[50] Id.

agreements.[51] For the length of these agreements, even before it hires any employees, the construction employer recognizes the union as the bargaining representative of the employer's eventual employees and the employer is guaranteed precise labor costs pursuant to the agreement and, in the event of a union hiring hall, a source of skilled craft workers.[52]

In 1959, responsive to these unique construction-industry practices, Congress amended the Act,[53] adopting section 8(f),[54] which permitted a limited alternative in the building and construction industry to the Act's existing section 9(a) requirement that a union have majority support to obtain exclusive collective-bargaining representative status.[55] By declaring that ''[i]t shall not be an unfair labor practice'' to do so, section 8(f) sanctions the construction-industry practice of a construction employer and a union entering into a prehire agreement even where the union has not established its majority support among any bargaining unit of the employer's employees under section 9(a).[56]

For more than 35 years, the Board's decision in *John Deklewa & Sons* has governed how the Board has handled these 8(f) agreements and the interplay with a construction employer's 9(a) recognition of a union in instances where the union does have the support of a majority of the bargaining unit employees. Under *John Deklewa & Sons,* the Board adopted a rebuttable presumption that a collective-bargaining relationship in the construction industry was established under section 8(f), with the burden of proving that the relationship instead falls under section 9(a) placed on the party so asserting.[57]

The distinction is important because, unlike where there is only an 8(f) relationship, a union recognized as the 9(a) representative enjoys the full panoply of rights and obligations available to unions in all other industries as the exclusive collective-bargaining representative under section 9(a).[58] This includes the irrebuttable presumption of majority support during the term of the contract and a rebuttable presumption of majority support at other times, including at the contract's expiration.[59] In practice, under the Board's contract-bar rules, 9(a) recognition bars the filing of a representation petition challenging the union's majority status during the ''reasonable period'' of an agreement (up to 3 years) outside of the ''window period'' and imposes an obligation on the employer to continue to recognize and bargain with the union even after the parties' agreement has expired.[60] By contrast, as the Board explained in *John Deklewa & Sons,* there is no contract or recognition bar where there is only an 8(f) relationship: ''the 8(f) union enjoys no presumption of majority status on the contract's expiration and cannot picket or strike to compel renewal of an expired agreement or require bargaining for a successor agreement. At no time does it enjoy a presumption of majority status, rebuttable or otherwise, and its status as the employees' representative is subject to challenge at any time.'' [61]

Nonetheless, nothing in section 8(f) prevents a union representing employees in the construction industry from overcoming the 8(f) presumption and obtaining the same 9(a) recognition (and the attendant benefits) as any other union. Thus, under *John Deklewa & Sons,* the Board provided for unions representing employees in the construction industry to obtain 9(a) recognition by demonstrating—similar to unions representing employees in nonconstruction industries—a ''clear showing of majority support'' from the unit employees, assayed either through a Board representation election or the construction employer voluntarily recognizing that a majority of unit employees had designated the union as its collective-bargaining representative.[62]

Additionally, because section 8(f) uniquely permits voluntary recognition in the construction industry in the absence of majority support, where a construction employer voluntarily recognizes a union, in order to avoid the uncertainty of whether the recognition is pursuant to section 8(f) or 9(a), there must be unambiguous evidence that the construction employer's recognition was pursuant to section 9(a) instead of 8(f). In considering whether there was unambiguous evidence of section 9(a) recognition, the Board has looked to positive evidence, including contract language, of the union having made an unequivocal demand for 9(a) recognition and the employer having unequivocally granted it.[63]

In *Staunton Fuel & Material, Inc.,* the Board defined the minimum requirements for what must be stated in a written recognition agreement or contract clause in order for it to serve as sufficient evidence of the union having attained 9(a) status.[64] The Board, following the approach taken by the Tenth Circuit in *NLRB* v. *Triple C Maintenance, Inc.,* 219 F.3d 1147 (10th

[51] Id.

[52] Id. at 1385.

[53] The Landrum-Griffin Act of 1959, Public Law 86–257, 73 Stat. 541, amending 29 U.S.C. 151–169.

[54] Sec. 8(f), 29 U.S.C. 158(f).

[55] *John Deklewa & Sons,* 282 NLRB at 1380.

[56] Id.

[57] The Board in *John Deklewa & Sons* abandoned the ''conversion doctrine,'' adopted in 1971, 16 years before it issued *John Deklewa & Sons,* in which a bargaining relationship initially established under section 8(f) could convert into a 9(a) relationship by means other than a Board election or majority-based voluntary recognition. Id. at 1377. The ''conversion doctrine'' was premised on an 8(f) agreement being a ''preliminary step that contemplates further action for the development of a full bargaining relationship.'' Id. at 1378 (quoting *Ruttmann Construction Co.,* 191 NLRB 701, 702 (1971)). As such, the 8(f) agreement could be repudiated at any time by any party but also permitted the signatory union to convert the 8(f) agreement into a 9(a) relationship/agreement based on its majority support during a relevant period, even though ''[t]he achievement of majority support required no notice, no simultaneous union claim of majority, and no assent by the employer to complete the conversion process.'' Id. In contrast, under *John Deklewa & Sons,* the parties to an 8(f) agreement cannot unilaterally repudiate the agreement until it expires or the unit employees vote to reject or change their representative. Id. at 1387.

[58] Id. at 1385.

[59] Id. at 1387.

[60] See *Mountaire Farms, Inc.,* 370 NLRB No. 110, slip op. at 1 (2021) (''During this 'contract bar' period, the Board will dismiss all representation petitions unless they are filed during the 30-day period that begins 90 days and ends 60 days before the agreement expires. In other words, there is a 30-day period—customarily known as the 'window period'—during which a petition may be properly filed while the agreement is still in effect.'') (internal citation omitted); *MSR Industrial Services, LLC,* 363 NLRB 1, 2 (2015) (''When relationships in the construction industry are governed by section 9(a), the employer cannot change terms and conditions of employment unilaterally upon contract expiration, and it must continue to recognize and bargain with the union after the contract expires.''). See also sec. 8(f), 29 U.S.C. 158(f) (recognizing that an 8(f) agreement ''shall not be a bar to a petition filed pursuant to section 9(c) or 9(e)'').

[61] 282 NLRB at 1387.

[62] Id. at 1385–1387 & fn. 53.

[63] *J & R Tile, Inc.,* 291 NLRB 1034, 1036 (1988) (''[A]bsent a Board-conducted election, the Board will require positive evidence that the union sought and the employer extended recognition to a union as the 9(a) representative of its employees before concluding that the relationship between the parties is 9(a) and not 8(f).''); see also *Golden West Electric,* 307 NLRB 1494, 1495 (1992) (finding positive evidence of a union's demand for and a construction employer's grant of 9(a) recognition where the parties' voluntary-recognition agreement unequivocally stated that the union claimed it represented a majority of employees and the employer acknowledged this was so). This avoids the Board having to determine whether the union enjoyed majority support at some point in the past—in some cases many years before a dispute over the union's status has arisen—if a construction employer attempts to escape a longstanding bargaining relationship unilaterally, claiming that the relationship was always an 8(f) relationship. The Board (and the parties) can rely on the specific written language in the parties' agreement to confirm their mutual acknowledgment that a showing of majority support existed when the relationship was established as opposed to years in the future when evidence may no longer be easily available (as witnesses and documents may disappear over time).

[64] 335 NLRB 717, 719–720 (2001).

Cir. 2000) and *NLRB* v. *Oklahoma Installation Co.* 219 F.3d 1160 (10th Cir. 2000), found that ''[a] recognition agreement or contract provision will be independently sufficient to establish a union's 9(a) representation status where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, evidence of its majority support.'' [65]

Significantly, this contract language does not substitute for the union showing or offering to show evidence of its majority support; it does, however, provide a contemporaneous, written memorialization that the union had majority support at the time of the 9(a) recognition. While holding that contract language can be independently dispositive of a 9(a) relationship, the Board in *Staunton Fuel* left open the issue of whether an employer could challenge the union's majority support within the 10(b) period where the contractual language the employer had agreed to unequivocally stated that the union made a showing of majority support.[66] As the D.C. Circuit has held, if other evidence casts doubt on the assertion that the union enjoyed majority support at the time the employer purportedly granted 9(a) recognition, then the contract language necessarily fails to satisfy its intended purpose.

Thus, in *Nova Plumbing, Inc.* v. *NLRB,* the D.C. Circuit held that language in the collective-bargaining agreement between a construction employer and a union could not establish a 9(a) relationship.[67] The court pointed to strong evidence in the record that contradicted the contractual language.[68] In particular, senior employees who had been longtime union members opposed the union representing them with this employer, for instance a meeting between the senior employees and union representatives turned ''extremely hostile,'' and the employer's field superintendents and other foremen ''encountered resistance'' as they informed other employees about having to join the union.[69] The court reasoned that language in the collective-bargaining agreement ''cannot be dispositive at least where, as here, the record contains strong indications that the parties had only a section 8(f) relationship.'' [70] Subsequently, in *M & M Backhoe Service, Inc.* v. *NLRB,* the D.C. Circuit distinguished *Nova Plumbing* to uphold the language in the parties' agreement establishing that the union was the 9(a) representative where there was evidence that the union actually had majority support, even if the employer never requested to see it.[71] Six years after *M & M Backhoe,* in *Allied Mechanical Services, Inc.* v. *NLRB,* the D.C. Circuit quoted the *Nova Plumbing* court but, in doing so, added emphasis to indicate that contract language cannot be dispositive of a union's 9(a) status where the record contains contrary evidence.[72]

More recently, the D.C. Circuit in *Colorado Fire Sprinkler, Inc.* v. *NLRB* rejected the union's claim of 9(a) recognition where the union relied solely on demonstrably false contract language stating that the employer had ''confirmed that a clear majority'' of the employees had designated it as their bargaining representative, even though not a single employee had been hired at the time the parties initially executed their agreement containing that language.[73] The court noted that ''actual evidence that a majority of employees have thrown their support to the union must exist and, in Board proceedings, that evidence must be reflected in the administrative record.'' [74] The court recognized that the only evidence of the union's majority support that could be pointed to in the record was the ''demonstrably false'' contract language.[75] In fact, as the court pointed out, ''[t]ellingly, at no point in the administrative record did the [u]nion even explain, let alone proffer, what evidence it claimed to have collected'' to support its assertion that a majority of employees had designated it as their bargaining representative.[76] The court concluded that the Board had improperly ''blink[ed] away record evidence undermining the credibility or meaningfulness of the recognition clauses'' and ''ma[de] demonstrably untrustworthy contractual language the be-all and end-all of [s]ection 9(a) status.'' [77] Construction industry employers and unions—like those in all other industries—cannot have created a 9(a) relationship where the union did not enjoy majority support, regardless of whether they agree to a contractual provision falsely attesting to the union's majority support.[78]

2. The 6-Month Limitations Period for Challenging a Union's 9(a) Recognition in the Construction Industry

Importantly, in *John Deklewa & Sons,* despite the greater statutory leeway granted to construction employers and unions to enter into section 8(f) collective-bargaining relationships, the Board recognized that unions seeking section 9(a) representation do not ''have less favored status with respect to construction industry employers than they possess with respect to those outside the construction industry.'' [79]

Six years after issuing *John Deklewa & Sons,* the Board in *Casale Industries* [80] relied on this basic tenet from *John Deklewa & Sons*—that unions representing construction-industry employees should be treated no less favorably than those representing nonconstruction-industry employees—to explicitly incorporate into the representation arena the teachings of the Supreme Court in *Local Lodge No. 1424, International Association of Machinists, AFL–CIO (Bryan Manufacturing Co.)* v. *NLRB.* In *Bryan Manufacturing,* the Supreme Court held that if an employer recognizes a union as the section 9(a) representative and more than 6 months

[65] Id. at 719–720.

[66] Id. at 720 fn. 14.

[67] 330 F.3d 531, 537–538 (D.C. Cir. 2003).

[68] Id. at 533.

[69] Id. at 537.

[70] Id.

[71] 469 F.3d 1047, 1050 (D.C. Cir. 2006) (''This case is like *Nova Plumbing* in the following respects: the union offered to prove to the employer that it had majority support; and the employer recognized the union without examining the union's proof. But there is a critical difference. Unlike *Nova Plumbing,* in which there was no evidence that the union actually had majority support, here the record shows—as the Board found—that a majority of employees voluntarily signed union authorization cards signifying their support of [the union].'').

[72] 668 F.3d 758, 766 (2012) (''Standing alone . . . contract language and intent cannot be dispositive *at least where . . . the record contains strong indications that the parties had only a section 8(f) relationship*.'') (quoting *Nova Plumbing,* 330 F.3d at 537) (emphasis added in *Allied Mechanical Services*).

[73] 891 F.3d 1031, 1036 (D.C. Cir. 2018).

[74] Id. at 1040.

[75] Id.

[76] Id. at 1041.

[77] Id.

[78] More recently, relying on the D.C. Circuit decision in *Colorado Fire Sprinkler,* the Board in *Enright Seeding, Inc.* noted that ''contractual language can only serve as evidence of a union's 9(a) majority representation *if it is true.*'' 371 NLRB No. 127, slip op. at 5 (emphasis added). Furthermore, the Board explained that ''[c]ontract language alone is insufficient to demonstrate the union's 9(a) status if other evidence casts doubt on the assertion that the union enjoyed majority support at the time the employer purportedly granted 9(a) recognition.'' Id., slip op. at 6. An application for enforcement of the Board's decision in *Enright Seeding* is currently pending in the Eighth Circuit.

[79] *John Deklewa & Sons,* 282 NLRB at 1387 fn. 53. Just as importantly, employees working for construction employers are entitled to the same rights and opportunities for their union to obtain 9(a) status through voluntary recognition as employees in nonconstruction industries.

[80] *Casale Industries,* 311 NLRB 951, 953 (1993).

elapse, the Board will not entertain a claim that the union lacked majority status when it was initially granted recognition.[81]

In *Bryan Manufacturing,* more than 6 months after the parties had executed a collective-bargaining agreement, unfair labor practice charges were filed contesting the parties' enforcement of the union-security clause in the contract on the grounds that the union indisputably lacked majority support at the time the parties executed their agreement.[82] Nonetheless, the Court reversed the Board and dismissed the complaint because, under section 10(b)'s 6-month limitations period, the complaint was premised on the allegedly unlawful recognition of the union, which occurred more than 6 months prior to the filing of the charge.[83] The Court based its decision on not only the statutory language but also the practical need for a time restriction on challenges to a union's initial recognition.[84] As the Court acknowledged, quoting the legislative history from the Congress that enacted it, the 6-month limitations period under section 10(b) is essential ''to bar litigation over past events 'after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused,' . . . and of course to stabilize existing bargaining relationships.'' [85]

Relying on *Bryan Manufacturing,* in *Casale,* the Board reiterated that, in nonconstruction industries, the Board will not entertain a claim that a union lacked majority status at the time of recognition if more than 6 months have elapsed because ''a contrary rule would mean that longstanding relationships would be vulnerable to attack, and stability in labor relations would be undermined.'' [86] The Board stated succinctly that these interests should prevail in construction industry representation cases: ''These same principles would be applicable in the construction industry . . . . [P]arties in nonconstruction industries, who have established and maintained a stable [s]ection 9 relationship, are entitled to protection against a tardy attempt to disrupt their relationship. Parties in the construction industry are entitled to no less protection.'' [87]

3. The Board's 2019 NPRM on 9(a) Recognition in the Construction Industry

On August 12, 2019, the Board issued an NPRM seeking public comments on its proposal, among other things, to modify the manner in which construction employers may acknowledge a union's 9(a) status.

The Board proposed in its 2019 NPRM to overrule *Staunton Fuel,* regarding the sufficiency of contract language alone to establish a 9(a) bargaining relationship.[88] The Board contended that overruling *Staunton Fuel* would be in accordance with the D.C. Circuit decision in *Colorado Fire Sprinkler* and that it would be most consistent with statutory majoritarian principles and protecting employee free choice.[89] The Board reasoned that the proposed rule was necessary to prevent a union, without having any extrinsic proof of its majority support, from barring the processing of an election petition filed by an employee or a rival union for up to three years based solely on language in the union's collective-bargaining agreement with a construction employer.[90]

Under the rule proposed in the 2019 NPRM, the Board would require, in the representation context, the parties to retain additional positive evidence of the union's 9(a) majority support beyond the parties' contract language. Specifically, if a representation petition is filed, and the parties are unable to present positive evidence of the union having made a contemporaneous showing of support from a majority of unit employees at the time initial recognition was granted, the parties would be unable to rely on the Board's customary voluntary-recognition and contract bars. The regional director would be required to process the representation petition, even if it would destabilize the collective-bargaining relationship.[91] Moreover, if the employer had granted the union 9(a) recognition at a time when it did not enjoy majority support, the Board would be processing a representation petition at a time when the employer had provided the union unlawful assistance under section 8(a)(2) and (1) so that laboratory conditions may not exist to ascertain employees' true sentiment towards the union.[92]

While the NPRM indicated that the Board sought to overrule *Staunton Fuel,* the Board's NPRM made no mention whatsoever of altering the bedrock principle from *Bryan Manufacturing,* reiterated in *Casale*—which was itself a representation case involving an election petition—that a challenge cannot be made to a union's initial recognition by a construction employer after 6 months had elapsed. Indeed, no mention was made of section 10(b), or that a modification to the Board's limitations period for challenging a union's initial recognition of 9(a) majority status was in any way being contemplated by the Board. Accordingly, under the language and reasoning of the Board's NPRM, and in accordance with *Casale,* even if a construction employer and/or a union were unable to present positive evidence of the union's initial 9(a) recognition, a representation petition challenging the union's 9(a) recognition that was based on unequivocal written 9(a) recognition could not be processed if more than 6 months had elapsed from the union's initial 9(a) recognition.

4. The 2020 Final Rule

On April 1, 2020, following a public comment period, the Board promulgated its final rule adopting the proposed language from its NPRM but also stating in the preamble to the rule that it was overruling *Casale* ''to the extent that it is inconsistent with the instant rule.'' [93] The Board proceeded by stating that ''we overrule *Casale's* holding that the Board will not entertain a claim that majority status was lacking at the time of recognition where a construction-industry employer extends 9(a)

[81] 362 U.S. 411, 419 (1960); see also *North Bros. Ford,* 220 NLRB 1021, 1021 (1975).

[82] 362 U.S. at 412.

[83] Id. at 416–417.

[84] Id. at 419.

[85] Id.

[86] *Casale,* 311 NLRB at 953 (citing *Bryan Manufacturing Co.,* 362 U.S. at 411).

[87] Id. (citing *John Deklewa & Sons,* 282 NLRB at 1387 fn. 53).

[88] 84 FR 39938–39939.

[89] Id.

[90] Id.

[91] See *General Cable Corp.,* 139 NLRB 1123, 1125 (1962) (finding the delay as to when employees are able to exercise their free choice in an election ''fully warranted when viewed in the light of countervailing considerations, including the necessity to introduce insofar as our contract-bar rules may do so, a greater measure of stability of labor relations into our industrial communities as a whole to help stabilize in turn our present American economy'').

[92] See *Joseph Weinstein Electric Corp.,* 152 NLRB 25, 39 (1965) (a construction employer's 9(a) recognition of and entering into an agreement with a union that does not enjoy majority support is unlawful under sec. 8(a)(2) and (1) and 8(b)(1)(A)); *Bear Creek Construction Co.,* 135 NLRB 1285, 1286–1287 (1962) (a construction employer provided unlawful assistance under sec. 8(a)(2) to a union in obtaining membership applications and checkoff authorization cards and, therefore, was ordered to cease and desist from recognizing the union as its employees' collective-bargaining representative and giving effect to the parties' agreement); see also *General Shoe Corp.,* 77 NLRB 124, 126 (1948) (''An election can serve its true purpose only if the surrounding conditions enable employees to register a free and untrammeled choice for or against a bargaining representative.'').

[93] 85 FR 18391.

recognition to a union and 6 months elapse without a petition.'' [94] The Board asserted that the DC and Fourth Circuits, and some former Board Members, had expressed doubts regarding section 10(b)'s applicability to challenges to a construction-industry union's purported 9(a) status.[95] The Board claimed that ''the *Casale* Board failed to recognize that employees and rival unions will likely presume that a construction-industry employer and union entered an 8(f) collective-bargaining agreement . . . . Thus, it is highly unlikely that [employees and rival unions] will file a petition challenging the union's status within 6 months of recognition.'' [96] The Board also stated that, ''most significantly, [the Board finds that] *Casale*'s requirement that an election petition be filed within 6 months to challenge a purported 9(a) recognition in the construction industry improperly discounts the importance of protecting employee free choice . . . .'' [97]

The practical effect of the Board's unanticipated overruling of *Casale* in the final rule—an action not mentioned, much less considered by the Board in the NPRM—was to require that a union and employer be prepared to prove evidence of the union's initial majority support—forever. Under the final rule, a challenge could be made to a construction employer's initial recognition of a union many years into the future at a time when it would be fundamentally unreasonable to expect the construction employer or the union to have maintained contemporaneous evidence of the union's majority support. Under the rule, there is no limit to the amount of time that may have passed since the initial recognition, but parties would be required to produce proof of the initial majority support in order for the Board to reject a challenge to even a longstanding employer-union 9(a) relationship.

D. Pending Litigation Challenging the 2020 Final Rule

On July 15, 2020, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the Baltimore-DC Metro Building and Construction Trades Council sued the NLRB (D.D.C. No. 20–cv–1909) (''AFL–CIO II''), alleging that the entirety of the April 2020 Rule was invalid because, among other things, it is arbitrary, capricious, an abuse of discretion, and in violation of the NLRA.

On August 11, 2020, the NLRB filed a motion to transfer *AFL–CIO II* to the United States Court of Appeals for the District of Columbia Circuit, arguing that the district court lacks subject matter jurisdiction. The AFL–CIO opposed the transfer. The NLRB previously advanced similar threshold jurisdictional arguments in *AFL–CIO* v. *NLRB* (''*AFL–CIO I*'') (D.D.C. Case No. 20–cv–675 (KBJ)), which is currently pending decision by the D.C. Circuit (Case No. 20–5223), concerning changes to the Board's representation case procedures that the Board promulgated on December 18, 2019. On October 23, 2020, the district court in *AFL–CIO II* ordered a temporary stay pending resolution of the parties' cross-appeals of *AFL–CIO I,* where the same jurisdictional issue will be decided. On May 14, 2021, the D.C. Circuit held oral argument in *AFL–CIO I.* Once the D.C. Circuit issues its decision, the *AFL–CIO II* parties must file a joint status report within 14 days proposing a schedule for further proceedings. That litigation remains pending.

E. Rulemaking Petitions Seeking Rescission of the April 1, 2020 Rule

On November 16, 2021, the AFL–CIO and North America's Building Trades Unions (''NABTU'') filed a joint petition for rulemaking (''2021 petition'') requesting that the Board rescind each of the amendments made in the April 1, 2020 final rule. The 2021 petition urged the Board to: (1) rescind § 103.20, arguing that the Board violated the Administrative Procedure Act in two respects (by presenting erroneous data in the NPRM and failing to correct those errors in the final rule, and by adopting a final rule that was not a logical outgrowth of the proposed rule) and additionally arguing, as a policy matter, that the changes to the blocking charge policy were ill-conceived; (2) rescind § 103.21, alleging that the Board had violated the Administrative Procedure Act by failing to respond to the AFL–CIO's comment that the rule violated the Board's duty of neutrality with respect to employees' choice concerning union representation; and (3) rescind § 103.22, because the NPRM had not proposed overruling *Casale* and did not advise the public that it was contemplating overruling *Casale* and thus failed to provide the public with an opportunity to be heard on such a fundamental modification to collective-bargaining relationships in the construction industry.

On April 7, 2022, UNITE HERE International Union (''UNITE HERE'') filed a petition (''2022 petition'') for rulemaking specifically requesting the Board to rescind § 103.21. The 2022 petition expressed its support for the 2021 petition but listed additional policy arguments favoring a return to the Board's prior voluntary-recognition bar doctrine.[98]

III. Statutory Authority

Section 6 of the NLRA, 29 U.S.C. 156, provides that ''[t]he Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of Title 5 [the Administrative Procedure Act, 5 U.S.C. 553], such rules and regulations as may be necessary to carry out the provisions of this [Act].'' [99] The Supreme Court unanimously held in *American Hospital Association* v. *NLRB,* 499 U.S. 606, 609–610 (1991), that the Act authorizes the Board to adopt both substantive and procedural rules governing representation case proceedings. The Board interprets section 6 as authorizing the proposed amendments to its existing rules.

IV. The Proposed Rule Amendments

A. Rescission of the April 1, 2020 Blocking Charge Amendments

As set forth above, the Board developed the blocking charge policy through adjudication more than eight decades ago. And, for the more than eight decades that the Board adhered to the policy, the blocking charge policy enabled the Board to fulfill one of its core obligations: to preserve laboratory conditions for ascertaining employee choice during Board-conducted elections. In addition, the policy advanced the interests of potential voters by shielding them from voting in an atmosphere tainted by coercion. Reviewing courts have approved the Board's historical blocking charge policy. See, *e.g., Bishop* v. *NLRB,* 502 F.2d 1024, 1028–1029, 1032 (5th Cir. 1974) (distinguishing *Templeton* v. *Dixie Color Printing Co.,* 444 F.2d 1064 (5th Cir. 1971), and *Surratt* v. *NLRB,* 463 F.2d 378 (5th Cir. 1972), as involving a ''high degree of arbitrariness'' in application of the blocking-charge policy). No court has ever held the policy invalid, despite occasional disagreements between the Board and

[94] Id.

[95] Id.

[96] Id.

[97] Id.

[98] The 2021 and 2022 petitions for rulemaking will be part of the administrative record for this rulemaking.

[99] Sec. 6 of the Act refers to the Board's authority to ''rescind'' rules, while sec. 553 of the Administrative Procedure Act refers to the ''repeal'' of rules. See also 5 U.S.C. 551(5) (''[R]ule making' means agency process for formulating, amending, or repealing a rule''). For purposes of this NPRM, we treat these terms as interchangeable.

the courts over the application of the policy in particular cases. For the reasons that follow, we are inclined to believe, subject to comments, that the pre-April 2020 blocking charge policy better balances the Board's interests in protecting employee free choice, preserving laboratory conditions in Board-conducted elections, and resolving questions concerning representation expeditiously.

Before explaining why we are inclined to believe, subject to comments, that the pre-April 2020 blocking charge policy better balances the Board's interests than the April 2020 final rule, we note that the rulemaking process that the Board followed in adopting the April 2020 rule was flawed in its treatment of Board election data. As discussed above and as the parties that filed the 2021 rulemaking petition also noted, 2021 Petition at 2–12, the NPRM contained flawed data that was never corrected in the final rule.

In adopting the final rule, the Board contended that any errors did not matter because the blocking charge policy by definition delays the conduct of elections, and its conclusion—that its amendments to the blocking charge policy better protect employees' statutory right of free choice on questions concerning representation—constituted a ''policy choice . . . that . . . does not . . . depend on statistical analysis.'' 85 FR 18366, 18377. We do not dispute that in rulemaking, the Board may be free to make a policy choice that does not primarily rely on either statistical data or particular facts about the operation of the prior rule.[100] Nevertheless, we are concerned that the Board's failure to correct errors in the data presented in the NPRM might well have harmed the rulemaking process.[101]

More importantly, turning to the merits of the April 2020 final rule, the Board is inclined to believe, subject to comments, that returning to the Board's pre-April 2020 blocking charge policy would best serve the policies of the Act. Permitting regional directors to generally decline to process an election petition at the request of a party who has filed a charge alleging conduct that would interfere with employee free choice or conduct that is inherently inconsistent with the petition (and who has simultaneously filed an adequate offer of proof and agreed to promptly make its witnesses available), until the merits of the charge can be determined, better protects employee free choice than the April 2020 amendments that require regional directors to conduct elections in all cases no matter how serious the unfair labor practice charges and no matter how powerful the indicia of their merit. Accordingly, we propose to amend the wording of 29 CFR 103.20 to conform to the wording of that section as it existed prior to the April 2020 final rule.[102] In all other respects, the Board's prior applicable law regarding the blocking charge policy, which was developed through adjudication, would be restored.

Although we agree with the April 2020 Board that, under ordinary circumstances, the Board should conduct elections expeditiously, there can also be no denying—and the April 2020 Board did not deny—that the Board has regularly confronted cases involving unlawful conduct that either interferes with the ability of employees to make a free choice about union representation in an election or is inherently inconsistent with the petition itself. The Board is inclined to believe, subject to comments, that it would undermine employee rights, and would run counter to the Board's duty to conduct elections in circumstances in which employees may freely choose whether to be represented by a union, if the Board were to require regional directors to conduct, and employees to vote in, a coercive atmosphere. But, as the April 2020 Board acknowledged in adopting the final rule, the 2020 blocking charge amendments require the Board to do precisely that. In particular, the April 2020 Board acknowledged that the results of the elections must be set aside and rerun elections ordered when the Type I charges are found to have merit and to have impacted the election. The April 2020 Board further acknowledged that the ballots cast in cases involving certain types of Type II charges will either not be honored (if the ballots had been counted) or will ''never be counted'' (if they were impounded because a complaint, which issued within 60 days of the election, is found to have merit). Thus, it cannot be denied that under the April 2020 amendments, regional directors will be required to run—and employees, unions, and employers will be required to participate in—elections conducted under coercive conditions. 85 FR 18370, 18378–18380. Subject to comments, we are also inclined to believe that because the April 2020 final rule requires regional directors to run—and employees, unions, and employers to participate in—elections that will not resolve the question of representation because they were conducted under coercive circumstances, the proposed amendments run the risk of imposing unnecessary costs on the parties and the Board. Subject to comments, we are also inclined to believe that the Board's position in the April 2020 rulemaking—that nothing is more important under the Act and its policies than having employees vote without delay in every case (even though it means they will be required to vote in elections under coercive conditions)—cannot be squared with the Board's responsibility to provide laboratory conditions for ascertaining employee choice during Board-conducted elections. Put simply, we are inclined to disagree with the April 2020 Board's conclusion that it is inappropriate to delay an initial election to shield employees from having to vote under coercive circumstances.

Subject to comments, we also question the April 2020 Board's premise that its amendment requiring elections to be held in all cases involving requests to block is necessary to preserve employee free choice because the blocking charge policy deprives employees of free choice in those cases where petitions are blocked by nonmeritorious charges. While we recognize that blocking elections based on nonmeritorious charges may result in some delay, our preliminary position, subject to comments, is that the benefits of not allowing elections to proceed under the clouds of an unfair labor practice far outweigh any such delay. We are inclined to believe that the Board's blocking charge policy as it existed prior to the effective date of the April 2020 final rule best preserved employee free choice in representation cases in which petitions are blocked because of concurrent unfair labor practice charges. We note that because

[100] While we acknowledge the Supreme Court's teaching that *relevant* data must be examined in the course of rulemaking, *Motor Vehicle Mfrs. Assn.* v. *State Farm Mutual Automobile Ins. Co.,* 463 U.S. 29, 43 (1983), it remains true that the Agency may make policy decisions for which the data does not provide the answer.

[101] Cf. *American Relay Radio League* v. *FCC,* 524 F.3d 227, 237 (D.C. Cir. 2008) (''[S]tudies upon which an agency relies in promulgating a rule must be made available during the rulemaking in order to afford interested persons meaningful notice and an opportunity for comment.''); *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375, 392–393 (D.C. Cir. 1973) (relying on inaccurate data is a ''critical defect'' in an agency's decisionmaking during a rulemaking proceeding).

[102] See 29 CFR 103.20 (Dec. 15, 2014) (requiring that a party filing a request to block must simultaneously file an adequate offer of poof and promptly make its witnesses available, and further providing that ''[i]f the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director shall continue to process the petition and conduct the election where appropriate.'').

the historical blocking charge policy provided for the regional director to resume processing the representation petition to an election if a charge were ultimately determined to lack merit, employees in those cases would be afforded the opportunity to vote whether they wish to be represented, and thus employee free choice was preserved. However, unlike the April 2020 rule amendments, the Board's historical blocking charge policy also protects employee free choice in cases involving *meritorious* charges by suspending the processing of the election petition until the unfair labor practices are remedied. By shielding employees from having to vote under coercive conditions, the historical blocking charge policy would seem to be more compatible with the policies of the Act and the Board's responsibility to provide laboratory conditions for ascertaining employee choice during Board-conducted elections. In short, we are inclined to believe, subject to comments, that it is the 80-year-old blocking charge policy, not the April 2020 final rule amendments requiring elections in all cases involving requests to block, that best protects employee free choice in the election process. 84 FR 39945.[103]

In proposing to return to the Board's historical blocking charge policy, we further note that the April 2020 Board pointed to nothing that had changed in the representation case arena during the eight decades that the blocking charge policy had been in existence that justified making their sea change in the law. Prior to the adoption of the April 2020 final rule, Congress had not amended the Act in such a way as to call the blocking charge policy into question. No court had invalidated the policy. To the contrary, the courts had recognized that the salutary reasons for the blocking charge policy ''do not long elude comprehension,'' and that the policy had ''long-since [been] legitimized by experience.'' *Bishop* v. *NLRB,* 502 F.2d 1024, 1028, 1032 (5th Cir. 1974).[104] And, significantly, the Agency's regional directors—the officials who are charged with administering the policy in the first instance, and whose opinions were explicitly sought and received by the Board—had publicly endorsed the policy.[105]

Subject to comments, we also question the reasons offered by the Board in adopting the April 2020 amendments and eliminating the historical blocking charge policy.

First, the April 2020 Board repeatedly emphasized the obvious: that the blocking charge policy causes delays in conducting elections. From this, the Board argued that the blocking charge policy impedes employee free choice. 85 FR 18366, 18367, 18372–18373, 18375–18380, 18393. However, as then-Member McFerran pointed out in her dissent to the proposed amendments, the Board's conclusion does not necessarily follow from its premise. 84 FR 39943. To the contrary, we are inclined to believe that the blocking charge policy better protects employee free choice notwithstanding the delay that the policy necessarily entails. As the Board has previously observed, ''it is immaterial that elections may be delayed or prevented by blocking charges, because when charges have merit, elections *should* be [delayed or] prevented.'' *Levitz,* 333 NLRB at 728 fn. 57 (emphasis in original). We thus are inclined to agree with the observation of the December 2014 Board, when it codified the decades-old blocking charge policy, that ''[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'' 79 FR 74429. If the circumstances surrounding an election interfere with employee free choice, then, contrary to the April 2020 final rule, it does not seem ''efficient'' to permit employees to cast ballots ''speedily'' because the ballots cast in such an election cannot be deemed to ''accurately'' reflect employees' true, undistorted desires. 85 FR 18367,

[103] Subject to comments, we question the suggestion of the April 2020 Board that the Board's historical blocking charge policy can prevent employees from ever obtaining an election if they continue to desire an election after the merits of the charge are determined. 85 FR 18366, 18377. As shown, if the petition was held in abeyance because of a Type I charge, the regional director resumed processing the petition once the charge was ultimately found to lack merit or the unfair labor practice conduct was remedied. Casehandling Manual Sections 11732, 11733.1, 11734 (August 2007). If, on the other hand, the petition was dismissed because of a Type II charge, it was subject to reinstatement if the charge was found nonmeritorious. Id. at section 11733.2. And, as the courts had recognized, even if the petition was dismissed because of a meritorious Type II blocking charge, employees could, if they so choose, file a new petition after the unfair labor practice conduct that caused the petition to be dismissed is remedied. See *Bishop* v. *NLRB,* 502 F.2d 1024, 1028–1029 (5th Cir. 1974) (''If the employees' dissatisfaction with the certified union should continue even after the union has had an opportunity to operate free from the employer's unfair labor practices, the employees may at that later date submit another decertification petition.''); see also *Albertson's Inc.* v. *NLRB,* 161 F.3d 1231, 1239 (10th Cir. 1998) (''[A]ny harm to employees seeking decertification resulting from the blocking of the petition is slight in that employees are free to file a new petition so long as it is circulated and signed in an environment free of unfair labor practices.''). Moreover, even if the petitioner withdrew their petition, another employee was free to file a new petition. To be sure, as the April 2020 Board noted, 85 FR 18377, a blocked decertification petition may never proceed to an election if the incumbent union disclaims interest in representing the unit. However, there plainly is no need to hold a decertification election to afford employees the opportunity to oust the incumbent union if that union has voluntarily withdrawn from the scene. We also question the final rule's complaint, 85 FR 18367, 18379, that the pre-April 2020 blocking charge policy renders illusory the possibility of employer-filed (''RM'') election petitions. Under that policy if an RM petition is blocked, the regional director resumes processing it once the unfair labor practice charges are remedied or the charges are determined to lack merit. Moreover, as noted, then-Member McFerran's analysis of the relevant data indicated that the overwhelming majority of RM petitions are never blocked, and that even in the minority of instances when RM petitions are blocked, most of these petitions are blocked by meritorious charges.

[104] Accord *Blanco* v. *NLRB,* 641 F.Supp. 415, 417–418, 419 (D.D.C. 1986) (rejecting claim that sec. 9 imposes on the Board a mandatory duty to proceed to an election whenever a petition is filed notwithstanding the pendency of unfair labor practice charges alleging conduct that would interfere with employee free choice in an election, and holding that the use of the blocking charge rule was ''in accord with the Board's policy to preserve the 'laboratory conditions' necessary to permit employees to cast their ballots freely and without restraint or coercion.''); see also *Remington Lodging & Hospitality, LLC* v. *Ahearn,* 749 F.Supp.2d 951, 960–961 (D. Alaska 2010) (''[W]here a petition to decertify the union is related to the ULP charges, the 'blocking charge rule' prioritizes the agency's consideration of the ULP charges to ensure that any decertification proceedings are handled in an uncoerced environment.''). As the Fifth Circuit explained in *Bishop,* 502 F.2d at 1028–1029 (citations omitted), ''it would be particularly anomalous, and disruptive of industrial peace, to allow the employer's [unfair labor practices] to dissipate the union's strength, and then to require a new election which 'would not be likely to demonstrate the employees' true, undistorted desires,' since employee disaffection with the union in such cases is in all likelihood prompted by [the situation resulting from the unfair labor practices].

''If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning. Nothing would be more pitiful than a bargaining order where there is no longer a union with which to bargain.

''Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.

''If the employees' dissatisfaction with the certified union should continue even after the union has had an opportunity to operate free from the employer's unfair labor practices, the employees may at that later date submit another decertification petition.''

[105] See April 13, 2018 Regional Director Committee's Response and Comments to the Board's Request for Information on the Representation-Case Procedures, at 1 (reporting that directors ''do not see a need to change'' blocking charge § 103.20).

18380, 18393. That is why, as the April 2020 Board acknowledged, elections conducted under coercive circumstances under its amendments will not actually resolve the question of representation.[106]

Second, the Board complained that there is a potential for incumbent unions to abuse the blocking charge policy by deliberately filing nonmeritorious unfair labor practice charges in the hopes of delaying decertification elections. 85 FR 18367, 18376, 18377, 18379–18380, 18393. But, as then-Member McFerran pointed out in her dissent to the proposed rule, the prior Board majority made no effort to determine how often decertification petitions are blocked by meritorious charges, as compared to nonmeritorious charges, or how much delay is attributable to nonmeritorious charges (which still may well have been filed in good faith, and not for purposes of obstruction). 84 FR 39943. Nor did the final rule. In short, there has been no showing that it was the norm for unions to file frivolous blocking charges to postpone elections in RD or RM cases. And, as noted, the NPRM dissent's analysis of the pre-Covid data would seem to undercut the April 2020 Board's unsupported concern, as it appears to show that an overwhelming majority of the decertification petitions and employer filed RM petitions are never blocked, and that even in the minority of instances when decertification petitions and RM petitions are blocked, most of these petitions are blocked by meritorious charges.[107] Moreover, subject to comments, we are inclined to believe that the regulatory provisions adopted in 2014—requiring the party that seeks to block the election to (1) simultaneously file an offer of proof providing the names of its witnesses who will testify in support of the charge and a summary of each witness' anticipated testimony, and (2) promptly make the witnesses available to the regional director—constitute a disincentive to file frivolous charges and provide powerful tools to regional directors to promptly dispose of any frivolous charges that are filed. See *Associated Builders and Contractors of Texas, Inc.* v. *NLRB,* 826 F.3d 215, 228 (5th Cir. 2016) (citing amended § 103.20's offer of proof requirement and concluding that the Board ''considered the delays caused by blocking charges, and modified current policy in accordance with those considerations.'').

Further, compared to the countless examples of cases where employers engage in coercive behavior—such as instigating decertification petitions, committing unfair labor practices that inevitably cause disaffection from incumbent unions, and engaging in unfair labor practices after a decertification petition is filed—in an effort to oust incumbent unions, or engage in coercive behavior to sway employee votes in the context of initial organizing campaigns, the final rule cited the same few isolated cases that the NPRM had cited to support the April 2020 Board's claim of judicial concern about the blocking charge policy's effect on employee free choice. 85 FR 18367,18376; 84 FR 39931–39932. Subject to comments, we are inclined to believe that those cases do not constitute persuasive authority for eliminating the blocking charge policy, for the same reasons the dissenting Board member articulated in her dissent to the NPRM.[108]

Third, the April 2020 Board found fault with the blocking charge policy because it permits a mere discretionary ''administrative determination'' as to the merits of unfair labor practice charges to delay employees' ability to vote whether they wish to obtain, or retain, union representation. 85 FR 18367, 18377, 18393. Subject to comments, we are inclined to believe that that does not constitute a persuasive reason to retain the April 2020 amendments. As the dissent to the NPRM pointed out, the Board ignored that regional directors and the General Counsel make all sorts of administrative determinations that impact the ability of employees to obtain an election or to retain union representation. 84 FR 39944. For example, employees, unions, and employers are denied an election if the regional director makes an administrative determination that the petitioner lacks an adequate showing of interest. See 79 FR 74391, 74421 (the adequacy of the showing of interest is a matter for administrative determination and is nonlitigable). Regional directors may also deny employer and union requests for second elections based on an administrative determination that no misconduct occurred or that any misconduct that occurred did not interfere with employee free choice. See 79 FR 74412, 74416 (parties have no entitlement to a post-election hearing on election objections or determinative challenges, and regional directors have discretion to dispose of such matters administratively).[109] Indeed, the Board's skepticism toward regional director administrative determinations in this context is in considerable tension with Congress' decision to authorize regional directors to administratively decide when elections should be conducted in

[106] The April 2020 Board made the claim that employees would be less ''frustrate[d]'' or ''confuse[d]'' under its amendments, 85 FR 18380, which provide that, although the ballots will be promptly opened and counted in the vast majority of cases, the results of the election will nevertheless not be certified until there has been a final disposition of the charge and a determination of its effects on the petition by the Board. 85 FR 18370. We reject this speculative proposition. We are inclined to believe, subject to comments, that opening and counting ballots submitted under coercive circumstances, yet refusing to certify the results, will, at best, confuse employees and, at worst, actively mislead them by conveying a materially false impression of union support. Moreover, it takes the same amount of time to determine the merits of the charge, whether that determination is made before an election is conducted (as under the Board's historical blocking charge policy) or whether that determination is made after the election (as is the case under the April 2020 amendments). In short, just as was the case under the Board's historical blocking charge policy, the question of representation cannot be resolved under the April 2020 final rule until the merits of the charge have been determined. In any event, the final rule also did not address the frustration that might well be felt by employees who, under the April 2020 final rule, will be required to vote under coercive circumstances.

[107] Moreover, the NPRM dissent's analysis seemed to show that the merit rates for blocking charges filed in the RD and RM contexts—66 percent and 89 percent respectively—were substantially higher than the merit rate for all unfair labor practice charges, which in FYs 2016 and 2017 merely ranged from 37.1% to 38.6%. 84 FR 39944 & fn. 64, 39945 fn. 69 (and materials cited therein). Ultimately, however, just as the April 2020 Board decided to substantially eliminate the blocking charge policy based on a policy choice that does not depend on statistical analysis, we propose to return to the judicially approved, historical blocking charge policy based on a policy choice that the historical blocking charge policy better enables the Board to fulfill its function in election proceedings of providing a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of employees.

[108] As mentioned above, although the Board's application of the blocking charge policy in a particular case had occasionally been criticized, no court had ever denied enforcement to a Board decision based upon a generalized rejection of that policy. 84 FR 39943.

[109] The D.C. Circuit's decision in *Allied Mechanical Services, Inc.* v. *NLRB,* 668 F.3d 758, 761, 771, 773 (D.C. Cir. 2012) provides further support for the notion that the April 2020 Board's distrust of administrative determinations is not well founded. There, the court rejected claims that an administrative settlement of a *Gissel* complaint—that is, a settlement agreement approved by a regional director requiring the company to bargain with the union as the unit's exclusive representative—was insufficient to demonstrate that a union had sec. 9(a) status. Id. at 770–771. In doing so, the court relied on a longstanding presumption that the actions of administrative officials are fair and regular. Id. (citing cases). The court reasoned, moreover, that it would be ''unlikely—and even illogical—to suppose that the Board's General Counsel would have asserted that a majority of [the Company's] unit employees had designated the Union as their representative through authorization cards, and that a *Gissel* bargaining order was necessary to remedy the Company's unfair labor practices, without first investigating the Union's claim of majority status and satisfying itself that a *Gissel* bargaining order was appropriate.'' Id. at 771.

the first place and when the results of elections should be certified in section 3(b) of the Act. See also 79 FR 74332–74334 (observing that Congress expressed confidence in the regional directors' abilities when it enacted section 3(b)).

Fourth, the April 2020 Board complained that employees who support decertification petitions are adversely affected by blocking charges because delay robs the petition effort of momentum and thereby threatens employee free choice. 85 FR 18367, 18393. We are inclined to believe, subject to comments, that this justification for the April 2020 amendments misapprehends the core statutory concerns underlying the blocking charge policy. As then-Member McFerran noted in her dissent to the NPRM, if a party has committed unremedied unfair labor practices that interfere with employee free choice, then elections in those contexts will not accurately reflect the employees' unimpeded desires and therefore should not be conducted. 84 FR 39944. Indeed, the momentum that the final rule seeks to preserve may be entirely illegitimate, as in cases where the employer unlawfully initiates the decertification petition, or the momentum may be infected by unlawful conduct, as in cases where after a decertification petition is filed, the employer promises to reward employees who vote against continued representation or threatens adverse consequences for employees who continue to support the incumbent union.[110]

The April 2020 Board also criticized the blocking charge policy as creating ''an anomalous situation'' whereby conduct (if alleged in election objections) that cannot be found to interfere with employee free choice because it occurred pre-petition, see *Ideal Electric,* 134 NLRB 1275 (1961), can nevertheless be the basis for delaying or denying an election. 85 FR 18367, 18393. We question whether this constitutes a persuasive reason not to return to the blocking charge policy as it existed prior to the effective date of the April 2020 amendments. *Ideal Electric* does not preclude the Board from considering pre-petition misconduct as a basis for setting aside an election. As the Board has explained, ''*Ideal Electric* notwithstanding, the Board will consider prepetition conduct that is sufficiently serious to have affected the results of the election.'' *Harborside Healthcare, Inc.,* 343 NLRB 906, 912 fn. 21 (2004). Accord *Madison Square Garden CT., LLC,* 350 NLRB 117, 122 (2007). Further, as the April 2020 Board implicitly conceded, under its final rule, it is equally the case that ballots will ''never be counted'' in some cases based on serious pre-petition misconduct, such as where the employer instigates the petition and where a complaint issues within 60 days of the election. 85 FR 18378, 18380 (even if the ballots are counted under the April 2020 final rule because the complaint on the Type II charge issues more than 60 days after the election, the ballots will be thrown out if the Board ultimately decides that the charge has merit). Moreover, under the pre-April 2020 blocking charge policy, regional directors had discretion to reject blocking requests and proceed straight to an election when they concluded that, under the circumstances, employees would be able to exercise free choice notwithstanding a pending unfair labor practice charge (because, for example, the charge merely alleged minor and isolated pre-petition unfair labor practice conduct).[111]

The April 2020 Board also justified its amendments to the blocking charge policy by claiming that regional directors had not been applying the blocking charge policy consistently. 85 FR 18367, 18379, 18393. However, after reviewing the final rule, we question whether that justification is persuasive. The final rule did not offer any specific evidence demonstrating any significant differences in how regions were actually applying the blocking charge policy as it existed at the time. Moreover, because the pre-April 2020 blocking charge policy entitled parties to file requests for Board review of regional director decisions to block elections based on either Type I or Type II charges, we believe that the Board had the ability to correct any erroneous blocking determinations made by regional directors. See 29 CFR 102.71 (2011); Casehandling Manual Sections 11730.7, 11733.2(b) (January 2017). Accordingly, we are inclined to believe that a return to the blocking charge policy as it existed prior to the effective date of the amendments would not create a widespread problem where petitions that would normally be blocked in some regions would normally be processed to election in other regions.

The April 2020 Board also faulted the blocking charge policy because a possible result of delaying elections is that employees who were in the workforce when the petition was filed might not be in the workforce when the election is ultimately held following disposition of the blocking charge, thereby disenfranchising those employees. 85 FR 18367, 18378, 18393. Subject to comments, we question whether this justification for eliminating the historical blocking charge policy is persuasive. Unless the Board were to conduct elections the day the election petition is filed, the possibility of employee turnover is unavoidable. Indeed, even in the absence of any unfair labor practice charges being filed

[110] Subject to comments, we question whether the Board was justified in adopting its amendments because they allow the balloting to occur when the parties' respective arguments are ''fresh in the mind[s] of unit employees.'' 84 FR 39937–39938, 85 FR 18393. Under the Board's historical blocking charge policy, balloting also occurred when the parties' respective arguments were ''fresh in the minds'' of unit employees, because parties had an opportunity to campaign after the regional director resumed processing a petition (once either the unfair labor practice conduct was remedied or the director determined that the charge lacked merit). Subject to comments, we are inclined to believe that all the April 2020 final rule ensures is that balloting will occur when the unremedied *coercive conduct* is fresh in the minds of unit employees, undermining the Act's policy of protecting employee free choice in the election process and contravening the Board's duty to conduct fair elections.

We also question whether the Board was justified in adopting the April 2020 amendments because they eliminate the ability of either party to control the pre-election narrative as to whether the Board has found probable cause that the employer has committed unfair labor practices. 84 FR 39938, 85 FR 18393. As then-Member McFerran pointed out in her dissent to the NPRM, under the Board's historical blocking charge policy, neither the Board nor the regional director notified unit employees that the petition was being held in abeyance because there was ''probable cause'' to believe that a party had committed unfair labor practices. 84 FR 39946 fn. 70. To be sure, under the Board's historical blocking charge policy, a party was free to tell unit employees that the regional director had blocked action on the petition because a party stood accused of committing unfair labor practices, and the charged party was free to tell the unit employees that it was innocent of any wrongdoing and that the charging party was responsible for the delaying the employees' opportunity to vote. But, under the April 2020 final rule, parties are similarly free to inform unit employees, in advance of the election in the vast majority of cases, that although employees will be permitted to vote, the results of the election will not be certified until a final determination is made as to the merits of the unfair labor practice charge(s) alleging that a party has engaged in conduct that interferes with employee free choice (or that the regional director will impound the ballots cast in the election for at least 60 days—rather than immediately opening and counting the ballots following the election—because a party stands accused of committing unfair labor practices concerning the legitimacy of the petition itself). The charged party, meanwhile, will be free to inform unit employees that it is innocent of any wrongdoing and that the charging party is responsible for the delay in the certification of the results or the opening and counting the ballots.

[111] See Casehandling Manual Section 11731.2 (January 2017) (''There may be situations where, in the presence of a request to block (Secs. 11731.1(a)), the regional director is of the opinion that the employees could under the circumstances, exercise their free choice in an election and that the R case should proceed notwithstanding the existence of a concurrent Type I or Type II unfair labor practice case. In such circumstances, the regional director should deny the request to block.'').

prior to the election, those eligible to vote are *not* those employed in the unit at the time the petition is filed. Rather, the employees who are eligible to vote in the election are those employees who were employed during the payroll period for eligibility and who remain employed as of the election. In directed election cases, this means that only employees employed in the unit during the payroll period immediately preceding the date the decision and direction issues—and who remain employed as of the election—are eligible. Casehandling Manual Section 11312.1 (August 2007). In the stipulated election context, the payroll period for eligibility is normally the last payroll period ending before the regional director's approval of the agreement. Casehandling Manual Sections 11086.3, 11312.1 (August 2007).

Subject to comments, we are inclined to believe that it serves no valid purpose to conduct elections in which employees cannot exercise free choice, even though delaying the election until employees can vote in a noncoercive atmosphere might mean that some employees who were present at the time the petition was filed are no longer employed at the time a free and fair election is held. As for the subset of cases where the charges are nonmeritorious, we question whether it is ''unjust'' to bar employees from voting who were employed at the time of the petition filing, but who are no longer employed when the regional director resumes processing the petition. As noted, the same rule applies in cases where no unfair labor practice charges are ever filed. Thus, employees who were employed as of the filing of the petition, but who are no longer employed as of the time of the election, are not eligible to vote. Certainly, there is nothing in the blocking charge policy that compels any employee to leave their place of employment during the period when the petition is held in abeyance pending a determination of the merits of the charge. The April 2020 Board does not explain why employees who are no longer in the workforce should be given a say in determining whether current employees should be represented for purposes of collective bargaining with their employer.[112]

We additionally note that the April 2020 amendments do not entirely eliminate the risk that employees who end up voting in a valid election (*i.e.,* an election whose results are certified) will not be those who were employed at the time of the petition filing. To repeat, the April 2020 final rule recognizes that the Board should set aside the initial election and, in certain circumstances, conduct a rerun election in cases where the charges are meritorious. And just as was the case prior to the April 2020 amendments, the eligibility period for rerun elections after that final rule is the payroll period preceding the date of issuance of the notice of rerun election, *not* the payroll period preceding the date of the original decision and direction of election (or approval of the stipulated election agreement), and certainly not the date of the petition filing. See Casehandling Manual Sections 11436, 11452.2 (August 2007); Casehandling Manual Sections 11436, 11452.2 (September 2020). Some risk of disenfranchisement is unavoidable in this context, but the risk of disenfranchisement caused by holding an election under nonlaboratory conditions may well outweigh that risk under the 2020 final rule.

The final rule also appeared to suggest that the blocking charge policy impeded settlement and that the policy should therefore be eliminated to promote settlement of blocking charges. 85 FR 18380. We confess that we are not entirely certain that we understand the Board's cryptic statements in this regard. To the extent that the April 2020 Board adopted the amendments because it believed they would promote settlement (by enabling the parties to know the results of the election during their settlement discussions), we question whether that belief is a reason to refrain from restoring the Board's historical blocking charge policy. The blocking charge policy advances core statutory interests—promoting employee free choice regarding whether to be represented by a labor organization for purposes of collective bargaining. We are inclined to believe that, even assuming for purposes of argument that the April 2020 final rule promotes settlement of charges, the worthy administrative goal of promoting settlement of unfair labor practice charges should not trump the fundamental *statutory* policy of protecting the right of employees to freely choose whether to be represented for purposes of collective bargaining by labor organizations.

In any event, we note that the April 2020 Board did not explain why parties would in fact be more likely to settle a charge under the April 2020 amendments (which provide for the holding of an election in all cases) than they would be to settle if the same charge were instead holding up an election and preventing employees from voting (under the pre-April 2020 blocking charge policy). And we question whether that is the case. Indeed, we suspect that the April 2020 Board thought that settled charges should not be deemed meritorious in part because it believed that at least some employers thought that it was worth settling blocking charges under the historical blocking charge regime that they otherwise would not have settled just so that their employees could vote ''sooner'' to possibly rid themselves of their representative in a decertification election. However, as noted, under the April 2020 amendments, employees will be permitted to vote even if the employer does not settle a pending charge against it before the election. Nor is it clear why the April 2020 final rule would encourage a union (that is seeking to delay its ouster) to settle its unfair labor practice charge after the election. As noted, under the April 2020 amendments, the certification of results is withheld until there is final disposition of the charge and its impact on the election by the Board. 85 FR 18370, 18377, 18399. In other words, under the April 2020 final rule, the outcome of the representation case still must await the outcome of the unfair labor practice case (even though an election has been held), the same result that obtained under the Board's historical blocking charge policy. And it

[112] Subject to comments, we are also inclined to believe that the April 2020 Board's view—that it should prioritize speedy elections over employee free choice in order to maximize the likelihood that those employed at the time of the petition filing will be able to vote in an election—is undermined by the same Board's adoption of the 2019 Representation-Case Procedures Rule that delayed the period of time between the filing of the petition and the holding of the election (thereby potentially disenfranchising those employed when the petition was filed) in cases where there have been no unfair labor practice charges of any kind filed, let alone those alleging conduct that would interfere with employee free choice. See *Representation-Case Procedures,* 84 FR 69524, 69524–69525, 69560–69563, 69566–69569, 69572–69579, 69580–69585 (Dec. 18, 2019) (noting that the Board's December 2019 rule delays the period between the filing of the petition and the election in directed election cases by, for example, delaying the opening of the pre-election hearing by two weeks—beyond any Board's processing time in more than two decades—while simultaneously making such hearings easier to postpone, entitling parties to file briefs in all cases a week after the close of the pre-election hearing (with additional extensions of up to 2 weeks) even when the regional director concludes that briefing would be unhelpful, entitling parties to litigate matters that are not relevant to the statutory purpose of the pre-election hearing and requiring regional directors to decide matters that need not be decided to determine whether a question of representation exists that should be resolved by an election; and instituting a 20-business day waiting period between the direction of election and the election itself to allow the Board to rule on interlocutory appeals that are rarely filed prior to the election, almost never result in reversals before the election, and in any event could be mooted by election results).

takes the same amount of time to determine the merits of the charge whether that determination is made before an election is conducted (as under the Board's historical blocking charge policy) or whether that determination is made after the election (as is the case under the April 2020 amendments).

We also question the April 2020 Board's apparent view that once the results of the election are known, the unfair-labor-practice-charge-settlement discussions are simplified because the parties' strategic considerations related to the election are removed from consideration. 85 FR 18380. Thus, although under the April 2020 amendments, an election will be held in all cases, it seems that parties will still have to consider the representation case as part of their settlement negotiations regarding the unfair labor practice charge(s). Because, as the April 2020 Board noted (85 FR 18377), a ''settled charge'' cannot be deemed meritorious unless it has been admitted by the charged party, a settled charge cannot result in a rerun election (or dismissal of the petition) unless the charged party agrees to a rerun election as part of the settlement agreement or admits that it violated the Act as part of the settlement. Thus, the party seeking to set aside the election results will need to address the representation case as part of its settlement discussions regarding the unfair labor practice charge(s) it filed. (In other words, the charging party will want the charged party as part of the settlement to agree to a rerun election or to admit that it violated the Act.) Indeed, knowledge of the provisional election outcome may perversely incentivize cases *not* to settle where a party deems that vote tally so valuable to its interests that it makes it efficient to litigate a long-shot legal theory in the unfair labor practice case.

Finally, the final rule asserted that there is no reason to delay elections when charges allege conduct that would interfere with employee free choice because the Board can always conduct a rerun election if the charge is ultimately found meritorious (or issue an affirmative bargaining order in cases involving the limited subset of Type II charges). 85 FR 18378, 18380. Subject to comments, we are inclined to disagree. Indeed, we are inclined to believe that, by requiring the Board to conduct elections under coercive circumstances, the April 2020 amendments contravene the Board's responsibility to conduct free and fair elections and undermines the Act's policy of protecting employee free choice in the election process. We also are inclined to believe, subject to comments, that by forcing employees to go to elections that will not count, the April 2020 final rule additionally threatens to create a sense among the employees that attempting to exercise their section 7 rights is futile, while risking imposing unnecessary costs on the parties and the Board. Moreover, by requiring the Board to conduct elections that will have to be rerun, the April 2020 final rule would seem to threaten industrial peace.

Subject to comments, we are inclined to believe that the April 2020 amendments do not put the unit employees in the position that most closely approximates the position they would have been in had no party committed unfair labor practices interfering with employee free choice. Had no party committed unfair labor practices, employees would not be voting in an atmosphere of coercion. But employees seemingly have to vote in an atmosphere of coercion under the April 2020 amendments, because the April 2020 final rule requires regional directors to conduct elections in all cases where there are concurrent unfair labor practice charges and further requires the opening and counting of the ballots in the vast majority of such cases. Accordingly, when a rerun election is conducted after the charged party takes all the action required by the Board order or settlement agreement, the union will have to convince each employee who voted against it under coercive conditions to switch their vote, something the union normally would not have had to do under the blocking charge policy because the regional director would not have held an election until the unfair labor practice conduct was remedied. And, as the Board previously concluded in its 2014 rule, 79 FR 74418–74419, there is a substantial risk that the tainted election will compound the effects of the unfair labor practices, because employees who voted against union representation under the influence of the employer's coercion are unlikely to change their votes in the rerun election. See *NLRB* v. *Savair Mfg. Co.,* 414 U.S. 270, 277–78 (1973). The union will also have to convince employees that it is worth voting for the union—and to risk incurring the wrath of their employer—even though employees will know that the union already lost the earlier election, something the union normally would not have had to do under the blocking charge policy because the regional director would not have held an election until the unfair labor practice was remedied.[113] It certainly cannot be counted as a statutory success if a union chooses not to seek a rerun election after losing an election conducted under coercive conditions that interfered with employee free choice. Thus, we are inclined to believe, subject to comments, that it is the historical blocking charge policy, rather than the April 2020 amendments, that puts the unit employees in a position that more closely approximates what would have happened had no party committed unfair labor practices and best protects employee free choice.

We are also inclined to believe that the April 2020 final rule creates perverse incentives for employers to commit unfair labor practices. By requiring the Board to conduct elections in most cases where Type I or Type II unfair labor practice conduct has occurred, the final rule creates a perverse incentive for unscrupulous employers to commit unfair labor practices because the predictable results will be: (1) to force unions to expend resources in connection with elections that will not reflect the uninhibited desires of the employees; and (2) to create a sense among employees that seeking to exercise their section 7 rights is futile.[114] This possibility may well induce unions to forego the Board's electoral machinery in favor of recognitional picketing and other forms of economic pressure, thereby exacerbating industrial strife and

[113] We note that the April 2020 final rule implicitly conceded the validity of these concerns in two primary respects. First, the rule acknowledged that the harm employees will suffer by voting in an election that will later be set aside can be addressed ''in some cases'' by impounding the ballots. 85 FR 18378, 18380. Second, the rule apparently relied on a premise that the immediate opening and counting of the ballots in the vast majority of cases provides a disincentive for unions to file charges seeking to block the election because tallying the ballots reveals to employees that the union is acting against their wishes. 85 FR 18379–18390. Thus, under this premise, if the union has lost the election that was conducted despite the pendency of charges alleging coercive conduct, that circumstance will (or is at least very likely to) have a meaningful effect on employees' perception of the union.

[114] Indeed, it seems difficult, at least, to square the April 2020 final rule's requiring elections in *all* cases no matter the severity of the employer's unfair labor practices with the Supreme Court's approval in *Gissel* of the Board's practice of *withholding* an election and issuing a bargaining order when the employer has committed serious unfair labor practice conduct disruptive of the election machinery and where the Board concludes that ''the possibility of erasing the effects of [the employer's] past [unfair labor] practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through [union authorization] cards would, on balance, be better protected by a bargaining order . . . .'' *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 591–592, 610–611, 614–615 (1969).

contravening the statutory policy favoring ''eliminat[ing] the causes of certain substantial obstructions to the free flow of commerce.'' 29 U.S.C. 151.

In sum, we are inclined to believe, subject to comments, that the Board's historical blocking charge policy better protects employee free choice than the April 2020 amendments. Accordingly, we propose to permit regional directors once again to generally decline to process election petitions at the request of a party who has filed an unfair labor charge alleging conduct that would interfere with employee free choice in an election or that is inherently inconsistent with the petition itself and which is supported by an offer of proof listing the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony, until the merits of the charge can be determined.

B. Rescission of Rule Providing for Processing of Election Petitions Following Voluntary Recognition; Voluntary-Recognition Bar to Processing of Election Petitions

The Board, subject to comments on all aspects of the proposed rule, proposes to rescind the current § 103.21 of the Board's Rules and Regulations, providing for the processing of election petitions following voluntary recognition, and to replace it with a new rule that codifies the traditional voluntary-recognition bar as refined in *Lamons Gasket Co.,* 357 NLRB 739 (2011), which the Board overruled in adopting § 103.21.[115]

The proposed rule, like current § 103.21, is limited to the representation-case context. It does not subject an employer to unfair labor practice liability under section 8(a)(5) of the Act for withdrawing recognition from a voluntarily recognized union before a reasonable period for bargaining has elapsed. See, *e.g., Brown & Connolly, Inc.,* 237 NLRB 271, 275 (1978), enfd. 593 F.2d 1373 (1st Cir. 1979). The Board invites public comment on whether it should adopt as part of the Board's Rules and Regulations a parallel rule to apply in the unfair labor practice context, prohibiting an employer—which otherwise would be privileged to withdraw recognition based on the union's loss of majority support—from withdrawing recognition from a voluntarily recognized union, before a reasonable period for collective bargaining has elapsed.

The Board's preliminary view is that restoring the voluntary-recognition bar, in its more traditional form, as well as the traditional contract bar in cases of voluntary recognition, better serves the policies of the National Labor Relations Act, respecting—indeed, vindicating—employee free choice, while encouraging collective bargaining and preserving stability in labor relations.[116] Experience under § 103.21, meanwhile, seems to show that voluntary recognition almost always reflects employee free choice accurately. This was the experience under *Dana* as well. Thus, the Board is concerned that § 103.21 imposes requirements that burden collective bargaining without producing commensurate benefits in vindicating employee free choice of bargaining representatives. Such a disproportionate waste of party and Board resources cannot be justified by reference to Federal labor policy, which favors voluntary recognition.[117]

We believe, subject to comments, that restoration of the voluntary-recognition bar as proposed in this document is fully consistent with the statutory language and would better effectuate the purpose and policies of the Act. Several Federal appellate courts have endorsed the voluntary-recognition bar, deferring to the Board's understanding of the Act and its application of the Act's policies.[118] No court of appeals has rejected the voluntary-recognition bar. Neither the *Dana* Board nor the Board that promulgated § 103.21 argued that the traditional voluntary-recognition bar was irrational or inconsistent with the Act. Nor did the Board at either time argue that the election procedure established in *Dana,* and then reestablished in § 103.21, was somehow compelled by the Act.[119] While the Board's approach to the voluntary-recognition bar has varied, the Board consistently has viewed the issue as presenting a policy choice for the Board to make, and this, of course, is how the Federal courts have seen it for decades. Similarly, applying contract-bar principles has long been recognized as promoting stability in the bargaining relationships between employers and unions.[120]

In proposing to restore the traditional voluntary-recognition bar, subject to comments, we give weight to the rationale for the bar that the Board, with judicial approval, has advanced and adhered to in the past: that the new

[115] Concerning the appropriateness of bargaining units in this context, in *Central General Hospital,* 223 NLRB 110, 111 fn. 10 (1976), the Board stated: ''As in the contract bar area, *e.g., Airborne Freight Corporation,* 142 NLRB 873, 874–875 (1963), a recognition agreement constitutes a bar only if the unit involved meets the requisite standard of appropriateness.'' Thus, under the proposed rule, the recognition bar applies where the recognized unit is an appropriate one. However, as *Central General Hospital* suggests, this requirement incorporates the long-standing principle that the appropriateness of the unit depends on the context, and the question of whether a voluntarily recognized unit is appropriate may turn on considerations deemed relevant in this particular setting, or in an analogous context, such as contract or successor bar, rather than those that obtain in the case of an initial determination made by the Board following a representation petition. Id. at 111–112 (''[T]he resulting unit is *sufficiently appropriate* for the recognition agreement to operate as a bar'') (emphasis added). See also *NLRB* v. *Cardox Div. of Chemetron Corp.,* 699 F.2d 148, 156 (3d Cir. 1983) (''[I]n a voluntary recognition case, section 9(b) requires only that the Board make a determination that the unit agreed upon by the parties is not inconsistent with the National Labor Relations Act and past Board policy.''); *Airborne Freight Corp.,* supra 142 NLRB at 874–875 (''[T]he voluntary grouping of the two clericals with the operating employees, a number of whom regularly perform clerical functions, is insufficient to render the contractual agreement inherently inappropriate and remove the agreement as a bar'').

[116] With the rescission of the current rule and the rejection of the rationales for treating voluntarily-recognized unions substantially differently for the purposes of challenges to a union's status, the Board's contract-bar doctrine—which generally insulates a union, regardless of the means by which it established its majority status, from challenges during the term of a collective-bargaining agreement—will be restored in the case of contracts executed with voluntarily-recognized unions to the same extent it has applied historically (typically, if certain criteria are met, for a period not to exceed 3 years). See *Lamons Gasket Co.,* supra, 357 NLRB at 745 fn. 22.

[117] In affirming the Board's application of the traditional voluntary-recognition bar, the District of Columbia Circuit, for example, has explained that whatever advantages an election may have over the use of authorization cards to determine employee support for a union, ''an employer's voluntary recognition of a majority union also remains 'a favored element of national labor policy.' '' *NLRB* v. *Creative Food Design Ltd.,* 852 F.2d 1295, 1299 (D.C. Cir. 1988) (quoting *NLRB* v. *Broadmoor Lumber Co.,* 578 F.2d 238, 241 (9th Cir. 1978)). Other circuits have characterized voluntary recognition precisely the same way. See, *e.g., NLRB* v. *Winco Petroleum Co.,* 668 F.2d 973, 981 (8th Cir. 1982); *NLRB* v. *Lyon & Ryan Ford, Inc.,* 647 F.2d 745, 750 (7th Cir. 1981).

[118] See, *e.g., Exxel/Atmos, Inc.* v. *NLRB,* 28 F.3d 1243, 1247–1248 (D.C. Cir. 1994); *Royal Coach Lines, Inc.* v. *NLRB,* 838 F.2d 47, 51–52 (2d Cir. 1988); *NLRB* v. *Lyon & Ryan Ford, Inc.,* supra, 647 F.2d at 750–751; *NLRB* v. *Broadmoor Lumber Co.,* supra, 578 F.2d at 241; *Toltec Metals, Inc.* v. *NLRB,* 490 F.2d 1122, 1125–1126 (3d Cir. 1974); *NLRB* v. *San Clemente Publishing Corp.,* 408 F.2d 367, 368 (9th Cir. 1969); *NLRB* v. *Montgomery Ward & Co.,* 399 F.2d 409, 411–413 (7th Cir. 1968); *NLRB* v. *Universal Gear Service Corp.,* 394 F.2d 396, 397–398 (6th Cir. 1968).

[119] See *United Mine Workers of America* v. *Arkansas Oak Flooring Co.,* supra, 351 U.S at 73 (explaining that union's failure to comply with certain statutory provisions, which prevented union from being certified by Board, did not prevent union from being voluntarily recognized by employer: ''The very specificity of the advantages to be gained [by compliance with statutory provisions] and the express provision for the loss of these advantages imply that no consequences other than those so listed shall result from noncompliance.''). The statutory benefits conferred only on certified unions are discussed above at fn. 16 and the accompanying text.

[120] See, *e.g., General Cable Corp.,* 139 NLRB 1123, 1125 (1962).

collective-bargaining relationship established through voluntary recognition—just like bargaining relationships established through other lawful means and protected by related Board bar doctrines—''must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed,'' in the Supreme Court's words,[121] in order to promote the Act's goals of encouraging the practice and procedure of collective bargaining. We specifically invite comment on the reasonable period for bargaining defined in the proposed rule. In our initial view, the current rule tends to undermine (a) the stability vital for the parties to successfully negotiate a first contract, as the employer may question whether its negotiating partner may be out of the picture in a matter of weeks, and (b) the stability needed to fairly administer an executed collective-bargaining agreement without the shadow of a possible challenge to the union's status by making the contract bar contingent on the notice procedure.

In proposing to return to the voluntary-recognition bar that existed under the Board's *Lamons Gasket* decision, we note that the Board in *Lamons Gasket* provided, in accordance with its decision in *Smith's Food & Drug Center,* 320 NLRB 844 (1996), that ''voluntary recognition of one union will not bar a petition by a competing union if the competing union was actively organizing the employees and had a 30-percent showing of interest at the time of recognition.'' 357 NLRB at 745 fn. 22. Because of the importance of stability to newly-established collective-bargaining relationships, we invite public comment on whether the Board should continue to process, consistent with *Smith's Food,* a representation petition filed by a competing union that had a 30-percent showing of interest at the time of recognition or bar the processing of such a petition so as to not delay until after a Board election the employer's recognition of the employees' designation of their collective-bargaining representative.

We are further inclined to believe that § 103.21 rejects the premise that newly established bargaining relationships must be given a fair chance to succeed in the context of voluntary recognition. In the name of promoting employee free choice, the rule permits a union's representative status to be challenged by an election petition immediately after the union has been voluntarily recognized. Indeed, the rule arguably invites such a challenge, by requiring employers, as a precondition to receiving the benefit of the recognition and contract bars, to post a notice to employees informing them of their right to file an election petition with the Board. In no other context does the Board require that employees be given notice of their right to change their minds about a recent exercise of statutory rights.[122] Section 103.21 suggests to employees that the Board considers their choice to be represented suspect and signals to employees that their choice should be reconsidered through the filing of a petition.[123]

It does so absent any basis to conclude that the union was not, in fact, freely chosen by employees to represent them. To proceed to an election, employees opposed to the union need not allege, much less establish, that the union lacked lawful majority support at the time it was voluntarily recognized. Nor are employees required to present evidence demonstrating that a majority of bargaining-unit employees no longer support the recently recognized union. Rather, a showing that a minority of unit employees (as few as 30 percent) desire an election is enough. An election, in turn, is decided by a majority of *voting* employees, who may comprise a minority of *unit* employees. Subject to comments, the Board's preliminary view is that § 103.21 actually undermines employee free choice by failing to fully respect the lawful designation of the voluntary-recognized union by a majority of bargaining-unit employees.[124]

To be sure, § 103.21 acknowledges that the employer still has a duty to bargain with the voluntarily recognized union. But collective bargaining during the 45-day window period for petitions established by § 103.21 will necessarily proceed (or not) under the cloud cast by the possibility of a challenge to the union's status, which (if successful) would vitiate any agreement reached. And if an election petition is filed, then bargaining will proceed under the same cloud until the election is held. In such a situation, it seems reasonable to conclude that instead of being ''given ample time for carrying out its mandate on behalf of its members,'' a union will be ''under exigent pressure to produce hot-house results or be turned out''—a concern cited by the Supreme Court in upholding the Board's rule that the status of a newly-certified union may not be challenged for one year.[125] That concern would seem to apply with equal force in the context of voluntary recognition, as the Federal courts have recognized.[126] The Board's tentative view—in agreement with the *Lamons Gasket* Board, but subject to comments—is that § 103.21 thus has a significant potential to interfere with effective collective bargaining.[127] Insofar as § 103.21 might be premised on the view that voluntary recognition based on union-authorization cards is inherently suspect, it would be in obvious tension with the provisions of the Act reflecting Congress's determination that a lawful—and, indeed, statutorily enforceable—collective-bargaining relationship may be established *without* a Board election.[128] Indeed, in holding that the Board, under certain circumstances, may *compel* an employer to recognize and bargain with a union whose majority support was demonstrated by authorization cards, the Supreme Court has flatly rejected arguments that union-authorization cards cannot reliably reflect employee free choice—and has noted a ''union's right to rely on cards as a freely interchangeable substitute for elections where there has been no election interference.'' [129]

[121] *Franks Bros. Co.* v. *NLRB,* supra, 321 U.S. at 705. See *Lamons Gasket,* supra, 357 NLRB at 739–740, 744–745.

[122] *Lamons Gasket,* supra, 357 NLRB at 743.

[123] Id. at 744.

[124] See *Lamons Gasket,* supra, 357 NLRB at 746 (observing that ''a more demanding standard is imposed on voluntary recognition than on certification following a Board-supervised election'' and citing authority).

[125] *Brooks* v. *NLRB,* 348 U.S. 96, 100 (1954).

[126] See, *e.g., NLRB* v. *Cayuga Crushed Stone, Inc.,* 474 F.2d 1380, 1383–1384 (2d Cir. 1973). The Second Circuit there noted with approval the ''general Board policy of protecting valid[l]y established bargaining relationships during their embryonic stage.'' Id. at 1384 fn. 5.

[127] In adopting § 103.21, the Board pointed to the absence of more than anecdotal evidence that the election procedure previously established by the *Dana* decision did, in fact, discourage or delay collective bargaining. 85 FR 18384. Nonetheless, the Board did acknowledge the possibility that the ''existence of a pending election petition will cause unions to spend more time campaigning or working on election-related matters rather than doing substantive work on behalf of employees,'' but expressed the view that ''this is a reasonable trade-off for protecting employees' ability to express their views in a secret-ballot election.'' Id. at 18384–18385. The *Lamons Gasket* Board, in contrast, cited the *Dana* experience of unions that filed amicus briefs with the Board, as well as the game-theoretical model of collective bargaining presented by amicus Professor Kenneth Dau-Schmidt. *Lamons Gasket,* supra, 357 NLRB at 747 & fn. 30. We invite public comment on the effect of § 103.21 on collective-bargaining negotiations.

[128] As explained, sec. 8(a)(5) of the Act requires an employer ''to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a),'' 29 U.S.C. 158(a)(5), and sec. 9(a), in turn, refers to ''[r]epresentatives *designated or selected* . . . by the majority of the employees'' in an appropriate unit. 29 U.S.C. 159(a) (emphasis added). See *Gissel Packing Co.,* supra, 395 U.S. at 596–598.

[129] See *Gissel Packing Co.,* supra, 395 U.S. at 601–604. The *Gissel* Court noted that in the case before it, ''a union's right to rely on cards as a freely interchangeable substitute for elections where there

Finally, this proposal to return to the traditional voluntary-recognition bar, as refined in *Lamons Gasket,* is consistent with the Board's preliminary view of the experience to date under § 103.21. That experience provides no evidence that voluntary recognition is suspect (as discussed above) and thus there is nothing to outweigh the reasonable tendency of the current rule to undermine employee free choice (as reflected in the lawful designation of the voluntarily recognized union) and to interfere with effective collective bargaining. Rejecting the *Dana* election procedure, the *Lamons Gasket* Board pointed to the tiny fraction of cases in which, following voluntary recognition of a union, employees ultimately rejected the union in a Board election. According to the Board in *Lamons Gasket,* the data showed that the ''proof of majority support that underlay the voluntary recognition [of unions] during the [*Dana* period] was a highly reliable measure of employee sentiment,'' contrary to the assumption of the *Dana* Board.[130] Insofar as § 103.21 might be premised on any empirical showing of the rate at which employees reject the union following the posting of the notice prescribed in the current rule, it, too, would seem to lack substantial empirical support.

But in restoring the *Dana* election procedure by adopting § 103.21, the Board did not clearly endorse or reject the premise on which the procedure was originally based. The Board's position arguably was grounded not in administrative experience, but rather in a particular interpretation of the Act, independent of that experience—and so not falsifiable by empirical evidence.[131] Subject to comments, we doubt that the Act's provision for Board elections as one means (but not the exclusive means) for determining employee free choice, coupled with the implicit statutory preference for Board elections (insofar as certain benefits are conferred only on certified unions), were enough to justify restoring the *Dana* procedure, given substantial evidence that permitting an election soon after voluntary recognition almost never results in employees making a *different* choice. Indeed, in adopting § 103.21, the Board acknowledged that ''data from the post-*Dana* period indicates that recognized unions will not often have to jump through the procedural 'hoop' of an election, and those that do will far more often emerge with a reaffirmation of their majority support . . . .'' [132] Put differently, the evidence seems strongly to suggest that the *Dana* procedure is an empty exercise at best, and one which imposes pointless burdens on parties and the Board—or at least that it is not something that would justify the current rule's departure from policies favoring voluntary recognition and encouraging stability in such bargaining relationships. We invite commenters to submit additional empirical evidence to inform our views on this subject.

As noted earlier, the experience under § 103.21 has been entirely consistent with the experience under *Dana.* To date, the current rule has resulted in scant instances of employees actually filing a petition and almost no instances of employees rejecting the voluntarily recognized union. Thus, only 0.4 percent of cases (1 out of 260 included cases) resulted in a petition being filed, and 0.4 percent resulted in a union's loss of representative status. Both data sets show that the number of instances in which the notices have resulted in the filing of a petition or holding an election is vanishingly small—and the cases where the voluntarily recognized union was displaced to be almost nothing. It seems illuminating that the post-§ 103.21 data show no significant change from the post-*Dana* data, suggesting that the low rate of election-petition filing and employee rejection of the voluntarily recognized union is consistent over time. Our preliminary view, accordingly, is that just as the Board's administrative experience under the *Dana* election procedure refuted the rationale offered in *Dana* (as the *Lamons Gasket* Board explained), so, too, does the experience under § 103.21 demonstrate that there was no reason to doubt that voluntarily recognized unions actually enjoy majority support.

In proposing and adopting § 103.21, however, the Board viewed the empirical evidence examined in *Lamons Gasket* very differently. In the notice of proposed rulemaking for § 103.21, the Board found that the post-*Dana* ''election statistics . . . support, rather than detract from, the need for a notice and brief open period following voluntary recognition.'' [133] The Board reiterated this surprising conclusion in the preamble to the final rule and delineated reasons why it deemed the data with respect to elections actually conducted under *Dana* to support § 103.21.

> [T]he [post-*Dana*] statistics showed that (1) *Dana* served the intended purpose of assuring employee free choice in those cases where the choice made in the preferred Board electoral process contradicted the showing on which voluntary recognition was granted; (2) in those cases where the recognized union's majority status was affirmed in a *Dana* election, the union gained the additional benefits of [s]ection 9(a) certification, including a 1-year bar to further electoral challenge, (3) there was no substantial evidence that *Dana* had any discernible impact on the number of union voluntary-recognition campaigns, or on the success rate of such campaigns, and (4) there was no substantial evidence that *Dana* had any discernible impact on the negotiation of bargaining agreements during the open period or on the rate at which agreements were reached after voluntary recognition.
>
> 85 FR 18368.[134]

Preliminarily, we see nothing in the data that would support, let alone compel, discarding long-standing policies that support voluntary recognition in favor of the current rule. As to the first assertion, subject to comments, we are inclined to agree with the *Lamons Gasket* Board that an election loss by the recognized union does not affirmatively suggest that *at the time it was recognized,* the union lacked majority support. The election, rather, would seem just as likely, if not more so, to be a referendum on the union's accomplishments in bargaining during the brief period after recognition and the result, a consequence, too, of the pre-election campaign. Other post-recognition factors, such as employee turnover or simply a change of employee sentiment, might also be at play. The Board's bar doctrines involving new collective-bargaining relationships, of course, are based on the premise that unions should not be subjected to challenge before a reasonable period for bargaining has elapsed. Section 103.21, in contrast, does not contemplate such a period. On our preliminary view, then, even in the tiny fraction of total voluntary-recognition cases where a recognized union ultimately was ousted, the result says nothing about employee free choice as reflected in the union's original designation by a majority of bargaining-unit employees.

The relevance of the Board's second assertion—pointing out that when

has been no election interference [was] not put in issue''; rather, the Court was only required to ''decide whether the cards are reliable enough to support a bargaining order where a fair election probably could not have been held, or where an election that was held was in fact set aside.'' 395 U.S. at 601 fn. 18.

[130] *Lamons Gasket,* supra, 357 NLRB at 742.

[131] See 85 FR 18383 (notwithstanding commenter's assertions regarding data, rule ''solidly based on and justified by the policy grounds already stated'').

[132] 85 FR 18385.

[133] 84 FR 39938.

[134] Reasons (3) and (4) pertain only to the absence of evidence of select negative consequences of the rule. As explained previously, we will consider additional data on these questions; moreover, we will also consider the probable, reasonable consequences in the absence of sufficient data pointing in either direction.

unions prevailed in a *Dana* election, they consequently gained the benefits of a Board certification—is not clear. The suggestion apparently is that the burden imposed on the union in requiring it to defend its status is mitigated or even outweighed. But unions and the employees who support them have always been free to *choose* to seek a Board election and the benefits of certification. When they seek and gain voluntary recognition from the employer instead—as the Act indisputably permits them to do—the Board presumably should respect that lawful expression of free choice.

The Board also suggested that, notwithstanding the low percentage of cases in which the recognized union was ousted after a *Dana* notice was requested, employees should still be given the option of an election (and informed of that right) because the data still leave substantial ambiguity regarding the validity of voluntary recognition based on majority support.[135] However, this claim—essentially that every instance of voluntary recognition remains open to doubt concerning employees' true sentiments, even after notice-requests have been made, unless an election occurs—cannot be squared with the notices in *Dana* and § 103.21 itself. The rule's necessary premise, like that of *Dana,* is that voluntary recognition is not presumptively *invalid,* and that the notice—by giving employees an option for an election which they may choose or not choose to exercise—merely provides additional assurances before further challenges to the union's status are (temporarily) foreclosed. But, as the language of the § 103.21 and *Dana* notices indicate, by *not* filing a petition, employees effectively have chosen to reaffirm their original choice to be represented by the union.[136] In any event, any ambiguity that might exist cannot be said to support the current rule, as the data offer no affirmative suggestion that voluntary recognition is suspect as a means of ascertaining employee choice.

Finally, for essentially the same reasons, we question the degree to which the Board focused on the very few cases where an election was held and the union was ousted. The Board observed that ''the fact that only a small percentage of all *Dana* notices resulted in ending continued representation by the voluntarily recognized union does not mean that the post-recognition open period procedure was unnecessary and should not be restored,'' because in ''1 out of every 4 *Dana* elections a majority of employees voted to reject continued representation by a voluntarily recognized union.'' [137] Again, our preliminary view is that the Board was fundamentally mistaken in suggesting that employees' choice not to seek an election after voluntary recognition is of little or no consequence. As stated previously, the notice in *Dana* and that prescribed by § 103.21 make clear that if employees do not seek a Board election, then they have assented to the validity of the voluntary recognition. We question, then, whether it is reasonable to discount cases where employees have declined to seek an election.

In sum, for the reasons offered here, the Board proposes to adopt a rule that effectively rescinds current § 103.21 of the Board's Rules and Regulations and to replace the existing rule with a new rule that codifies the Board's traditional voluntary-recognition bar, as refined and articulated in the *Lamons Gasket* decision. The Board again invites public comment on any and all of the issues and matters specifically identified here, as well as on any other issues or matters relevant to the proposed rule.

C. Rescission of § 103.22 of the Board's Rules and Regulations

The Board proposes, subject to comments, to rescind § 103.22 of the Board's Rules and Regulations promulgated on April 1, 2020. Once rescinded, the previously effective case-law precedent would govern section 9(a) recognition in the construction industry, such as *Staunton Fuel, Casale,* and other cases pertaining to the application of the voluntary-recognition and contract bars in the construction industry.

The Board believes that this change is required because § 103.22 is premised on overruling *Casale* and revoking the limitations period for challenging voluntary recognition in the construction industry, which was not mentioned anywhere in the NPRM as being under consideration by the Board. Without having provided the required notice, stakeholders and members of the public had no reason to submit comments on this critical issue, which may have affected the Board's decision to ultimately enact § 103.22.[138]

In the absence of prior public comments on this critical issue, we are concerned that the overruling of *Casale* pursuant to § 103.22 may create an onerous and unreasonable recordkeeping requirement on construction employers and unions.[139] Where a construction employer chooses to voluntarily recognize a union as the majority representative of its employees, the overruling of *Casale* requires the parties to retain and preserve—indefinitely—extrinsic evidence of a union's showing of majority support at the time when recognition was initially granted.[140] If, at some point years into

[135] The Board observed that ''as for the . . . cases in which *Dana* notices were requested but no petitions were filed, we know nothing about the reasons for that outcome. Specifically, we know nothing about the reliability of the proof of majority support that underlay recognition in each of these cases, nor do we know why no petition was filed.'' 85 FR 18383.

[136] The § 103.21 notice provides in relevant part: ''If no petition is filed within the 45-day window period, the Union's status as the unit employees' exclusive bargaining representative will be insulated from challenge for a reasonable period of time, and if [Employer] and [Union] reach a collective-bargaining agreement during that insulated reasonable period, an election cannot be held for the duration of that collective-bargaining agreement, up to 3 years.'' The *Dana* notice included a similar provision. 351 NLRB at 443.

[137] 85 FR 18383.

[138] As our dissenting colleagues recognize, the only reference to this issue in public comments to the 2019 NPRM was by two parties who advocated for the Board to codify *Casale* into its rules, not to abandon it altogether. In fact, there was no party that advocated for abandoning *Casale,* and no party would have known from the 2019 NPRM that doing so was intended. In an earlier Notice and Invitation to File Briefs, the same Board majority that issued the 2020 final rule solicited briefs on not only whether the Board should adhere, modify, or overrule *Staunton Fuel* but also, ''[i]f *Staunton Fuel* is modified or overruled, should the Board adhere to, modify, or overrule *Casale Industries,* and, if either of the latter, how?'' Notice and Invitation to File Briefs, *Loshaw Thermal Technology, LLC,* 05–CA–15860 (Sept. 11, 2018). The language about adhering, modifying, or overruling *Casale* was conspicuously absent from the 2019 NPRM.

[139] In analyzing the recordkeeping costs of § 103.22 under the Regulatory Flexibility Act, the April 2020 Board concluded that it may impose a de minimis additional cost on small construction industry labor unions for recordkeeping but that ''there is no reason for a small labor organization to implement a record-retention system that is more sophisticated than their normal-course-of-business records retention.'' 85 FR 18395. However, as the April 2020 final rule acknowledges, § 103.22 imposes a completely new recordkeeping requirement on construction employers and unions of all sizes. We see no reason to assume that their current records retention processes are adequate for the task imposed on them by § 103.22. Nonetheless, we welcome comments on this issue.

[140] It seems unlikely, as a practical matter, that anything but contemporaneous evidence of majority support from the time of recognition could satisfy the standard set out in § 103.22. In the preamble to the final rule, although the Board declined to define ''positive evidence,'' the Board stated that ''the same contemporaneous showing of majority support that would suffice to establish that employees wish to be represented by a labor organization in collective bargaining with their employer under section 9(a) in non-construction industries will also suffice to establish recognition under section 9(a) in construction-industry bargaining relationships.'' 85 FR 18390. Thus, it appears that the Board contemplated that the ''positive evidence'' the parties are required to retain pursuant to § 103.22 is the contemporaneous showing of majority support. And indeed, even under *Staunton Fuel,* the union's 9(a) recognition had to be based on it having shown or offered to show evidence of its majority support. 335 NLRB at 720. Because the final rule deemed the parties'

the future, a party seeks to challenge the union's continued presumption of majority support by filing a representation petition during the duration of a collective-bargaining agreement, in light of the overruling of *Casale* pursuant to § 103.22, the parties will lose the benefit of the Board's longstanding contract-bar rules unless they can successfully show that they continued to retain and preserve that initial showing of majority support.

Notably, pursuant to § 103.22, this burden is borne only by construction employers and unions—a situation that the Board foreswore in *John Deklewa & Sons* when it took the practical but moderate step of requiring construction employers and unions to specify the 9(a) basis for the recognition in written contracts. Nonetheless, as the Board there observed, a construction employer's voluntary recognition of a union based on a showing of majority support among employees was not to be treated less favorably than if granted by a nonconstruction employer, including barring challenges to the validity of the union's initial recognition after more than 6 months had elapsed.[141]

The current Board is inclined to believe that its contract-bar rules are too critical for promoting stability in labor relations—particularly in the construction industry—to allow them to be subject to needless gamesmanship if a construction employer and union unintentionally fail to adhere to this uniquely burdensome and perpetual recordkeeping requirement. Aware of the Board's contract bar, parties enter into collective-bargaining agreements pursuant to section 9(a) with the expectation that doing so will provide finality as to employees' terms and conditions of employment for a defined time period.[142] This stability is an important benefit of collective-bargaining for employers, unions, and employees alike.[143] However, in light of the overruling of *Casale* pursuant to § 103.22, even successor collective-bargaining agreements are not protected from challenge by the contract bar because a party could still contest a construction employer's initial 9(a) recognition of the union.

The Board is inclined to believe that the overruling of *Casale* pursuant to § 103.22 unjustifiably injects uncertainty and unpredictability into construction-industry labor relations. It makes construction-industry collective-bargaining agreements subject to challenge at any time. Paradoxically, and perversely, it makes the longest lasting collective-bargaining relationships the least stable. The parties' extrinsic evidence of the union's contemporaneous showing of majority support is more likely to become lost or forgotten as more years have elapsed. Collective-bargaining relationships in the construction industry can last for decades. It could be 20 years after an initial grant of voluntary recognition that a petition is filed at a time when the parties' agreement—but for § 103.22—would have barred it from being processed.[144] Relationships ideally characterized by stability are instead plagued by continued uncertainty over whether the parties' relationship will be challenged in the future—potentially for decades.

The Board also is inclined to believe that the problems with overruling *Casale* pursuant to § 103.22 are compounded by requiring parties to litigate what may be very old evidence of the union's initial 9(a) recognition in a representation proceeding—a forum that is not designed for that task. If a party challenges the validity or authenticity of the extrinsic evidence, especially because it may be any number of years old, this will have to occur at the preelection representation hearing. In contrast to an unfair labor practice proceeding, the representation hearing is nonadversarial and does not offer the evidentiary and procedural safeguards that should exist for reviewing that type of evidence, such as applying evidentiary rules or making credibility determinations.[145] Importantly, even if the parties had retained and preserved contemporaneous evidence of the union's initial majority status, it is only going to be so probative of whether the union in fact had majority support. It is not uncommon for parties to dispute the validity of a signed authorization card. The overruling of *Casale* could mean that the Board may have to assess the authenticity of cards that could be any number of years old where signers—especially in the construction-industry where employee turnover is known to be frequent—have long ago left the workplace.[146] As the Supreme Court recognized in *Bryan Manufacturing,* it is imprudent to permit parties to litigate a union's initial recognition outside of the 10(b) period—whether in a preelection representation proceeding or in an unfair labor practice hearing—''after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused.'' [147]

The Board is also inclined to believe that the procedures in place prior to the overruling of *Casale* pursuant to § 103.22 appropriately granted regional directors discretion to determine whether the evidence adequately showed where the union had been properly granted 9(a) recognition.[148] This is particularly true in the context of a representation case where regional directors could determine whether the union had actually obtained 9(a) status so that a collective-bargaining agreement between the parties would serve as a contract bar to the processing of a petition.[149] Of course, even if the

written memorialization of that showing of support in their contract as always insufficient on its own to prove majority support, the positive evidence that the final rule requires the parties to retain is presumably the union's contemporaneous showing of its majority support to demonstrate the veracity of that contractual language.

[141] *John Deklewa & Sons,* 282 NLRB at 1387 fn. 53.

[142] See *Appalachian Shale Products Co.,* 121 NLRB 1160, 1163 (1958) (finding a contract bar only exists where an agreement contains substantial terms and conditions of employment because ''real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems'').

[143] See *General Cable Corp.,* 139 NLRB at 1125.

[144] For instance, the employer in *John Deklewa & Sons* had recognized the union for 23 years before repudiating the parties' agreement and withdrawing recognition. Id. at 1376. Although the April 2020 final rule is to be applied prospectively only, it could still cause significant disruption to longstanding collective-bargaining relationships 20 years into the future for collective-bargaining relationships first formed after April 2020.

[145] See *Paragon Products Corp.,* 134 NLRB at 665 (representation ''proceedings are investigatory in character and do not afford a satisfactory means for determining matters which are more properly the subject of adversary proceedings with their accompanying safeguards.''). Compare Board's Rules and Regulations § 102.39 (''The [unfair labor practice] hearing will, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States . . . .''), with Board's Rules and Regulations § 102.66(a) (''The rules of evidence prevailing in courts of law or equity shall not be controlling'' at a representation hearing); see also *Marian Manor for the Aged & Infirm, Inc.,* 333 NLRB 1084, 1084 (2001) (''[A] preelection hearing is investigatory in nature and credibility resolutions are not made.'').

[146] See *John Deklewa & Sons,* 282 NLRB at 1380 (''Another, important characteristic of the industry was sporadic employment relationships. In construction, an employee or group of employees 'typically works for many employers and for none of them continuously. Jobs are frequently of short duration, depending on various stages of construction.' '') (quoting S. Rep. No. 86–187, reprinted in 1 NLRB, Leg. Hist., at 423).

[147] See *Bryan Manufacturing,* 362 U.S. at 419 (quoting H.R. Rep. No. 80–245, at 40).

[148] See *Golden West Electric,* 307 NLRB at 1495 (acting regional director properly administratively dismissed representation petition under the contract bar after finding the parties' relationship governed under sec. 9(a)).

[149] See *G.M.S. Excavators, Inc.,* Case No. 18–RD–125379, slip op. 14–16 (Jun. 3, 2014) (regional director found that a union was not the 9(a)

Continued

regional director were to find that a contract bar existed, a party is not foreclosed from challenging the union's continued presumption of majority support forever. The absolute longest a party would have to wait before filing a representation petition under the Board's contract-bar rules would be 3 years.[150] But in the absence of *Casale,* and without the evidence of the union's contemporaneous majority support, a collective-bargaining agreement and the union's very recognition could be challenged at any time. It could even be challenged when the processing of a representation petition would entrench employee coercion instead of ameliorating it. If a construction employer and union attempt to masquerade an 8(f) relationship as a lawful 9(a) recognition, § 103.22 attempts to rectify that unlawful 8(a)(2) and 8(b)(1)(A) conduct through a representation petition. But that is not the right medicine for the ailment. Under the Board's statutory framework, unlawful conduct is to be remedied through unfair labor practice proceedings with the attendant evidentiary and procedural safeguards. Moreover, a construction employer found to have violated the law will be ordered to cease and desist from recognizing the union as its employees' collective-bargaining representative and from giving effect to any agreement. An election may thus be a poor method for accurately gauging employee support when it occurs while employees are being unlawfully represented by a purported 9(a) bargaining representative.

Moreover, a filed petition may even have nothing to do with employee free choice. A construction employer that had voluntarily entered into a contract with a union could, at any time during the life of that contract, decide that it does not like the terms that it had agreed to or the collective-bargaining relationship altogether and file an RM petition, hoping to defeat the Board's standard contract bar merely because the union failed to retain and preserve indefinitely the extrinsic evidence from its initial 9(a) recognition.

In overruling *Casale* pursuant to § 103.22, the 2020 Board perplexingly speculated that this was necessary because parties would presume that a construction employer and union only entered into an 8(f) agreement and, therefore, would not know to file a petition within the first 6 months to challenge a union's 9(a) recognition.[151] This Board is inclined to disagree. Although the Board in *John Deklewa & Sons* adopted a rebuttable presumption that a collective-bargaining relationship in the construction industry was established under section 8(f), the Board also explicitly recognized that a union representing construction employees could obtain 9(a) status. Employees and rival unions who wish to challenge an incumbent union during the duration of a contract must know whether the construction employer has recognized the union as the 9(a) representative. And indeed, this is exactly why the unambiguous 9(a) recognition language in the parties' agreement is so important.

Under the law that existed prior to § 103.22, the parties' contract language had to unequivocally state that the construction employer granted the union 9(a) recognition so there could be no doubt if a party wanted to challenge its lawfulness. An employee will know immediately upon cursory review of the contract—after all, the 9(a) recognition must be stated using *unequivocal* language—whether the employer has recognized the union as the majority section 9(a) representative. In the same way that the collective-bargaining agreement grants the employees certain rights that they may want to know about, it also imposes obligations. One of those obligations under *Casale* is that, if the agreement unequivocally states that the union has 9(a) status, a challenge to the union's majority status during the term of the agreement, either through a petition or a charge, must be filed within 6 months. The *Casale* Board understood this to be necessary so that unions representing employees in the construction industry are not treated less favorably than nonconstruction unions. But the *Casale* Board, like the Supreme Court in *Bryan Manufacturing,* also recognized the need for a defined limitations period because the evidence as to whether the union had majority status at the time of the initial recognition becomes increasingly unreliable as more time passes.[152]

The Board is inclined to believe that § 103.22 should be rescinded in toto. In promulgating § 103.22, the Board clearly recognized—albeit after the issuance of its NPRM—that it had to overrule *Casale.* In the preamble to § 103.22, the Board acknowledged that § 103.22 is inconsistent with *Casale.* We presume that the Board would not have enacted § 103.22 without also overruling *Casale.* The Board stated in the preamble that ''most significant[ ]'' to its reason for enacting § 103.22 is that requiring an election petition to be filed within 6 months from the initial recognition discounts the importance of employee free choice. In reaching that conclusion, however, the Board did not solicit comments from stakeholders and the public about the effects of overruling *Casale* because the Board did not propose such a monumental modification in its NPRM. The Board failed to give stakeholders and the public the opportunity to comment on—and for the Board to consider—the deleterious and destabilizing impact on collective-bargaining relationships in the construction industry by potentially allowing collective-bargaining agreements to be challenged at any time.

Furthermore, the Board is inclined to believe that the unique nature of section 8(f) and the highly fact-specific circumstances under which parties in the construction industry seek to establish a 9(a) relationship make adjudication—rather than rulemaking—a better method for developing and, when necessary, reconsidering on a case-by-case basis the rules that govern how parties in the construction industry demonstrate a union's 9(a) status. The Board welcomes comments on the suitability of adjudication versus rulemaking in this area.

Accordingly, the Board is inclined to believe, subject to comments, that the overruling of *Casale* and the adoption of § 103.22 does not further the policies and purposes of the Act and should be rescinded.

V. Conclusion

Our dissenting colleagues were part of the Board that issued the April 2020 final rule at a time when the Board consisted of a three-member quorum without any dissenting views.[153] Our

representative and processed a decertification petition where the agreement stated that the union represented employees but not that the union had the support or the authorization of a majority of the employees).

[150] See *Mountaire Farms, Inc.,* 370 NLRB No. 110, slip op. at 1 (''Under the Board's current application of the contract-bar doctrine, a valid collective-bargaining agreement ordinarily is a bar to a representation petition during the term of the agreement, but for no longer than 3 years.'').

[151] 85 FR 18391.

[152] In the preamble to § 103.22, the Board stated that courts had expressed doubts regarding sec. 10(b)'s applicability to challenges to a construction-industry union's purported 9(a) status. See *American Automatic Sprinkler Systems,* 163 F.3d 209, 218 fn. 6 (4th Cir. 1998). However, other courts have expressly approved it. See *Triple C Maintenance,* 219 F.3d 1147, 1156–1159 (10th Cir. 2000); *NLRB* v. *Triple A Fire Protection,* 136 F.3d 727, 736–737 (11th Cir. 1998); see also *Sheet Metal Workers' Intern. Assn. Local 19* v. *Herre Bros., Inc.,* 201 F.3d 231, 241 (3d Cir. 1999). Notably, the D.C. Circuit has explicitly declined to decide this issue because the Board, in a case where the limitations period was raised, had not relied on sec. 10(b) as a basis for finding that the union's 9(a) status could not be challenged. *Nova Plumbing,* 330 F.3d at 539.

[153] As mentioned above, then-Member McFerran dissented from the 2019 NPRM that resulted in the

dissenting colleagues express many of the same criticisms of the Board's prior blocking-charge policy, voluntary-recognition bar doctrine, and standards for determining whether construction-industry bargaining relationships are governed by section 8(f) or 9(a) that they expressed in the 2020 final rule. We have expressed our preliminary view that the Act's purposes of promoting stable collective bargaining and employee free choice in Board elections are better served by the Board's traditional standards than by the approaches taken in the 2020 final rule.

The Board welcomes public comment on all aspects of its proposed rule. We look forward to receiving and reviewing the public's comments and, afterward, considering these issues afresh with the good-faith participation of all members of the Board.

VI. Dissenting View of Members Kaplan and Ring

Two-and-a-half years ago, the Board issued a final rule (''the 2020 Rule'') that made three well-advised changes to our rules and regulations.[154] As discussed in greater detail below, the amendments modified the Board's blocking-charge policy to eliminate the primary cause of delay in the conduct of representation elections; overruled *Lamons Gasket*[155] and reinstated the framework the Board adopted in *Dana Corp.*[156] to afford employees an opportunity to file a petition for a secret-ballot election[157] following their employer's voluntary recognition of a labor organization; and specified the proof of majority support necessary to demonstrate that a bargaining relationship in the construction industry, presumed to have been established under section 8(f) of the Act, has instead been established through voluntary recognition under section 9(a) of the Act.[158] The 2020 Rule, known as the ''Election Protection Rule,'' was designed to ''better protect employees' statutory right of free choice on questions concerning representation by removing unnecessary barriers to the fair and expeditious resolution of such questions through the preferred means of a Board-conducted secret-ballot election.'' 85 FR 18366. In our considered judgment, the 2020 Rule has been a hard-won success. As with the final rule on joint-employer status under the Act, achieving this success required the expenditure of considerable Agency resources to thoroughly consider, analyze, and respond to numerous public comments.

Today, however, with their Notice of Proposed Rulemaking (''NPRM''), the majority sets in motion a project to do it all over again with the express aim of reversing all the progress made just two years ago. Our colleagues point to no changed circumstances as justification for the about-face. To the contrary, this NPRM is simply the product of a new Board majority's disagreement with the 2020 Rule, which they propose to rescind not because they must, but because they can. One unfortunate consequence of this change is needless policy oscillation that tends to upset the settled expectations of the Agency's stakeholders. Worse, the rule our colleagues propose would be clearly inferior to the 2020 Rule, inasmuch as the proposed rule would undermine the very policy of employee free choice on which the 2020 Rule is predicated. Claiming themselves to be the true advocates of employee free choice, our colleagues would reverse all the employee free choice protections embodied in the 2020 Rule. We cannot countenance the majority's unjustified policy reversals and therefore must respectfully dissent. After supplying some general background on Board representation law, we discuss and respond to each of these policy reversals in turn.

A. General Background

Section 9(c) of the Act provides that the Board ''shall direct an election by secret ballot'' if the Board finds that a question of representation exists. The Supreme Court has repeatedly recognized that Congress granted the Board wide discretion under the Act to ensure that employees are able freely and fairly to choose whether to be represented by a labor organization and, if so, which one. E.g., *NLRB* v. *Wyman-Gordon Co.,* 394 U.S. 759, 767 (1969). The Court has observed that ''[t]he control of the election proceedings, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.'' *NLRB* v. *Waterman S.S. Corp.,* 309 U.S. 206, 226 (1940). Importantly, in *NLRB* v. *A.J. Tower Co.,* the Court stated that ''the Board must act so as to give effect to the principle of majority rule set forth in [section] 9(a), a rule that 'is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions.' '' 329 U.S. 324, 331 (1946) (quoting S. Rep. No. 74–573, at 13). ''It is within this democratic framework,'' the Court continued, ''that the Board must adopt policies and promulgate rules and regulations in order that employees' votes may be recorded accurately, efficiently and speedily.'' Id.

Representation-case procedures are set forth in the Act and in the Board's regulations and caselaw. In addition, the Board's General Counsel maintains a non-binding Casehandling Manual describing representation-case procedures in detail.[159] The Act itself contains only one express limitation on the timing of otherwise valid election petitions. Section 9(c)(3) provides that ''[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.'' The Board instituted through adjudication a parallel limitation precluding, with limited exceptions, an electoral challenge to a union's representative status for one year from the date the union is certified following its selection by a majority of employees in an appropriate bargaining unit in a valid Board election. The Supreme Court approved this certification-year bar in *Brooks* v. *NLRB,* 348 U.S. 96 (1954). Through adjudication, the Board also created several additional discretionary bars to the timely processing of a properly supported election petition, including the ''blocking charges'' bar, the voluntary-recognition bar, and the contract bar. Concerned that these additional election bars were unreasonably interfering with employees' statutorily protected rights, the Board refined each one in the 2020 Rule. As further discussed below, the proposed rule imprudently seeks to reverse each of these refinements, at the expense of employee free choice.[160]

2020 final rule before her prior term expired on December 19, 2019. She was reappointed August 10, 2020, after the publication of the 2020 Rule.

[154] Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships, 85 FR 18366 (Apr. 1, 2020) (codified at 29 CFR 103.20 *et seq.*).

[155] 357 NLRB 934 (2011).

[156] 351 NLRB 434 (2007).

[157] In Board parlance, representation-election petitions filed by labor organizations are classified as RC petitions and those filed by employers are RM petitions; decertification petitions filed by an individual employee are called RD petitions.

[158] Sec. 8(f) of the Act refers to ''an employer engaged primarily in the building and construction industry.'' 29 U.S.C. 158(f). In the interest of simplicity, throughout this dissent we use the shorthand ''construction industry'' and ''construction employer.''

[159] NLRB Casehandling Manual (Part Two) Representation Proceedings.

[160] The 2020 Rule also revised the standard of proof required to establish a 9(a) bargaining relationship in the construction industry, again to protect employee free choice. As with the election bars, the proposed rule would also undermine the 2020 Rule's protections.

B. Discussion

1. The Blocking-Charge Policy

For decades, the Board's blocking-charge policy was exploited to frustrate the timely exercise by employees of their right to vote—most often, when they sought to vote whether to decertify their incumbent bargaining representative in a secret-ballot election. The policy enabled this by permitting unions to block the processing of a pending decertification petition by filing an unfair labor practice charge, regardless of whether the charge was meritorious. The 2020 Rule modified the blocking-charge policy to facilitate the timely exercise of employees' electoral rights, while at the same time ensuring that no election results can or will be certified where unfair labor practices have interfered with the free exercise of those rights. Today, the majority proposes undoing these changes and resurrecting the pre–2020 Rule blocking-charge policy. While unions will be pleased, employees who have become dissatisfied with their incumbent representative predictably will not—and it is employees to whom the Act gives rights.

a. Background

The blocking-charge policy dates from shortly after the Act went into effect. See *United States Coal & Coke Co.,* 3 NLRB 398 (1937). A product of adjudication,[161] the policy permits a party—almost invariably a union and most often in response to an RD petition—to block an election indefinitely by filing unfair labor practice charges that allegedly create doubt as to the validity of the election petition or the ability of employees to make a free and fair choice concerning representation while the charges remain unresolved. Under this policy, petitioned-for elections can be blocked for months, or even years—and the election may never be held at all. See, *e.g., Cablevision Systems Corp.,* 367 NLRB No. 59 (2018) (blocking charge followed by regional director's misapplication of settlement-bar doctrine delayed processing until December 19, 2018, of valid RD petition filed on October 16, 2014; employee petitioner thereafter withdrew petition).

The adverse impact on employee RD (and employer RM) petitions resulting from the Board's blocking-charge policy, and the potential for abuse and manipulation of that policy by incumbent unions seeking to avoid a challenge to their representative status, have drawn criticism from numerous courts of appeals. See *NLRB* v. *Hart Beverage Co.,* 445 F.2d 415, 420 (8th Cir. 1971) (''[I]t appears clearly inferable to us that one of the purposes of the [u]nion in filing the unfair practices charge was to abort [r]espondent's petition for an election, if indeed, that was not its only purpose.''); *Templeton* v. *Dixie Color Printing Co.,* 444 F.2d 1064, 1069 (5th Cir. 1971) (''The short of the matter is that the Board has refused to take any notice of the petition filed by appellees and by interposing an arbitrary blocking[-]charge practice, applicable generally to employers, has held it in abeyance for over 3 years. As a consequence, the appellees have been deprived during all this time of their statutory right to a representative 'of their own choosing' to bargain collectively for them, 29 U.S.C. 157, despite the fact that the employees have not been charged with any wrongdoing. Such practice and result are intolerable under the Act and cannot be countenanced.''); *NLRB* v. *Midtown Service Co.,* 425 F.2d 665, 672 (2d Cir. 1970) (''If . . . the charges were filed by the union, adherence to the [blocking-charge] policy in the present case would permit the union, as the beneficiary of the [e]mployer's misconduct, merely by filing charges to achieve an indefinite stalemate designed to perpetuate the union in power. If, on the other hand, the charges were filed by others claiming improper conduct on the part of the [e]mployer, we believe that the risk of another election (which might be required if the union prevailed but the charges against the [e]mployer were later upheld) is preferable to a three-year delay.''); *NLRB* v. *Minute Maid Corp.,* 283 F.2d 705, 710 (5th Cir. 1960) (''Nor is the Board relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.''); *Pacemaker Corp* v. *NLRB,* 260 F.2d 880, 882 (7th Cir. 1958) (''The practice adopted by the Board is subject to abuse as is shown in the instant case. After due notice both parties proceeded with the representation hearing. Possibly for some reasons of strategy near the close of the hearing, the [u]nion asked for an adjournment. Thereafter it filed a second amended charge of unfair labor practice. By such strategy the [u]nion was able to and did stall and postpone indefinitely the representation hearing.'').

The potential for delay is the same when employees, instead of filing an RD petition, have expressed to their employer a desire to decertify an incumbent union representative. In that circumstance, the blocking-charge policy can prevent the employer from obtaining a timely Board-conducted election to resolve the question concerning representation raised by evidence that creates good-faith uncertainty as to the union's continuing majority support. Accordingly, the supposed ''safe harbor'' of filing an RM election petition that the Board majority referenced in *Levitz Furniture Co. of the Pacific,* 333 NLRB 717, 726 (2001), as an alternative to the option of withdrawing recognition (which the employer selects at its peril) is often illusory. As Judge Henderson stated in her concurring opinion in *Scomas of Sausalito, LLC* v. *NLRB,* it is no ''cure-all'' for an employer with a good-faith doubt about a union's majority status to simply seek an election because ''[a] union can and often does file a ULP charge—a 'blocking charge'—'to forestall or delay the election.' '' 849 F.3d 1147, 1159 (D.C. Cir. 2017) (quoting from Member Hurtgen's concurring opinion in *Levitz,* 333 NLRB at 732).

Additionally, concerns have been raised about the Board's regional directors applying the blocking-charge policy inconsistently, thereby creating uncertainty and confusion about when, if ever, parties can expect an election to occur. See Zev J. Eigen & Sandro Garofalo, *Less Is More: A Case for Structural Reform of the National Labor Relations Board,* 98 Minn. L. Rev. 1879, 1896–1897 (2014) (''Regional directors have wide discretion in allowing elections to be blocked, and this sometimes results in the delay of an election for months and in some cases for years—especially when the union resorts to the tactic of filing consecutive unmeritorious charges over a long period of time. This is contrary to the central policy of the Act, which is to allow employees to freely choose their bargaining representative, or to choose not to be represented at all.'').

[161] Except for certain evidentiary requirements, discussed below, that are set forth in § 103.20 of the Board's Rules and Regulations, the pre-2020 Rule blocking-charge policy was not codified. A detailed description of the prior version of the policy appears in the non-binding NLRB Casehandling Manual (Part Two) Representation, Sec. 11730–11734 (August 2007). In brief, the policy afforded regional directors discretion to hold election petitions in abeyance or to dismiss them based on the request of a charging party alleging either unfair labor practice conduct that ''interferes with employee free choice'' (a Type I charge) or conduct that ''not only interferes with employee free choice but also is inherently inconsistent with the petition itself'' (a Type II charge). Sec. 11730.1.

In 2014, the Board engaged in a broad notice-and-comment rulemaking review of the then-current rules governing the representation-election process. Many, if not most, of the changes that were proposed in the February 6, 2014 notice of proposed rulemaking [162] were focused on shortening the time between the filing of a union's RC election petition and the date of the election. The final Election Rule, which adopted 25 of the proposed changes, issued on December 15, 2014, and went into effect the following April. 79 FR 74308 (2014).

Of particular relevance here, the 2014 NPRM included a ''Request for Comment Regarding Blocking Charges.'' The Board did not propose changing the then-current blocking-charge policy, but it invited public comment on whether any of nine possible changes should be made, either as part of a final rule or through means other than amendment of the Board's rules.[163] Extensive commentary was received both in favor of retaining the existing policy and of revising or abandoning it. The final Election Rule, however, made only minimal revisions in this respect. The 2014 Board majority incorporated, in new § 103.20 of the Board's Rules and Regulations, provisions requiring that a party requesting the blocking of an election based on an unfair labor practice charge make a simultaneous offer of proof, provide a witness list, and promptly make those witnesses available to the regional director. These revisions were viewed as facilitating the General Counsel's existing practice of conducting expedited investigations in blocking-charge cases. The 2014 majority declined to make any other changes in the existing policy, expressing the view that the policy was critical to protecting employees' exercise of free choice,[164] and asserting that ''[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'' [165] By contrast, dissenting Board Members Miscimarra and Johnson criticized the 2014 majority's failure to make more significant revisions to the blocking-charge policy, contrasting the majority's concern with the impact on employee free choice of election delays in initial-representation RC elections with a perceived willingness to accept prolonged delay in blocking-charge cases, which predominantly involve RD or RM petitions challenging an incumbent union's continuing representative status.

A 2015 review of the final Election Rule by Professor Jeffrey M. Hirsch excepted the majority's treatment of the blocking-charge policy from a generally favorable analysis of the rule revisions. Noting the persistent problems with delay and abuse, Professor Hirsch observed that ''[t]he Board's new rules indirectly affected the blocking charge policy by requiring parties to file an offer of proof to support a request for a stay, but that requirement is unlikely to change much, if anything. Instead, the Board should have explored new rules such as lowering the presumption that favors staying elections in most circumstances or setting a cap on the length of stays, either of which might have satisfied the blocking charge policy's main purpose while reducing abuse.'' [166]

b. The 2020 Rule's Modifications to the Blocking-Charge Policy

To address the concerns with the blocking-charge policy discussed above, and to safeguard employee free choice, the 2020 Rule provided that an unfair labor practice charge would no longer delay the conduct of an election, and it set forth the following rules.

Where an unfair labor practice charge, filed by the party that is requesting to block the election, alleges (1) violations of section 8(a)(1) and 8(a)(2) or section 8(b)(1)(A) of the Act that challenge the circumstances surrounding the petition or the showing of interest submitted in support of the petition, or (2) that an employer has dominated a union in violation of section 8(a)(2) and seeks to disestablish a bargaining relationship, the election will be held and the ballots will be impounded for up to 60 days from the conclusion of the election. If a complaint issues with respect to the charge at any time prior to expiration of that 60-day period, the ballots will continue to be impounded until there is a final determination regarding the complaint allegation and its effect, if any, on the election petition. If the charge is withdrawn or dismissed at any time prior to expiration of that 60-day period, or if the 60-day period ends without a complaint issuing, the ballots will be promptly opened and counted. The 2020 Rule further provides that the 60-day period will not be extended, even if more than one unfair labor practice charge is filed serially.

For all other types of unfair labor practice charges, the 2020 Rule provided that the ballots will be promptly opened and counted at the conclusion of the election, rather than temporarily impounded. Finally, for all types of charges upon which a blocking-charge request is based, the 2020 Rule clarified that the certification of results (including, where appropriate, a certification of representative) will not issue until there is a final disposition of the charge and a determination of its effect, if any, on the election petition.[167] 85 FR 18369–18370, 18399.

c. Critique of the Majority's Proposed Readoption of the Pre–2020 Rule Blocking-Charge Policy

Demonstrating little concern for the previous abuse of the Board's blocking-charge policy and the inadequacy of the offer-of-proof requirements imposed by the 2014 final Election Rule, our colleagues would simply reverse all that was accomplished in the 2020 Rule and return the Board to what they refer to as the ''historical'' blocking-charge policy as modified by the Election Rule. Our colleagues ostensibly regard the blocking-charge policy's decades-long endurance as a sufficient justification to resurrect the policy without modification irrespective of its glaring deficiencies. But in stressing the ''historical'' nature of the blocking-charge policy, the majority largely dismisses the similarly historical abuse of that policy, which also goes back decades. That the ''historical'' blocking-charge policy persisted for decades hardly signifies that it was wise or just. Board policy and precedent, however historical, need not bind us forever when wrong. As the late Supreme Court Justice Oliver Wendell Holmes, Jr. said: ''If truth were not often suggested by error, if old implements could not be adjusted to new uses, human progress

[162] Representation-Case Procedures, 79 FR 7318.

[163] 79 FR 7334–7335.

[164] 79 FR 74418–74420, 74428–74429.

[165] 79 FR 74429.

[166] Jeffrey M. Hirsch, *NLRB Elections: Ambush or Anticlimax?,* 64 Emory L.J. 1647, 1664 (2015).

[167] Nothing in the 2020 Rule altered the existing requirements that only a party to the representation proceeding may file the request to block the election process; only unfair labor practice charges filed by that party may be the subject of a request to block; that party must file a written offer of proof as well as the names of witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony; and that party must promptly make available to the regional director the witnesses identified in the offer of proof.

Citing *Rieth-Riley Construction Co., Inc.,* 371 NLRB No. 109 (2022), the majority observes that the 2020 Rule ''did not disturb the authority of regional directors to dismiss a representation petition, subject to reinstatement, under the Board's long-standing practice of 'merit-determination dismissals.' '' Although we stated our agreement there that regional directors retain this authority ''at least where . . . the regional director has found merit to unfair labor practice charges and issued a complaint before the petition was filed,'' we were forced to dissent because, inter alia, our colleagues erroneously affirmed merit dismissals in the face of extraordinary delay and a failure to hold a ''causal nexus'' hearing. See *Rieth-Riley,* supra, slip op. at 8–13 (Members Kaplan and Ring, dissenting).

would be slow. But scrutiny and revision are justified.'' [168] Regarding the blocking-charge policy, scrutiny and revision were clearly justified.

However well intentioned, the historical blocking-charge policy stifled the exercise by employees of their fundamental right, guaranteed by the Act, to choose whether to be represented by a labor organization and, if so, which one. As the 2020 Rule appropriately concluded, the blocking-charge policy ''encourage[d] . . . gamesmanship, allowing unions to dictate the timing of an election for maximum advantage in all elections presenting a test of representative status,'' regardless of the type of petition (RD, RC, or RM) filed.[169] 85 FR 18376 & fn. 81. Moreover, the 2020 Rule appropriately concluded that the blocking-charge policy ''denie[d] employees supporting a petition the right to have a timely election based on charges the merits of which remain to be seen, and many of which will turn out to have been meritless.'' Id. at 18377. In the meantime, during the extended delay caused by a blocking charge, any momentum in support of a valid petition may be lost, and the employee complement may substantially turn over.[170] Id. at 18367, 18374. Thus, in a very practical sense, ''employees who support [RD or RM] petitions are just as adversely affected by delay as employees who support a union's initial petition to become an exclusive bargaining representative.'' [171] 84 FR 39930, 39937 (2019).

Contrary to the majority, there is nothing improper in recognizing the drawbacks of the blocking-charge policy and making changes to eliminate them. The Board in the 2020 Rule did precisely that. The proposed rule would undo this necessary progress, elevating history over substance. Illustrative of this point is our colleagues' heavy reliance on the Fifth Circuit's positive perceptions of the historical policy nearly fifty years ago.[172] However, other circuit-court cases from that time and much earlier recognized the problems addressed in the 2020 Rule. Indeed, the 2020 Rule observed that ''courts of appeals have criticized the blocking charge policy's adverse impacts on employee RD petitions, as well as the potential for abuse and manipulation of that policy by incumbent unions seeking to avoid a challenge to their representative status.'' 85 FR 18367 (citing *NLRB* v. *Hart Beverage Co.,* 445 F.2d at 420; *Templeton* v. *Dixie Color Printing Co.,* 444 F.2d at 1069; *NLRB* v. *Midtown Serv. Co.,* 425 F.2d at 672; *NLRB* v. *Minute Maid Corp.,* 283 F.2d at 710; *Pacemaker Corp.* v. *NLRB,* 260 F.2d at 882).

In plotting a return to the ''historical'' blocking-charge policy, the majority stresses their view that this policy ''enabled the Board to fulfill one of its core obligations: to preserve laboratory conditions for ascertaining employee choice during Board-conducted elections.'' Our colleagues claim that ''it would undermine employee rights, and would run counter to the Board's duty to conduct elections in circumstances in which employees may freely choose whether to be represented by a union, if the Board were to require regional directors to conduct, and employees to vote in, a coercive atmosphere.'' They add that by ''shielding employees from having to vote under coercive conditions, the historical blocking charge policy would seem to be more compatible with the policies of the Act and the Board's responsibility to provide laboratory conditions for ascertaining employee choice during Board-conducted elections.'' In other words, our colleagues view the mere act of *conducting* an election—in the face of unlitigated and unproven accusations [173]—as injurious to employee free choice. This supposed imperative of ''shielding employees'' from voting *at all* in what the majority deems a ''coercive atmosphere''—even though the 2020 Rule guarantees that any coerced electoral result will not be given legal effect—runs like a leitmotif through the majority's justification for the proposed rule. We disagree that the mere possibility that a choice may be compromised justifies blocking employees from exercising their right to make that choice altogether.

We fully recognize, as has the Supreme Court, that it is the ''duty of the Board . . . to establish the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by

[168] Oliver Wendell Holmes, Jr., The Common Law 37 (1881).

[169] The Board has long been aware of this gamesmanship. Thus, Section 11730 of the Board's August 2007 Casehandling Manual for representation proceedings states that ''it should be recognized that the policy is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition.'' Further, the 2014 final Election Rule stated that the Board was ''sensitive to the allegation that at times, incumbent unions may abuse the policy by filing meritless charges in order to delay decertification elections,'' and it sought to address that issue by adding the offer-of-proof evidentiary requirements in § 103.20 (currently § 103.20(a)) of the Board's Rules and Regulations. However, § 103.20(a), standing alone, was not adequate to the task of ending gamesmanship through blocking charges. We agree with Professor Hirsch's observation that the mere offer-of-proof requirement—which the 2020 Rule left undisturbed and which the majority apparently believes is, standing alone, sufficient to address the threats to employee free choice posed by abuse and manipulation—would be ''unlikely to change much, if anything.'' See 64 Emory L.J. at 1664. The majority's reliance on *Associated Builders and Contractors of Texas, Inc.* v. *NLRB,* 826 F.3d 215, 228 (5th Cir. 2016), as supporting the original § 103.20 is misplaced. There, the court did not substantively endorse the 2014 Election Rule's decidedly modest changes to the blocking-charge policy. It merely rejected a facial challenge to the Election Rule based on the plaintiffs' failure to carry their ''high burden'' of demonstrating either that the Board lacked authority to promulgate the rule or that the rule was arbitrary and capricious under the Administrative Procedure Act. Id. at 229.

Significantly, the majority largely downplays and dismisses the gamesmanship problem, claiming that ''there has been no showing that it was the norm for unions to file frivolous blocking charges to postpone elections in RD or RM cases.'' But the majority's claim begs the question of exactly how much union abuse of the blocking-charge policy they would find sufficient to justify taking action to prevent it. Our colleagues' suggestion that there is insufficient evidence that frivolous blocking charges are ''the norm'' would seem to presage the majority's tolerance of a very substantial burden on employee free choice before even acknowledging, let alone redressing, this harm.

[170] The majority cautions that ''the momentum that the [2020 Rule] seeks to preserve may be entirely illegitimate, as in cases where the employer unlawfully initiates the decertification petition, or the momentum may be infected by unlawful conduct.'' But if the momentum truly is ''illegitimate'' under the hypothetical circumstances the majority describes, then the Board will not certify the election results. If, however, the momentum is in fact legitimate, the 2020 Rule appropriately protects it.

[171] As the 2020 Rule recognized, the potential for the blocking-charge policy to delay elections also exists ''when employees, instead of filing an RD petition, have otherwise expressed to their employer a desire to decertify an incumbent union representative'' and the employer files an RM petition seeking a timely election. Id. at 18367. Consequently, the purported ''safe harbor'' afforded employers uncertain of a union's ongoing majority support—filing an RM petition rather than withdrawing recognition (a perilous option)—is often illusory. See *Levitz Furniture Co. of the Pacific,* supra.

[172] See generally *Bishop* v. *NLRB,* 502 F.2d 1024 (5th Cir. 1974).

[173] The majority faults the 2020 Rule for its purported ''skepticism toward regional director administrative determinations in this context,'' which they claim is ''in considerable tension with Congress' decision to authorize regional directors to administratively decide when elections should be conducted in the first place and when the results of elections should be certified in [s]ection 3(b) of the Act.'' Our colleagues miss the point. Initially, it warrants mention that section 3(b) authorizes *the Board* to delegate this authority to regional directors, subject to Board review. The Board has done so, and we have no quarrel with that delegation. At issue here is whether the Board should block employees from voting in a Board-supervised election based on an initial administrative determination that has not been fully adjudicated. In our considered view, employee free choice is best served by the 2020 Rule's procedures permitting employees to vote, and then relying on the relevant administrative determinations to decide whether and when ballots should be impounded (in certain types of cases) or certifications issued. Additionally, promptly holding elections helps prevent employees from mistakenly inferring that unproven unfair labor practice allegations necessarily have merit.

employees.'' *NLRB* v. *Savair Mfg. Co.,* 414 U.S. 270, 276 (1973) (internal quotation marks omitted). In this connection, the Board has long held that ''[a]n election can serve its true purpose only if the surrounding conditions enable employees to register a free and untrammeled choice for or against a bargaining representative.'' *General Shoe Corp.,* 77 NLRB 124, 126 (1948). To that end, ''[i]n election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.'' Id. at 127. It does not follow, however, that where it has merely been *alleged*—not found—that an employer has engaged in conduct that might affect the freedom of an electoral choice, the answer is to prevent employees from making any choice at all. To begin with, the Board in *General Shoe* emphasized that it had ''sparingly'' exercised its power to ''set an election aside and direct[ ] a new one,'' saving that remedy for election misconduct ''so glaring that it is almost certain to have impaired employees' freedom of choice.'' Id. at 126 (emphasis added). Board law is therefore clear that employees are to be afforded the opportunity in an election to make a ''free and untrammeled *choice* ''of bargaining representative, with ''choice'' being the operative word.

Collectively choosing to select or reject a bargaining representative through the Board's electoral processes necessarily entails voting in an election that is eventually certified and given legal effect. Under the *General Shoe* standard, the Board will set aside an election—*i.e.,* deny it legal effect—where employees were denied the opportunity to make a free and uncoerced choice. See id. Without an uncoerced and therefore legally valid vote, there can be no effective choice of bargaining representative. In such circumstances, the question of representation raised by the election petition is preliminarily answered but not resolved.[174] Assuming unfair labor practice charges filed during the pendency of an election petition are subsequently determined to be meritorious, if the election result is not given legal effect—and the 2020 Rule ensures it will not be—then employees' right to make a free and uncoerced choice *has not been abridged.* In contrast to the 2020 Rule, the proposed rule would indefinitely block employees from registering any choice at all based on charges that have not been (and may never be) found meritorious and that may even have been filed merely to delay an election in hopes of preserving the union's representative status.

The majority's claim that the potential for employees to vote in a ''coercive atmosphere'' necessarily inhibits employee free choice overlooks the fact that under their proposal, employees may be deprived of the opportunity to register any choice at all. The majority ''recognize[s] that blocking elections based on nonmeritorious charges may result in some delay,'' but asserts that ''the benefits of not allowing elections to proceed under the clouds of an unfair labor practice far outweigh any such delay.'' In other words, the majority believes that because some unfair labor practice charges prove meritorious and that where this is the case, an election, if allowed to proceed, would be conducted under unfair labor practice ''clouds,'' *every* election should be blocked whenever a properly supported blocking charge is filed, even though this means that elections will be blocked when there is not a cloud in the sky. This is rather like saying that all baseball games should be delayed indefinitely because some games, if played, would be called on account of rain. We believe the game should proceed unless and until clouds actually gather and rain actually falls—or to drop the simile, we would adhere to the 2020 Rule, permitting elections to proceed and intervening to set aside the results if and when an unfair labor practice charge proves meritorious. Without ascribing motives to our colleagues, we cannot avoid observing that their preferred approach does make it easier for incumbent unions bent on self-preservation to frustrate the will of the majority. Safeguarding employees' access to the ballot box remains a compelling reason why the amendments to the blocking-charge policy made in the 2020 Rule were (and still are) necessary.

Further, as the 2020 Rule appropriately recognized, ''the concerns raised about the harm that employees would suffer by voting in an election that is later set aside are overstated and can be addressed by the prophylactic post-election procedures of certification stays and, in some cases, impounding ballots, set forth in the [2020 Rule].'' 85 FR 18378. The effectiveness of these procedures cannot be attacked without calling into question decades of Board decisions. For nearly the entirety of the Act's existence, the Board has set aside elections based on meritorious objections and has ordered second elections. See, *e.g., Paragon Rubber Co.,* 7 NLRB 965, 966 (1938). In many of those cases, the objectionable conduct was an unfair labor practice. Based on the Board's extensive experience in handling election objections, it defies reason to suggest that employee free choice in a second election will invariably be affected by a union's prior election loss set aside based on unfair labor practices. That has not been the case in many rerun elections where employees have voted for union representation in a second or even third election.[175] 85 FR 18378. We therefore disagree with our colleagues that the mere filing of an unfair labor practice charge alleging conduct that, if proven, would create a ''coercive atmosphere''

[174] Our colleagues fault the 2020 Rule for requiring the conduct of certain ''elections that will not resolve the question of representation because they were conducted under coercive circumstances, . . . [thereby] run[ning] the risk of imposing unnecessary costs on the parties and the Board.'' In agreement with the 2020 Rule, we consider ''any consequential costs [to be] worth the benefits secured'' of safeguarding employee free choice by conducting petitioned-for elections. 85 FR 18378. Indeed, ''one of the principal duties of the Board is to resolve questions of representation by holding elections, and that duty is not discharged where the Board does not process a representation petition, especially where there is no legitimate basis for delaying an election.'' Id. In any event, ''it is clearly not the case that unfair labor practices alleged in a charge, even if meritorious, will invariably result in a vote against union representation. If the union prevails despite those unfair labor practices, there will be no second election.'' Id.

Moreover, conducting elections and, in most cases under the 2020 Rule, promptly counting the ballots is likely to facilitate settlement of the relevant unfair labor practice charges, thereby leading to cost savings for the parties and the Board. Contrary to the majority's claim that the 2020 Rule permits ''the worthy administrative goal of promoting settlement'' to ''trump the fundamental *statutory* policy'' of employee free choice, the 2020 Rule actually promotes *both* the statutory policy of employee free choice *and* the administrative goal of promoting settlement. The majority's false dichotomy between these policy aims distorts the 2020 Rule. The majority also speculates that ''knowledge of the provisional election outcome may perversely incentivize cases *not* to settle where a party deems that vote tally so valuable to its interests that it makes it efficient to litigate a long-shot legal theory in the unfair labor practice case.'' This is nonsense. There is no reason to presume that a party would press forward with a dubious legal theory in an unfair labor practice case—and assume the resulting litigation costs—merely to keep alive the equally dubious hope of obtaining a certification of favorable provisional election results. Hope may spring eternal, but a fool's hope is an unsound litigation strategy.

[175] The majority overstates the risk of employees refusing to vote for the union in a rerun election after the union's loss in an initial election held ''under coercive conditions'' occasioned by a meritorious unfair labor practice. Employees voting in second (or third) elections under noncoercive conditions, *i.e.,* after the unfair labor practices were fully remedied, have repeatedly demonstrated a willingness to consider union representation. In addition, given the Board's experience in successfully conducting rerun elections, there is no basis for our colleagues' assumption that doing so consistent with the 2020 Rule will ''threaten industrial peace.'' By their logic, any rerun election could threaten industrial peace.

as a matter of law imposes a ''duty'' on the Board not to conduct an election. On the contrary, as noted above, the Board has a duty ''to resolve questions of representation by holding elections, and that duty is not discharged where the Board does not process a representation petition, especially where there is no legitimate basis for delaying an election.'' Id. If the union loses the election and the allegation proves meritorious, the election results are set aside. Thus, any potential ''coercive atmosphere'' is fully dealt with under the Board's existing representation rules, including the procedures set forth in the 2020 Rule.[176]

The majority additionally claims that ''opening and counting ballots submitted under coercive circumstances, yet refusing to certify the results, will, at best, confuse employees and, at worst, actively mislead them by conveying a materially false impression of union support.'' But unions will be highly motivated to explain to employees why election results have not been certified and should be disregarded. The reason is easy to understand; apparently our colleagues have less faith in employees' intelligence than we do. Moreover, despite a regional director's investigatory determination of merit, the relevant charge may well turn out to have been meritless after a full adjudication before the Board, meaning that the ballots for that case would not have been ''submitted under coercive circumstances.'' See 85 FR 18377. Similarly, where a regional director's investigation results in a relevant charge's dismissal, employee ballots in such a case plainly would not have been ''submitted under coercive circumstances,'' and it is entirely appropriate that employees promptly learn the election results in that case. Additionally, our colleagues discount the benefit to employees (and to their confidence in the Board's processes) of promptly learning the results of an election in which they voted. Where a statutory question of representation exists, employees should be entitled to a prompt answer to that question, even where unfair labor practice charges later deemed meritorious delay the final resolution of the question.

Rejecting the 2020 Rule's concern with safeguarding employee free choice by conducting elections in the face of meritless unfair labor practice charges, the majority rather audaciously asserts that the historical blocking-charge policy ''best preserved employee free choice in representation cases in which petitions are blocked because of concurrent unfair labor practice charges,'' even though some employees might never get to vote due to a blocked petition. See, *e.g., Geodis Logistics, LLC,* 371 NLRB No. 102 (2022) (blocking charge delayed elections for four years; employee petitioner no longer employed in unit); *Cablevision Systems Corp.,* 367 NLRB No. 59 (2018) (blocking charge followed by regional director's misapplication of settlement-bar doctrine delayed processing until December 19, 2018, of valid RD petition filed on October 16, 2014; employee petitioner thereafter withdrew petition). Indeed, the passage of time while a charge is blocked, and the attendant turnover in the workforce of employees opposed to a particular union, inures to the benefit of unions attempting to preserve their representative status, at the expense of employee choice. The majority dismisses the 2020 Rule's concern for such employees by pointing out the obvious fact that some turnover is ''unavoidable'' over the days and weeks between a petition's filing and the election. In doing so, our colleagues discount the potential for blocking charges to cause *years* of delay, during which extensive employee turnover is all too likely.

Taking the debate from the obvious to the absurd, the majority faults the 2020 Rule for failing to ''explain why employees who are no longer in the workforce should be given a say in determining whether current employees should be represented during the period when the petition is held in abeyance pending a determination of the merits of the charge.'' Of course, this argument misses the point entirely. The point is not that former employees should get a say in current employees' electoral choice. Rather, to the extent practicable, employees employed at the time a petition is filed should get the opportunity to promptly express a choice of representative. The majority, by contrast, would rather assist unions facing possible ouster by facilitating election delay while the union waits for its opponents to head for the exits and works to rebuild support among the undecideds. They criticize the 2020 Rule for ''prioritiz[ing] speedy elections over employee free choice in order to maximize the likelihood that those employed at the time of the petition filing will be able to vote in an election,'' but their criticism rests on a false dichotomy between ''speedy elections'' and ''employee free choice.'' It's not an either/or, but a both/and. The 2020 Rule facilitates prompt elections *and* safeguards employee free choice, for all the reasons we have explained. Moreover, a prompt opportunity for employees to vote in a Board election *itself* safeguards employee free choice.[177] See *NLRB* v. *A.J. Tower Co.,* 329 U.S. at 331 (observing that ''within [the] democratic framework'' of section 9(c) of the Act, ''the Board must adopt policies and promulgate rules and regulations in order that employees' votes may be recorded accurately, efficiently *and speedily*'' (emphasis added)). Finally, the majority asserts that employee turnover will necessarily occur in the event an unfair labor practice charge proves meritorious and a rerun election is directed. But that result is acceptable where a charge has merit. The goal should be to limit employee turnover resulting from blocking petitions for extended periods based on any and every unproven and potentially meritless allegation of employer conduct that could interfere with employee free choice or taint the petition.

Next, the majority makes the fantastical claim that the 2020 Rule's modification of the blocking-charge policy to permit elections to be conducted despite pending unfair labor practice charges somehow ''creates a perverse incentive for unscrupulous employers to commit unfair labor practices'' because, in our colleagues' estimation, the ''predicable results'' of such unlawful conduct will be (1) the expenditure of unions' resources on

[176] The Board also remains free to redress the harm from certain serious unfair labor practices by issuing a general bargaining order. See generally *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575 (1969). Our colleagues claim to have discovered an incongruity between the 2020 Rule ''requiring elections in *all* cases no matter the severity of the employer's unfair labor practices [and] the Supreme Court's approval in *Gissel* of the Board's practice of *withholding* an election and issuing a bargaining order'' in certain serious cases. No such incongruity exists because, pursuant to the 2020 Rule, elections conducted under coercive conditions based on relevant meritorious unfair labor practices paired with a request to block will not be given legal effect and can be rerun *or,* where circumstances warrant, replaced with an affirmative bargaining order consistent with *Gissel.* See 85 FR 18380 (''If the charge is found to have merit in a final Board determination, we will set aside the election and either order a second election or issue an affirmative bargaining order, depending on the nature of the violation or violations found to have been committed.'').

[177] The majority invites us to re-litigate the reasonable amendments made to the Board's representation procedures through a prior 2019 rulemaking. See Representation-Case Procedures, 84 FR 69524 (Dec. 18, 2019). We decline this invitation. The unrelated 2019 rulemaking sought to balance the complementary aims of electoral efficiency, transparency, and accuracy. Insofar as our colleagues would juxtapose an extension of the critical period by a few weeks by operation of the 2019 amendments with their proposal here to restore the blocking charge policy's ability to halt the critical period and delay an election for *years,* this is a comparison of incommensurables.

elections that ''will not reflect the uninhibited desires of the employees,'' and (2) ''a sense among employees that seeking to exercise their [s]ection 7 rights is futile.'' This fallacious parade of horribles leads nowhere. It defies reason that employers would deliberately expose their businesses to unfair labor practice litigation and liability, and the financial consequences thereof, merely to compel unions to expend resources on an election that the union might well win. In any event, such employers would themselves presumably have to commit resources to an election. Additionally, we reject the premise that holding an election (but not immediately certifying the results) in the face of pertinent unfair labor practice charges necessarily imbues employees with a sense of futility regarding the exercise of their section 7 rights—rights that include being able to cast a vote for or against representation in a Board-supervised, secret-ballot election. Indeed, the majority completely discounts the futility that a decertification petitioner and other supporters of that petition must feel when forced to wait for years to vote in an election, assuming they are ever afforded the opportunity to do so. Lastly, the majority effectively presumes an abuse of process that is not known to have occurred, which stands in stark contrast to the recognized abuse of the Board's processes by unions seeking to preserve their representative status—an abuse that, according to our colleagues, does not merit curative action unless it is shown to be ''the norm.''

Finally, our colleagues state that they are ''concerned'' with claimed errors in certain data considered in the notice of proposed rulemaking preceding the 2020 Rule. The Board appropriately responded to these concerns in the 2020 Rule as follows: ''Even accepting those claims as accurate, the remaining undisputed statistics substantiate the continuing existence of a systemic delay that supports our policy choice to modify the current blocking-charge procedure that does not, and need not, depend on statistical analysis.'' 85 FR 18377. Further, the Board, quoting the AFL–CIO's comment, observed that ''[b]locking elections delays elections. That is undeniably true and requires no 'statistical evidence' to demonstrate.'' Id. Finally, the Board reiterated that ''anecdotal evidence of lengthy blocking charge delays in some cases, and judicial expressions of concern about this, remain among the several persuasive reasons supporting a change that will assure the timely conduct of elections without sacrificing protections against election interference.'' Id. We agree. As the majority acknowledges, the Board is ''free to make a policy choice that does not primarily rely . . . on statistical data'' and ''may make policy decisions for which the data does not provide the answer.'' The Board did so in the 2020 Rule—and now, at the unfortunate expense of the gains in safeguarding employee free choice made there, the majority claims the right to do so in this NPRM.

For all the reasons set forth above, the 2020 Rule's modifications to the Board's blocking-charge policy were prompted by real and serious abuses, and they successfully addressed those abuses. Those modifications should be retained. Instead, the majority proposes rescinding them. We cannot join them in taking this step and therefore, we dissent.

2. The Voluntary-Recognition Bar

When it comes to ascertaining whether a union enjoys majority support, a Board-conducted election is superior to union-authorization cards for several reasons, not least of which is that in the former, employees vote by secret ballot, whereas an employee presented with a card for signature makes an observable choice and is therefore susceptible to group pressure. For this reason and others, discussed below, the 2020 Rule reinstated a framework, previously adopted through adjudication, that provides employees a limited window period, following their employer's card-based voluntary recognition of a union as their bargaining representative, within which to petition for a secret-ballot election, and during which the start of the voluntary-recognition election bar is paused until that window closes without a petition being filed. We believe this aspect of the 2020 Rule appropriately balances the sometimes-competing policies of labor-relations stability and employee free choice. Our colleagues propose throwing out this valuable framework. Because their proposal strikes the wrong balance, at the expense of employee free choice, we dissent.

a. Background

Longstanding precedent holds that a ''Board election is not the only method by which an employer may satisfy itself as to the union's majority status [under section 9(a) of the Act].'' *United Mine Workers* v. *Arkansas Flooring Co.,* 351 U.S. 62, 72 fn. 8 (1956). Voluntary-recognition agreements based on a union's showing of majority support are undisputedly lawful. *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 595–600. However, it was not until *Keller Plastics Eastern, Inc.,* 157 NLRB 583 (1966), that the Board addressed the issue of whether a section 9(a) bargaining relationship established by voluntary recognition can be disrupted by the recognized union's subsequent loss of majority status. Although the union in *Keller Plastics* had lost majority support by the time the parties executed a contract little more than three weeks after voluntary recognition, the Board rejected the General Counsel's claim that the employer was violating the Act by continuing to recognize a nonmajority union as the employees' representative. The Board reasoned that ''like situations involving certifications, Board orders, and settlement agreements, the parties must be afforded a reasonable time to bargain and to execute the contracts resulting from such bargaining. Such negotiations can succeed, however, and the policies of the Act can thereby be effectuated, only if the parties can normally rely on the continuing representative status of the lawfully recognized union for a reasonable period of time.'' Id. at 586. Shortly thereafter, the Board extended this recognition-bar policy to representation cases and held that an employer's voluntary recognition of a union would immediately bar the filing of an election petition for a reasonable amount of time following recognition. *Sound Contractors,* 162 NLRB 364 (1966).

From 1966 until 2007, the Board tailored the duration of the immediate recognition bar to the circumstances of each case, stating that what constitutes a reasonable period of time ''does not depend upon either the passage of time or the number of calendar days on which the parties met. Rather, the issue turns on what transpired during those meetings and what was accomplished therein.'' *Brennan's Cadillac, Inc.,* 231 NLRB 225, 226 (1977). In some cases, a few months of bargaining were deemed enough to give the recognized union a fair chance to succeed, whereas in other cases substantially more time was deemed warranted. Compare *Brennan's Cadillac* (finding employer entitled to withdraw recognition after 4 months), with *MGM Grand Hotel,* 329 NLRB 464, 466 (1999) (finding a bar period of more than 11 months was reasonable considering the large size of the unit, the complexity of the bargaining structure and issues, the parties' frequent meetings and diligent efforts, and the substantial progress made in negotiations).

In *Dana Corp.,* 351 NLRB 434 (2007), a Board majority reviewed the development of the immediate

recognition-bar policy and concluded that it ''should be modified to provide greater protection for employees' statutory right of free choice and to give proper effect to the court- and Board-recognized statutory preference for resolving questions concerning representation through a Board secret-ballot election.'' Id. at 437.[178]

Drawing on the General Counsel's suggestion in his amicus brief of a modified voluntary-recognition election bar, the *Dana* majority held that ''[t]here will be no bar to an election following a grant of voluntary recognition unless (a) affected unit employees receive adequate notice of the recognition and of their opportunity to file a Board election petition within 45 days, and (b) 45 days pass from the date of notice without the filing of a validly-supported petition. These rules apply notwithstanding the execution of a collective-bargaining agreement following voluntary recognition. In other words, if the notice and window-period requirements have not been met, any [post-recognition] contract will not bar an election.'' 351 NLRB at 441. The recognition-bar modifications did not affect the obligation of an employer to bargain with the recognized union during the post-recognition open period, even if a decertification or rival petition was filed. Id. at 442.

The *Dana* majority emphasized ''the greater reliability of Board elections'' as a principal reason for the announced modification. *Dana Corp.,* 351 NLRB at 438. In this respect, while a majority card showing has been recognized as a reliable basis for the establishment of a section 9(a) bargaining relationship, authorization cards—as the Supreme Court has found—are ''admittedly inferior to the election process.'' *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 603. Several reasons were offered in support of this conclusion. ''First, unlike votes cast in privacy by secret Board election ballots, card signings are public actions, susceptible to group pressure exerted at the moment of choice.'' *Dana Corp.,* 351 NLRB at 438. This is in contrast to a secret-ballot vote cast in the ''laboratory conditions'' of a Board election, held ''under the watchful eye of a neutral Board agent and observers from the parties,'' [179] and free from immediate observation, persuasion, or coercion by opposing parties or their supporters. ''Second, union card-solicitation campaigns have been accompanied by misinformation or a lack of information about employees' representational options.'' Id. Particularly in circumstances where voluntary recognition is preceded by an employer entering into a neutrality agreement with the union, which may include an agreement to provide the union access to the workplace for organizational purposes, employees may not understand they even have an electoral option or an alternative to representation by the organizing union. Id. ''Third, like a political election, a Board election presents a clear picture of employee voter preference at a single moment. On the other hand, card signings take place over a protracted period of time.'' Id. A statistical study cited in several briefs and by the *Dana* majority indicated a significant disparity between union card showings of support obtained over a period of time and ensuing Board election results. Id. (citing McCulloch, *A Tale of Two Cities: Or Law in Action,* Proceedings of ABA Section of Labor Relations Law 14, 17 (1962)). Lastly, the Board election process provides for post-election review of impermissible electioneering and other objectionable conduct, which may result in the Board invalidating the election results and conducting a second election. Id. at 439. ''There are no guarantees of comparable safeguards in the voluntary recognition process.'' Id.

In *Lamons Gasket Company,* 357 NLRB 739 (2011),[180] a new Board majority overruled *Dana Corp.* and reinstated the immediate voluntary-recognition election bar. The *Lamons Gasket* majority emphasized the validity of voluntary recognition as a basis for establishing a section 9(a) majority-based recognition. Further, citing Board statistical evidence that employees had decertified the voluntarily recognized union in only 1.2 percent of the total cases in which a *Dana* notice was requested,[181] the majority concluded that *Dana*'s modifications to the voluntary-recognition bar were unnecessary and that the *Dana* majority's concerns about the reliability of voluntary recognition as an accurate indicator of employee choice were unfounded. The *Lamons Gasket* majority criticized the *Dana* notice procedure as compromising Board neutrality by ''suggest[ing] to employees that the Board considers their choice to be represented suspect and signal[ing] to employees that their choice should be reconsidered.'' Id. at 744. The majority opinion also defended the voluntary-recognition bar as consistent with other election bars that are based on a policy of assuring that '' 'a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.' '' Id. (quoting *Franks Bros. Co.* v. *NLRB,* 321 U.S. 702, 705 (1944)). The majority viewed the *Dana* 45-day open period as contrary to this policy by creating a period of post-recognition uncertainty during which an employer has little incentive to bargain, even though technically required to do so. Id. at 747. Finally, having determined that a return to the immediate recognition-bar policy was warranted, the *Lamons Gasket* majority applied its holding retroactively. In addition, based on the Board's decision in *Lee Lumber & Building Material Corp.,* 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002), the majority defined the reasonable period of time during which a voluntary recognition would bar an election as no less than six months and no more than one year from the date of the parties' first bargaining session. *Lamons Gasket,* supra at 748.[182]

Then-Member Hayes dissented in *Lamons Gasket,*[183] arguing that *Dana* was correctly decided for the policy reasons stated there, most importantly the statutory preference for a secret-ballot Board election to resolve questions of representation under

[178] The 2007 *Dana* decision followed a decision granting review, consolidating two cases, and inviting briefing by the parties and amici on the voluntary recognition-bar issue. *Dana Corp.,* 341 NLRB 1283 (2004). In response, the Board received 24 amicus briefs, including one from the Board's General Counsel, in addition to briefs on review and reply briefs from the parties. *Dana Corp.,* 351 NLRB at 434 fn. 2.

[179] Id. at 439.

[180] Similar to the *Dana* proceeding, the 2011 *Lamons Gasket* decision followed a decision granting review, consolidating two cases, and inviting briefing by the parties and amici on the voluntary-recognition-bar issue. *Rite Aid Store #6473,* 355 NLRB 763 (2010). In response, the Board received 17 amicus briefs, in addition to briefs on review and reply briefs from the parties. *Lamons Gasket,* 357 NLRB at 740 fn. 1.

[181] ''As of May 13, 2011, the Board had received 1,333 requests for *Dana* notices. In those cases, 102 election petitions were subsequently filed and 62 elections were held. In 17 of those elections, the employees voted against continued representation by the voluntarily recognized union, including 2 instances in which a petitioning union was selected over the recognized union and 1 instance in which the petition was withdrawn after objections were filed. Thus, employees decertified the voluntarily recognized union under the *Dana* procedures in only 1.2 percent of the total cases in which *Dana* notices were requested.'' Id. at 742.

[182] Under *Lamons Gasket,* the recognition bar takes effect immediately, but the reasonable period for bargaining does not begin to run until the parties' first bargaining session. Accordingly, the bar period may well continue for more than one year from the date recognition is extended—*longer* than the certification-year bar following a union election win, which runs from the date the union is certified (assuming the employer does not unlawfully refuse to bargain with the certified union).

[183] Id. at 748–754.

section 9 of the Act. He noted that the *Lamons Gasket* majority's efforts to secure empirical evidence of *Dana's* shortcomings by inviting briefs from the parties and amici ''yielded a goose egg.'' Id. at 750 (''Only five respondents sought to overturn *Dana,* and only two of them supported their arguments for doing so with the barest of anecdotal evidence.'') (footnotes omitted). Consequently, the only meaningful empirical evidence came from the Board's own election statistics. In this regard, Member Hayes disagreed with the majority's view that the number of elections held and votes cast against the recognized union proved the *Dana* modifications were unnecessary. He pointed out that the statistics showed that in one of every four elections held, an employee majority voted against representation by the incumbent recognized union. While that 25-percent rejection rate was below the recent annual rejection rate for all decertification elections, it was nevertheless substantial and supported retention of a notice requirement and brief open period. Id. at 751.

Under *Lamons Gasket,* the imposition of the immediate recognition bar, followed by the execution of a collective-bargaining agreement resulting in a contract bar,[184] can preclude the possibility of conducting a Board election contesting the initial non-electoral recognition of a union as employees' exclusive bargaining representative for as many as four years. Indeed, because under *Lamons Gasket* the recognition-bar period begins to run only when the parties first meet to bargain, which may be months after recognition is granted, a secret-ballot election may be barred for more than four years.

b. The 2020 Rule's Modifications to the Voluntary-Recognition Bar

The 2020 Rule largely reinstated the *Dana* notice period, including the 45-day open period during which a valid election petition may be filed challenging an employer's voluntary recognition of a labor organization. However, in response to certain comments, the Board modified the *Dana* framework in several respects. First, the *Dana* notice period applies only to voluntary recognition extended on or after the effective date of the 2020 Rule and to the first collective-bargaining agreement reached after such voluntary recognition. Second, the 2020 Rule clarified that the employer ''and/or'' labor organization must notify the Regional Office that recognition has been granted. Third, in contrast to the 2019 proposed rule, the 2020 Rule specified where the notice should be posted (*i.e.,* ''in conspicuous places, including all places where notices to employees are customarily posted''), eliminated the 2019 proposed rule's specific reference to the right to file ''a decertification or rival-union petition'' and instead referred generally to ''a petition,'' added a requirement that an employer distribute the notice to unit employees electronically if the employer customarily communicated with its employees by such means, and set forth the wording of the notice. 85 FR 18370, 18399–18400.

c. Critique of the Majority's Proposed Return to the Immediate Voluntary-Recognition Bar

The majority proposes to rescind current § 103.21 of the Board's Rules and Regulations—adopted in the 2020 Rule—and return, purportedly, the Board's recognition-bar jurisprudence to the law as it existed under *Lamons Gasket,* supra, *i.e.,* an immediate recognition bar that lasts a minimum of six months and a maximum of one year, *not* from the date recognition is granted, but from the date of the parties' first bargaining session—followed, of course, by a contract bar of up to three years if the parties execute a collective-bargaining agreement.[185] Our colleagues' reasons for doing so contain few surprises. Predictably, they refuse to acknowledge the 2020 Rule's essential contribution to the statutory policy of safeguarding employee free choice, claiming instead that the *Lamons Gasket* rule allowing no opportunity for a Board-supervised election immediately following a voluntary recognition better serves the freedom of employees to choose their representatives. For reasons explained below, our colleagues err in proposing this counterproductive change.

Initially, based on the Board's statistical data discussed above from the years *Dana* was in effect, as well as similar post-2020 Rule data, the majority asserts that these data ''seem[ ] to show that voluntary recognition almost always reflects employee free choice accurately,'' such that the 2020 Rule ''imposes requirements that burden collective bargaining without producing commensurate benefits in vindicating employee free choice of bargaining representatives.'' The majority continues that ''[s]uch a disproportionate waste of party and Board resources cannot be justified by reference to Federal labor policy, which favors voluntary recognition.'' There is much to unpack in these noticeably slanted assertions.

Regarding the majority's supposedly data-driven argument that the 2020 Rule fails to ''vindicat[e] employee free choice'' inasmuch as successful electoral overrides of voluntary recognition appear rare, our colleagues fail to say how many electorally overturned voluntary recognitions it would take to warrant retaining the modified *Dana* framework. Might a five percent override rate do so in our colleagues' view? How about ten percent? The majority's position begs the question of how many employees must be effectively disenfranchised and saddled with a bargaining representative lacking majority support before they will leave the current framework alone.

Employees should have the right to test the validity of a voluntary recognition. The Board need not and should not accept possibly unsupported voluntary recognitions at any frequency, particularly considering that a simple procedure to prevent them is available and already in place. In any event, the data showing infrequent overrides of voluntary recognitions cut both ways.

[184] Collective-bargaining agreements may bar the processing of an election petition for a period of up to three years, insulating a union from challenges to its majority status during that period. See *General Cable Corp.,* 139 NLRB 1123, 1125 (1962).

[185] We say ''purportedly'' because the majority appears willing to go further than the *Lamons Gasket* Board in restricting employee free choice. The Board there provided, in accordance with *Smith's Food & Drug Center,* 320 NLRB 844 (1996), that ''voluntary recognition of one union will not bar a petition by a competing union if the competing union was actively organizing the employees and had a 30-percent showing of interest at the time of recognition.'' 357 NLRB at 745 fn. 22. Citing ''the importance of stability to newly-established collective-bargaining relationships,'' the majority seeks public comment regarding ''whether the Board should continue to process, consistent with *Smith's Food,* a representation petition filed by a competing union that had a 30-percent showing of interest at the time of recognition or bar the processing of such a petition.''

Additionally, the majority takes the unnecessary step of seeking public comment on whether the Board ''should adopt as part of the Board's Rules and Regulations a parallel rule to apply in the unfair labor practice context, prohibiting an employer—which otherwise would be privileged to withdraw recognition based on the union's loss of majority support—from withdrawing recognition from a voluntarily-recognized union, before a reasonable period for collective bargaining has elapsed.'' To do so would reach beyond representation law and have nothing to do with protecting elections, contrary to the very name our colleagues have adopted for their proposed rulemaking. In a different context—regarding Board precedent, discussed below, that permits a sec. 9(a) bargaining relationship in the construction industry to be created based on contract language alone—the 2020 Rule majority, of which we were members, refrained from reaching beyond representation-law limits. Apparently, our colleagues do not share our sense of restraint. Nevertheless, because the majority does not presently propose codifying *Keller Plastics,* supra, we need not consider the merits of this issue now.

Thus, not only do the data show a legally significant error rate, but the majority's characterization of this rate as low suggests that the *Dana* framework undermines neither the voluntary-recognition process nor the statutory policies the majority discusses as supporting it (*e.g.,* ''encouraging collective bargaining and preserving stability in labor relations''). Additionally, we agree with the view expressed in the 2020 Rule that the *Dana* framework ''serve[s] its intended purpose of assuring employee free choice in all . . . cases at the outset of a bargaining relationship based on voluntary recognition, rather than 1 to 4 years or more later,'' and that ''giving employees an opportunity to exercise free choice in a Board-supervised election without having to wait years to do so is . . . solidly based on and justified by . . . policy grounds.'' 85 FR 18383.[186] Indeed, the majority acknowledges that ''the Board's approach to the voluntary-recognition bar has varied, [and] the Board [and the Federal courts] consistently [have] viewed the issue as presenting a policy choice for the Board to make.''

Moreover, the majority distorts the 2020 Rule to claim that the *Dana* framework is a ''waste of party and Board resources [that] cannot be justified by reference to [F]ederal labor policy, which favors voluntary recognition.'' Our colleagues miss the mark. Even as the 2020 Rule clearly acknowledged that ''voluntary recognition and voluntary-recognition agreements are lawful,'' [187] both the NLRA and the courts have made plain that a Board-supervised election is ''the Act's preferred method for resolving questions of representation.'' Id. Thus, ''the election-year bar and the greater statutory protections accorded to a Board-certified bargaining representative implicitly reflect congressional intent to encourage the use of Board elections as the preferred means for resolving questions concerning representation.'' Id. Indeed, our colleagues concede ''the implicit statutory preference for Board elections (insofar as certain benefits are conferred only on certified unions).'' Additionally, both the Board and the courts have long recognized that secret-ballot elections are superior to voluntary recognition at protecting employees' section 7 freedom to choose, or not choose, a bargaining representative.[188] See, *e.g., Linden Lumber Div.* v. *NLRB,* 419 U.S. 301, 304 (1974); *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 602; *Transp. Mgmt. Servs.* v. *NLRB,* 275 F.3d 112, 114 (D.C. Cir. 2002); *NLRB* v. *Cayuga Crushed Stone, Inc.,* 474 F.2d 1380, 1383 (2d Cir. 1973); *Levitz Furniture Co. of the Pacific,* 333 NLRB at 727; *Underground Service Alert,* 315 NLRB 958, 960 (1994). As the United States Supreme Court has stated, ''secret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support.'' *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 602. Although voluntary recognition is a valid method of obtaining recognition, authorization cards used in a card-check recognition process are ''admittedly inferior to the election process.'' Id. at 603.[189]

The majority further claims that the notice requirement ''invites'' the filing of an election petition and that the language of the required notice itself ''indicate[s] [that], by *not* filing a petition, employees effectively have chosen to reaffirm their original choice to be represented by the union'' and ''make[s] clear that if employees do not seek a Board election, then they have assented to the validity of the voluntary recognition.'' [190]

Contrary to our colleagues, we find no fault in requiring notice to employees that their employer has recognized a particular union and informing them of their right to test that union's support—or to support a different union with the requisite showing of interest—through the statutorily-preferred method of a Board-supervised election. Further, the notice language of the 2020 Rule (§ 103.21 of the Board's Rules and Regulations) clearly informs employees of their right to seek an election for a variety of purposes, not simply to obtain a decertification election. On this point—and contrary, moreover, to the majority's claim that the notice requirement ''invites'' employees to file a petition—the notice language clearly states that the Board ''does not endorse any choice about whether employees should keep the recognized union, file a petition to certify the recognized union, file a petition to decertify the recognized union, or support or oppose a representation petition filed by another union.'' 85 FR 18400. The 2020 Rule also states that it ''does not encourage, much less guarantee, the filing of a petition.'' Id. at 18384. The message is plain: file a petition, don't file a petition, file any one of a variety of petitions—it's all the same to us. Finally, regarding the majority's claim that, by failing to file an election petition within the 45-day window, employees ''effectively have chosen to reaffirm their original choice to be represented by the union'' and ''assented to the validity of the voluntary recognition,'' our colleagues plainly misapprehend the 2020 Rule's required notice language. The notice merely explains that absent an election petition's filing within the 45-day window period, ''the Union's status as the unit employees' exclusive bargaining representative will be insulated from challenge'' pursuant to the recognition bar (and also pursuant to the contract bar if a contract is agreed to during the insulated period). Id. An employee's failure to challenge the validity of a voluntary recognition by filing a petition is not tantamount to ''assenting to the validity'' of that voluntary recognition. The notice does

[186] We disagree with our colleagues' suggestion that due to early bargaining accomplishments, pre-election campaigning, or employee turnover, ''an election loss by the recognized union does not affirmatively suggest that *at the time it was recognized,* the union lacked majority support.'' Even accepting, arguendo, the majority's premise, the collection of authorization cards is similarly asynchronous, yet the majority does not question whether, at the moment of a union's demand for recognition, all employees who signed cards still (or ever did) support the employer's recognition of the union as their exclusive bargaining representative. The possibility that employees who sign authorization cards (or, for that matter, disaffection petitions) will change their minds is very real and has been the cause of some dispute between the Board and reviewing courts. See, *e.g., Johnson Controls, Inc.,* 368 NLRB No. 20 (2019) (discussing employees who sign both a disaffection petition and authorization card); *Struthurs-Dunn, Inc.,* 228 NLRB 49, 49 (1977) (holding authorization card not effectively revoked until union notified of revocation), enf. denied 574 F.2d 796 (3d Cir. 1978).

But in any event, our colleagues miss the point here. The *Dana* framework readopted (with modifications) in the 2020 Rule is not designed to cast doubt on the validity of voluntary recognition, but to afford employees the opportunity to test the union's majority support—and the validity of the resulting voluntary recognition—through the statutorily-preferred method of a Board-supervised election. The election process allows a test of majority support at a given moment in time, whereas authorization cards may be gathered over weeks or months without regard to whether the card signers continue to support the union by the time a demand for recognition is made (unless the card signers affirmatively requested the return of their signed cards).

[187] Id. at 18381 and cases cited.

[188] 85 FR 18381.

[189] Despite citing *Gissel* for the proposition that union-authorization cards constitute ''a freely interchangeable substitute for elections where there has been no election interference,'' the majority concedes, as it must, that the Court did not reach this issue but found only that the cards were sufficiently reliable ''where a fair election probably could not have been held, or where an election that was held was in fact set aside.'' Id. at 601 fn. 18.

[190] In making these claims, the majority relies on the following language from the notice: ''If no petition is filed within the 45-day window period, the Union's status as the unit employees' exclusive bargaining representative will be insulated from challenge for a reasonable period of time, and if [Employer] and [Union] reach a collective-bargaining agreement during that insulated reasonable period, an election cannot be held for the duration of that collective-bargaining agreement, up to 3 years.''

not indicate that ''silence is acceptance,'' as can occur under certain circumstances in contract law. It merely informs employees of the legal effect, under longstanding law, of voluntary recognition—a legal effect temporarily delayed to afford employees an opportunity to avail themselves of the Board's electoral processes, should they wish to do so. Thus, the choice not to file a petition is more akin to a waiver of the legal right to challenge the union's exclusive-representative status for ''a reasonable period of time'' under the recognition bar, and up to three more years in the case of the contract bar. See id. The majority's assertions otherwise are aimed at validating their reliance on data apparently demonstrating a low incidence of electoral overrides of voluntary recognitions as compared to the total number of voluntary recognition notices requested over certain time periods.

Finally, the majority claims that the 2020 Rule ''undisputedly rejects the premise that newly established bargaining relationships must be given a fair chance to succeed in the context of voluntary recognition,'' contrary to the central rationale underlying other Board bar doctrines that protect new bargaining relationships. As a result, our colleagues claim, the 2020 Rule undermines the labor-relations stability necessary to negotiate and administer collective-bargaining agreements between parties to new bargaining relationships established through voluntary recognition. But the 2020 Rule's 45-day window, which the majority claims is rarely used in any event, hardly rejects the premise that new bargaining relationships must have an opportunity to succeed. After the window closes without a petition being filed, the recognition bar takes effect. Further, if, as the majority claims, ''voluntary recognition almost always reflects employee free choice accurately,'' it is difficult to ascertain how the 2020 Rule ''undermines the stability'' of bargaining relationships. The majority cannot have it both ways. If § 103.21's voluntary-recognition notice procedure affects relatively few bargaining relationships established through voluntary recognition, then the benefit to employee free choice of retaining that procedure clearly outweighs any modest burden caused by a few employees deciding to vindicate their statutory rights through the preferred method of a Board election.[191] Moreover, as the 2020 Rule observed, there was ''no evidence in the record for this rulemaking that *Dana* had any meaningful impact on the negotiation of bargaining agreements during the open period or on the rate at which agreements were reached after voluntary recognition.'' Id. at 18384.[192]

3. Proof of Majority-Based Recognition Under Section 9(a) in the Construction Industry

Under section 9 of the Act, *employees* choose union representation. However, under extant Board precedent applicable to unfair labor practice cases— *Staunton Fuel & Material,* 335 NLRB 717 (2001)—unions and employers in the construction industry can install a union as the section 9(a) representative of the employer's employees through contract language alone, regardless of whether those employees have chosen it as such, and indeed, even if the employer *has no employees at all* when it enters into that contract.[193] The 2020 Rule overruled *Staunton Fuel* for representation-case purposes, and the majority now proposes to reinstate it. Nobody can be in suspense as to whether that proposal will be adopted in a final rule, since the majority just reaffirmed *Staunton Fuel* for unfair-labor-practice-case purposes.[194] Readers of the proposed rule will search in vain, however, for a full-throated endorsement of *Staunton Fuel.* Our colleagues largely walk away from *Staunton Fuel,* focusing instead on its procedural sidekick, *Casale Industries.*[195] The reason is not far to seek: the Court of Appeals for the District of Columbia Circuit has rejected *Staunton Fuel,* repeatedly and emphatically.[196] We agree with the D.C. Circuit's criticisms of that decision, and we would retain this aspect of the 2020 Rule as well.

a. Background

In 1959, Congress enacted section 8(f) of the Act to address unique characteristics of employment and bargaining practices in the construction industry. Section 8(f) permits an employer and labor organization in the construction industry to establish a collective-bargaining relationship in the absence of majority support, an exception to the majority-based requirements for establishing a collective-bargaining relationship under section 9(a). While the impetus for this exception to majoritarian principles stemmed primarily from the fact that construction-industry employers often executed pre-hire agreements with labor organizations in order to assure a reliable, cost-certain source of labor referred from a union hiring hall for a specific job, the exception applies as well to voluntary recognition and collective-bargaining agreements executed by a construction-industry employer that has a stable cohort of employees. However, the second proviso to section 8(f) states that any agreement that is lawful only because of that section's nonmajority exception cannot bar a petition for a Board election. Accordingly, there cannot be a contract bar or voluntary-recognition bar to an election among employees covered by an 8(f) agreement.

Board precedent has evolved with respect to the standard for determining whether a bargaining relationship and a collective-bargaining agreement in the construction industry are governed by section 9(a) majoritarian principles or by section 8(f) and its exception to those principles. In 1971, the Board adopted a ''conversion doctrine,'' under which a bargaining relationship initially established under section 8(f) could convert into a 9(a) relationship by means other than a Board election or majority-based voluntary recognition. See *R.J. Smith Construction Co.,* 191 NLRB 693 (1971), enf. denied sub nom. *Operating Engineers Local 150* v. *NLRB,* 480 F.2d 1186 (D.C. Cir. 1973); *Ruttmann Construction Co.,* 191 NLRB 701 (1971). As subsequently described in *John Deklewa & Sons,* 282 NLRB 1375, 1378 (1987), enfd. sub nom. *Iron Workers Local 3* v. *NLRB,* 843 F.2d 770 (3d Cir. 1988), *R.J. Smith* and *Ruttmann* viewed a section 8(f) agreement as '' 'a preliminary step that contemplates further action for the development of a full bargaining relationship' '' (quoting from *Ruttmann,* 191 NLRB at 702). This preliminary 8(f) relationship/agreement could convert to a 9(a) relationship/agreement, within a few days or years later, if the union could show that it had achieved majority support among bargaining-unit employees during a contract term. ''The achievement of majority support required no notice, no simultaneous union claim of majority, and no assent by the employer to

[191] Relatedly, to the extent that a pending election petition might ''cause unions to spend more time campaigning or working on election-related matters rather than doing substantive work on behalf of employees,'' this is ''a reasonable trade-off for protecting employees' ability to express their views in a secret-ballot election.'' 85 FR 18384–18385.

[192] Implicitly acknowledging this dearth of evidence, the majority ''invite[s] public comment on the effect of § 103.21 on collective-bargaining negotiations.''

[193] See *Enright Seeding, Inc.,* 371 NLRB No. 127, slip op. at 11 & fn. 8 (2022) (Member Ring, dissenting) (citing cases).

[194] *Enright Seeding,* supra.

[195] 311 NLRB 951 (1993).

[196] See *Nova Plumbing, Inc.* v. *NLRB,* 330 F.3d 531 (D.C. Cir. 2003); *Colorado Fire Sprinkler, Inc.* v. *NLRB,* 891 F.3d 1031, 1038 (D.C. Cir. 2018).

complete the conversion process.'' Id. Proof of majority support sufficient to trigger conversion included ''the presence of an enforced union-security clause, actual union membership of a majority of unit employees, as well as referrals from an exclusive hiring hall.'' Id. The duration and scope of the post-conversion contract's applicability under section 9(a) would vary, depending upon the scope of the appropriate unit (single or multiemployer) and the employer's hiring practices (project-by-project or permanent and stable workforce). Id. at 1379.

The *Deklewa* Board made fundamental changes in the law governing construction-industry bargaining relationships and set forth new principles that are relevant to the 2020 Rule. First, it repudiated the conversion doctrine as inconsistent with statutory policy and Congressional intent expressed through the second proviso to section 8(f) ''that an 8(f) agreement may not act as a bar to, inter alia, decertification or rival union petitions.'' Id. at 1382. Contrary to this intent, the ''extraordinary'' conversion of an original 8(f) agreement into a 9(a) agreement raised ''an absolute bar to employees' efforts to reject or to change their collective-bargaining representative,'' depriving them of the ''meaningful and readily available escape hatch'' assured by the second proviso. Id. Second, the Board held that 8(f) contracts and relationships are enforceable through section 8(a)(5) and section 8(b)(3) of the Act, but only for as long as the contract remains in effect. Upon expiration of the contract, ''either party may repudiate the relationship.'' Id. at 1386. Further, inasmuch as section 8(f) permits an election at any time during the contract term, ''[a] vote to reject the signatory union will void the 8(f) agreement and will terminate the 8(f) relationship. In that event, the Board will prohibit the parties from reestablishing the 8(f) relationship covering unit employees for a 1-year period.'' Id. Third, the Board presumed that collective-bargaining agreements in the construction industry are governed by section 8(f), so that ''a party asserting the existence of a 9(a) relationship bears the burden of proving it.'' Id. at 1385 fn. 41. Finally, stating that ''nothing in this opinion is meant to suggest that unions have less favored status with respect to construction industry employers than they possess with respect to those outside the construction industry,'' the Board affirmed that a construction-industry union could achieve 9(a) status through ''voluntary recognition accorded . . . by the employer of a stable workforce where that recognition is based on a clear showing of majority support among the union employees, *e.g.,* a valid card majority.'' Id. at 1387 fn. 53.

The *Deklewa* Board's presumption of 8(f) status for construction-industry relationships did not preclude the possibility that a relationship undisputedly begun under section 8(f) could become a 9(a) relationship upon the execution of a subsequent agreement. In cases applying *Deklewa,* however, the Board repeatedly stated the requirement, both for initial and subsequent agreements, that in order to prove a 9(a) relationship, a union would have to show '' 'its express demand for, and an employer's voluntary grant of, recognition to the union as bargaining representative based on a contemporaneous showing of union support among a majority of employees in an appropriate unit.' '' *Brannan Sand & Gravel Co.,* 289 NLRB 977, 979–980 (1988) (quoting *American Thoro-Clean, Ltd.,* 283 NLRB 1107, 1108–1109 (1987)). Further, in *J & R Tile,* 291 NLRB 1034, 1036 (1988), the Board held that, to establish voluntary recognition, there must be ''positive evidence that a union unequivocally demanded recognition as the employees' 9(a) representative and that the employer unequivocally accepted it as such.'' *Golden West Electric,* 307 NLRB 1494, 1495 (1992) (citing *J & R Tile,* supra).[197]

However, in *Staunton Fuel & Material,* 335 NLRB at 719–720, the Board, for the first time, held that a union could prove 9(a) recognition by a construction-industry employer on the basis of contract language alone without any other ''positive evidence'' of a contemporaneous showing of majority support. Relying on two recent decisions by the United States Court of Appeals for the Tenth Circuit,[198] the Board held that language in a contract is independently sufficient to prove a 9(a) relationship ''where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, evidence of its majority support.'' Id. at 720. The Board found that this contract-based approach ''properly balances [s]ection 9(a)'s emphasis on employee choice with [s]ection 8(f)'s recognition of the practical realities of the construction industry.'' Id. at 719. Additionally, the Board stated that under the *Staunton Fuel* test, ''[c]onstruction unions and employers will be able to establish 9(a) bargaining relationships easily and unmistakably where they seek to do so.'' Id.

On review of a subsequent Board case applying *Staunton Fuel,* the United States Court of Appeals for the District of Columbia Circuit sharply disagreed with the Board's analysis. *Nova Plumbing, Inc.* v. *NLRB,* 330 F.3d at 531, granting review and denying enforcement of *Nova Plumbing, Inc.,* 336 NLRB 633 (2001). Relying heavily on the majoritarian principles emphasized by the Supreme Court in *Int'l Ladies' Garment Workers' Union* v. *NLRB,* 366 U.S. 731 (1961), the D.C. Circuit stated that ''[t]he proposition that contract language standing alone can establish the existence of a section 9(a) relationship runs roughshod over the principles established in *Garment Workers,* for it completely fails to account for employee rights under sections 7 and 8(f). An agreement between an employer and union is void and unenforceable, *Garment Workers* holds, if it purports to recognize a union that actually lacks majority support as the employees' exclusive representative. While section 8(f) creates a limited exception to this rule for pre-hire agreements in the construction industry, the statute explicitly preserves employee rights to petition for decertification or for a change in bargaining representative under such contracts. 29 U.S.C. 158(f). The Board's ruling that contract language alone can establish the existence of a section 9(a) relationship—and thus trigger the three-year 'contract bar' against election petitions by employees and other parties—creates an opportunity for construction companies and unions to circumvent both section 8(f) protections and *Garment Workers'* holding by colluding at the expense of employees and rival unions. By focusing exclusively on employer and union intent, the Board has neglected its fundamental obligation to protect employee section 7 rights, opening the

[197] In an Advice Memorandum issued after *J & R Tile,* the Board's General Counsel noted record evidence that the employer in that case ''clearly knew that a majority of his employees belonged to the union, since he had previously been an employee and a member of the union. However, the Board found that in the absence of positive evidence indicating that the union sought, and the employer thereafter granted, recognition as the 9(a) representative, the employer's knowledge of the union's majority status was insufficient to take the relationship out of [s]ection 8(f).'' *In re Frank W. Schaefer, Inc.,* Case 9–CA–25539, 1989 WL 241614.

[198] *NLRB* v. *Triple C Maintenance, Inc.,* 219 F.3d 1147 (10th Cir. 2000); *NLRB* v. *Oklahoma Installation Co.,* 219 F.3d 1160 (10th Cir. 2000).

door to even more egregious violations than the good faith mistake at issue in *Garment Workers.*'' 330 F.3d at 536–537.

Notwithstanding the court's criticism in *Nova Plumbing,* until the 2020 Rule the Board had adhered to *Staunton Fuel's* holding that certain contract language, standing alone, can establish a 9(a) relationship in the construction industry. Indeed, as noted above, the current majority has recently reaffirmed that holding. See *Enright Seeding, Inc.,* 371 NLRB No. 127 (2022).[199]

The D.C. Circuit, for its part, has adhered to the contrary view. In *Colorado Fire Sprinkler, Inc.* v. *NLRB,* 891 F.3d 1031 (2018), the court granted review and vacated a Board order premised on the finding that a bargaining relationship founded under section 8(f) became a 9(a) relationship solely because of recognition language in a successor bargaining agreement executed by the parties. The court reemphasized its position in *Nova Plumbing* that the *Staunton Fuel* test could not be squared either with *Garment Workers'* majoritarian principles or with the employee free choice principles represented by section 8(f)'s second proviso. It also focused more sharply on the centrality of employee free choice in determining when a section 9(a) relationship has been established. The court observed that ''[t]he *raison d'être* of the National Labor Relations Act's protections for union representation is to vindicate the *employees'* right to engage in collective activity and to empower *employees* to freely choose their own labor representatives.'' Id. at 1038. Further, the court emphasized that ''[t]he unusual [s]ection 8(f) exception is meant not to cede all employee choice to the employer or union, but to provide employees in the inconstant and fluid construction and building industries some opportunity for collective representation. . . . [I]t is not meant to force the employees' choices any further than the statutory scheme allows.'' Id. at 1039. Accordingly, ''[b]ecause the statutory objective is to ensure that only unions chosen by a majority of employees enjoy [s]ection 9(a)'s enhanced protections, the Board must faithfully police the presumption of [s]ection 8(f) status and the strict burden of proof to overcome it. Specifically, the Board must demand clear evidence that the employees—not the union and not the employer—have independently chosen to transition away from a [s]ection 8(f) pre-hire arrangement by affirmatively choosing a union as their [s]ection 9(a) representative.'' Id. Pursuant to that strict evidentiary standard, the court found that it would not do for the Board to rely under *Staunton Fuel* solely on contract language indicating that '' 'the employer's recognition was based on the union's having shown, or having offered to show, an evidentiary basis of its majority support.' '' Id. at 1040 (quoting *Staunton Fuel,* 335 NLRB at 717). Such reliance ''would reduce the requirement of affirmative employee support to a word game controlled entirely by the union and employer. Which is precisely what the law forbids.'' Id.

b. The 2020 Rule's Modified Requirements for Proof of Section 9(a) Bargaining Relationships in the Construction Industry

The 2020 Rule requires positive evidence that the union unequivocally demanded recognition as the 9(a) majority-supported exclusive bargaining representative of employees in an appropriate bargaining unit, and that the employer unequivocally accepted it as such, based on a contemporaneous showing of support from a majority of employees in an appropriate unit. The Rule also clarifies that collective-bargaining agreement language, standing alone, will not be sufficient to provide the required showing that a majority of unit employees covered by a presumptive 8(f) bargaining relationship have freely chosen the union to be their 9(a) representative. These modifications apply only to voluntary recognition extended on or after the effective date of the 2020 Rule and to any collective-bargaining agreement entered into on or after the date of voluntary recognition extended on or after the effective date of the Rule. Finally, in adopting these modifications, the 2020 Rule overruled *Casale Industries*[200] in relevant part, ''declin[ing] to adopt a [s]ection 10(b) 6-month limitation on challenging a construction-industry union's majority status by filing a petition for a Board election.'' 85 FR 18370, 18390–18391, 18400.

c. Critique of the Majority's Proposal To Rescind § 103.22

The majority proposes to fully rescind § 103.22 of the Board's Rules and Regulations, which encompasses all the 2020 Rule's modified requirements for proving a section 9(a) bargaining relationship in the construction industry. The result would be the effective reinstatement of the ill-conceived Board precedents of *Staunton Fuel* and *Casale Industries* for purposes of applying the voluntary-recognition and contract bars in the construction industry. Our colleagues' reasons for doing so, discussed below, lack merit and do not warrant revisiting the sound policy of the 2020 Rule.

Principally, the majority complains that the 2020 Rule's overruling of *Casale Industries* ''[i]n the absence of prior public comments . . . may create an onerous and unreasonable recordkeeping requirement on construction employers and unions . . . to retain and preserve—indefinitely—extrinsic evidence of a union's showing of majority support at the time when recognition was initially granted.'' First of all, our colleagues are mistaken when they claim that the decision to overrule *Casale Industries* in relevant part was undertaken ''in the absence of prior public comments.'' In fact, this issue was squarely raised in public comments requesting that the Board ''incorporate [in the final rule] a [s]ection 10(b) 6-month limitation for challenging a construction-industry union's majority status.'' 85 FR 18390–18391. The Board thoroughly considered the commenters' request and responded with a detailed and persuasive explanation of why it declined to incorporate such a limitations period in the 2020 Rule. Id. at 18391. Thus, section 10(b) applies only to unfair labor practices, whereas the 2020 Rule ''addresses only representation proceedings—*i.e.,* whether an election petition is barred because a construction-industry employer and union formed a 9(a) rather than an 8(f) collective-bargaining relationship.'' Id. ''[O]nly if the parties formed a 9(a) relationship could there be an unfair labor practice that would trigger [s]ection 10(b)'s 6-month limitation.'' Id.[201] Accordingly, as the

[199] Member Ring relevantly dissented, explaining that *Staunton Fuel* was wrongly decided and should be overruled for the reasons stated in the 2020 Rule and here. *Enright Seeding, Inc.,* 371 NLRB No. 127, slip op. at 8–14. As Member Ring observed, the Board should, at the least, commit to resolving its long-running and irreconcilable disagreement with the D.C. Circuit by seeking Supreme Court review when that court inevitably denies enforcement of the decision in that case. We hope the majority will do so as part of this rulemaking, once they follow through with their ill-advised proposal to rescind § 103.22.

[200] 311 NLRB at 953 (holding that the Board would ''not entertain a claim that majority status was lacking at the time of recognition'' where ''a construction[-]industry employer extends 9(a) recognition to a union, and 6 months elapse without a charge or petition'').

[201] See also *Brannan Sand & Gravel Co.,* 289 NLRB at 982 (predating *Casale Industries,* and holding that nothing ''precludes inquiry into the establishment of construction[-]industry bargaining relationships outside the 10(b) period'' because ''[g]oing back to the beginning of the parties' relationship . . . simply seeks to determine the

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2020 Rule explained, *Casale Industries* erroneously ''begs the question by assuming the very 9(a) status that ought to be the object of inquiry.'' Id. The Board also appropriately concluded in the 2020 Rule that such a limitations period in this context ''improperly discounts the importance of protecting employee free choice.'' Id.[202] Further, the District of Columbia and Fourth Circuits have expressed doubts regarding the limitations period adopted in *Casale Industries.* See *Nova Plumbing,* 330 F.3d at 539; *American Automatic Sprinkler Systems* v. *NLRB,* 163 F.3d 209, 218 fn. 6 (4th Cir. 1998). Finally, regarding the supposedly ''onerous . . . recordkeeping requirement,'' the Board reasonably concluded, and we agree, that although the 2020 Rule ''will incentivize unions to keep a record of majority-employee union support[,] . . . such a minor administrative inconvenience [is not] a sufficient reason to permit employers and unions to circumvent employees' rights.'' 85 FR 18392.[203]

At bottom, the legal presumption of 8(f) status in the construction industry follows from the protections afforded under the second proviso to section 8(f), which provides that an extant 8(f) agreement ''shall not be a bar to a petition'' for an election under either section 9(c) or 9(e) of the Act. However, once the 8(f) presumption is rebutted and a 9(a) relationship is recognized, the voluntary recognition bar and/or the contract bar may operate to bar election petitions in appropriate circumstances. In other words, a valid 9(a) recognition causes employees to forfeit their rights to invoke the Board's power to resolve a question of representation during the bar period. Just as a party—or a Federal court acting sua sponte—may at any time during litigation challenge the court's subject-matter jurisdiction inasmuch as such jurisdiction implicates the court's power to hear the claim (Fed. R. Civ. Pro. 12(h)(3)), we conclude that a party should be free to file an election petition challenging a construction-industry employer's claimed 9(a) recognition of an incumbent union—and thereby demand contemporaneous positive evidence of majority support—inasmuch as a default 8(f) relationship potentially masquerading as a lawful 9(a) relationship implicates the Board's power to resolve a valid question of representation.

B. Conclusion

For all these reasons, we respectfully dissent from this Notice of Proposed Rulemaking to rescind and replace the 2020 Rule. We would leave the 2020 Rule in place and are confident that it will be upheld as valid in the courts. Of course, given that a second round of rulemaking will proceed, we shall consider with open minds all public comments, any developments brought to our attention, and the considered views of our colleagues.

VII. Regulatory Procedures

The Regulatory Flexibility Act

A. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601, *et seq.,* ensures that agencies ''review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental

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majority or nonmajority[-]based nature of the current relationship and does not involve a determination that any conduct was unlawful'').

[202] The majority rejects the 2020 Rule's concern that ''employees and rival unions will likely presume that a construction-industry employer and union entered an 8(f) collective-bargaining agreement'' with a term longer than six months, meaning that it is ''highly unlikely that they will file a petition challenging the union's status within 6 months of recognition.'' See 85 FR 18391. According to our colleagues, ''[e]mployees and rival unions who wish to challenge an incumbent union during the duration of a contract must know whether the construction employer has recognized the union as the 9(a) representative'' based on ''the unambiguous 9(a) recognition language in the parties' agreement'' despite the clear legal presumption in favor of an 8(f) bargaining relationship. It strikes us as unreasonable to infer that employees and rival unions would effectively presume the opposite of the legal default relationship in the construction industry. In contrast to our colleagues in the majority, not every employee and rival union will necessarily take at face value the word of the parties to a collective-bargaining agreement with a purported 9(a) recognition clause. See *Nova Plumbing,* 330 F.3d at 537 (observing that ''construction companies and unions [could] circumvent both section 8(f) protections and *Garment Workers'* holding by colluding at the expense of employees and rival unions'').

Moreover, the majority suggests that in situations where an employer and union could not prove majority support contemporaneous with a voluntary recognition, ''the Board would be processing a representation petition at a time when the employer had provided the union unlawful assistance under Sec[.] 8(a)(2) and (1) so that laboratory conditions may not exist to ascertain employees' true sentiment towards the union.'' But the 2020 Rule applies to the determination of whether to process a petition in the representation context, not to the hypothetical adjudication of unalleged unfair labor practices. In any event, the scenario the majority posits would go entirely undiscovered under the proposed rule given that our colleagues would simply take the parties' word for it that they had established a valid 9(a) relationship. Besides, it is rather rich of our colleagues to express concern about potential unlawful assistance under sec. 8(a)(2), when *Staunton Fuel,* which they propose to reinstate, is an open invitation to construction-industry employers and unions to form 9(a) bargaining relationships without regard to the will of the majority of the employer's employees, with the predictable result that the parties to those relationships will routinely be in violation of sec. 8(a)(2) and 8(b)(1)(A)—and, if their contract includes union security, of section 8(a)(3) and 8(b)(2) as well. See *Dairyland USA Corp.,* 347 NLRB 310, 312–313 (2006).

The majority further claims that where ''a construction employer and union attempt to masquerade an 8(f) relationship as a lawful 9(a) recognition, Sec[.] 103.22 attempts to rectify that unlawful 8(a)(2) and 8(b)(1)(A) conduct through a representation petition'' when the ''right medicine for the ailment'' is an unfair labor practice proceeding and appropriate cease-and-desist remedial relief. Our colleagues miss the mark once again. Sec. 103.22 does not attempt to remedy unfair labor practices with a representation petition and Board-supervised election. Again, the 2020 Rule does not apply to unfair labor practices. Rather, the 2020 Rule protects employee free choice to seek a Board election upon a proper showing of interest where no lawful sec. 9(a) relationship has been formed. Any attendant unfair labor practices—which, again, would typically go undiscovered under the majority's proposal—are subject to appropriate unfair labor practice proceedings and remedies under current law.

[203] The majority claims that such a need for recordkeeping in the absence of a limitations period will destabilize longstanding collective-bargaining relationships by permitting employers to challenge decades-old voluntary recognitions for which there may be no available supporting evidence of majority status contemporaneous with the sec. 9(a) recognition. This claim is belied by the language of the 2020 Rule itself, which makes clear that its evidentiary requirements for majority-based recognition in the construction industry apply only prospectively. The majority's related claim that the recordkeeping requirement ''could still cause significant disruption to longstanding collective-bargaining relationships 20 years into the future for collective-bargaining relationships first formed after April 2020'' ignores the obvious fact that parties forming bargaining relationships after the effective date of the 2020 Rule will have been on notice of the need to retain the relevant records. Under the circumstances, any ''disruption'' would be self-inflicted.

Further, we reject our colleagues' suggestion that the absence of a limitations period and any resulting recordkeeping so burdens parties in the construction industry as to be inconsistent with the *Deklewa* Board's assurance that construction-industry parties do not enjoy a ''less favored status'' relative to non–construction-industry parties. See *Deklewa,* 282 NLRB at 1387 fn. 53. The 2020 Rule does not treat construction-industry parties differently: voluntary recognitions both outside and within the construction industry must be based on a showing of majority support. But even if it did, evidence supporting this showing is particularly crucial where a party claims that an 8(f) relationship has become a 9(a) relationship. See *Colorado Fire Sprinkler,* 891 F.3d at 1039 (observing that ''[b]ecause the statutory objective is to ensure that only unions chosen by a majority of employees enjoy Sec[.] 9(a)'s enhanced protections, the Board must faithfully police the presumption of Sec[.] 8(f) status and the strict burden of proof to overcome it'').

We also find it ironic that our colleagues baselessly speculate about the ''needless gamesmanship'' with the Board's contract-bar rules that will supposedly result when parties fail to keep adequate records, notwithstanding (1) the majority's proposal in this rulemaking to return to the ''historical'' blocking-charge policy, the gamesmanship under which is well known and has been acknowledged by the Board, and (2) the D.C. Circuit's concern that ''construction companies and unions [could] circumvent both section 8(f) protections and *Garment Workers'* holding by colluding at the expense of employees and rival unions.'' *Nova Plumbing,* 330 F.3d at 537.

jurisdictions, and small organizations, as provided by the [RFA].'' [204] It requires agencies promulgating proposed rules to prepare an Initial Regulatory Flexibility Analysis (''IRFA'') and to develop alternatives wherever possible, when drafting regulations that will have a significant impact on a substantial number of small entities.[205] However, an agency is not required to prepare an IRFA for a proposed rule if the agency head certifies that, if promulgated, the rule will not have a significant economic impact on a substantial number of small entities.[206] The RFA does not define either ''significant economic impact'' or ''substantial number of small entities.'' [207] Additionally, ''[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulations.'' [208]

Although the Board believes that it is unlikely that the proposed rule will have a significant economic impact on a substantial number of small entities, it seeks public input on this hypothesis and has prepared an IFRA to provide the public the fullest opportunity to comment on the proposed rule.[209] An IRFA describes why an action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities.[210]

1. Description of the Reasons Why Action by the Agency Is Being Considered and Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

Detailed descriptions of this proposed rule, its purpose, objectives, and legal basis are contained earlier in the **SUMMARY** and **SUPPLEMENTAL INFORMATION** sections and are not repeated here. In brief, the proposed rule aims to better protect the statutory rights of employees to express their views regarding representation by rescinding the Board's 2020 changes to the blocking charge policy, the voluntary recognition bar doctrine, and the use of contract language to serve as sufficient evidence of majority-supported voluntary recognition under section 9(a) in representation cases in the construction industry.

2. Description of, and Where Feasible, an Estimate of the Number of Small Entites to Which the Proposed Rule Will Apply

To evaluate the impact of the proposed rule, the Board first identified the universe of small entities that could be impacted by reinstating the blocking charge policy, the voluntary recognition bar doctrine, and the use of contract language to serve as sufficient evidence of voluntary recognition under section 9(a) in representation cases in the construction industry.

a. Blocking Charge and Voluntary Recognition Bar Changes

The changes to the blocking charge policy and voluntary recognition bar doctrine will apply to all entities covered by the National Labor Relations Act (''NLRA'' or ''the Act''). According to the United States Census Bureau, there were 6,102,412 business firms with employees in 2019.[211] Of those, the Census Bureau estimates that about 6,081,544 were firms with fewer than 500 employees.[212] While this proposed rule does not apply to employers that do not meet the Board's jurisdictional requirements, the Board does not have the data to determine the number of excluded entities.[213] Accordingly, the Board assumes for purposes of this analysis that all of the 6,081,544 small business firms could be impacted by the proposed rule.

The changes to the blocking charge policy and voluntary recognition bar doctrine will also impact labor unions as organizations representing or seeking to represent employees. Labor unions, as defined by the NLRA, are entities ''in which employees participate and which exist for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.'' [214] The Small Business Administration's (''SBA'') small business standard for ''Labor Unions and Similar Labor Organizations'' (NAICS #813930) is $14.5 million in annual receipts.[215] In 2017, there were 13,137 labor unions in the U.S.[216] Of

[204] E.O. 13272, sec. 1, 67 FR 53461 (''Proper Consideration of Small Entities in Agency Rulemaking'').

[205] Under the RFA, the term ''small entity'' has the same meaning as ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6).

[206] 5 U.S.C. 605(b).

[207] 5 U.S.C. 601.

[208] Small Business Administration Office of Advocacy, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' (''SBA Guide'') at 18, *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[209] After a review of the comments, the Board may elect to certify that the rule will not have a significant economic impact on a substantial number of small entities in the publication of the final rule. 5 U.S.C. 605(b).

[210] 5 U.S.C. 603(b).

[211] U.S. Department of Commerce, Bureau of Census, 2019 Statistics of U.S. Businesses (''SUSB'') Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html* (from downloaded Excel Table entitled ''U.S. & States, 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2019/us_state_6digitnaics_2019.xlsx*). ''Establishments'' refer to single location entities—an individual ''firm'' can have one or more establishments in its network. The Board has used firm level data for this IRFA. Census Bureau definitions of ''establishment'' and ''firm'' can be found at *https://www.census.gov/programs-surveys/susb/about/glossary.html.*

[212] The Census Bureau does not specifically define ''small business'' but does break down its data into firms with 500 or more employees and those with fewer than 500 employees. See U.S. Department of Commerce, Bureau of Census, 2019 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html* (from downloaded Excel Table entitled ''U.S. & States, 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2019/us_state_6digitnaics_2019.xlsx*). Consequently, the 500-employee threshold is commonly used to describe the universe of small employers. For defining small businesses among specific industries, the standards are defined by the North American Industry Classification System (NAICS).

[213] Pursuant to 29 U.S.C. 152(6) and (7), the Board has statutory jurisdiction over private sector employers whose activity in interstate commerce exceeds a minimal level. *NLRB* v. *Fainblatt,* 306 U.S. 601, 606–07 (1939). To this end, the Board has adopted monetary standards for the assertion of jurisdiction that are based on the volume and character of the business of the employer. In general, the Board asserts jurisdiction over employers in the retail business industry if they have a gross annual volume of business of $500,000 or more. *Carolina Supplies & Cement Co.,* 122 NLRB 88 (1959). But shopping center and office building retailers have a lower threshold of $100,000 per year. *Carol Management Corp.,* 133 NLRB 1126 (1961). The Board asserts jurisdiction over non-retailers generally where the value of goods and services purchased from entities in other states is at least $50,000. *Siemons Mailing Service,* 122 NLRB 81 (1959).

The following employers are excluded from the NLRB's jurisdiction by statute: (1) Federal, State and local governments, including public schools, libraries, and parks, Federal Reserve banks, and wholly-owned government corporations, 29 U.S.C. 152(2); (2) employers that employ only agricultural laborers, those engaged in farming operations that cultivate or harvest agricultural commodities, or prepare commodities for delivery, 29 U.S.C. 153(3); and (3) employers subject to the Railway Labor Act, such as interstate railroads and airlines, 29 U.S.C. 152(2).

[214] 29 U.S.C. 152(5).

[215] 13 CFR 121.201.

[216] The Census Bureau only provides data about receipts in years ending in 2 or 7. The 2022 data

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these, 12,875 (98% of total) are definitely small businesses according to SBA standards because their receipts are below $10 million.[217] And, 89 additional unions have annual receipts between $10 million and $14,999,999.[218] Since the Board cannot determine how many of those 89 labor union firms fall below the $14.5 million annual receipt threshold, it will assume that all 89 are small businesses as defined by the SBA. Therefore, for the purposes of this IRFA, the Board assumes that 12,964 labor unions (98.7% of total) are small businesses that could be impacted by the proposed rule.

The number of small entities likely to be specially impacted by the proposed rule, however, is much lower. First, the blocking charge policy will only be applied as a matter of law under certain circumstances in a Board proceeding—namely when a party to a representation proceeding files an unfair labor practice charge alleging conduct that could result in setting aside the election or dismissing the petition. This occurs only in a small percentage of the Board's cases. For example, between July 31, 2018 and July 30, 2020, the last two-year period during which the original blocking charge policy was in effect, there were 162 requests that an unfair labor practice charge block an election (*i.e.,* an average of 81 per year). Assuming each request involved a distinct employer and labor organization, the Board's blocking charge policy affected an average of 162 entities per year, which is only .000026% of the 6,081,544 small entities that could be subject to the Board's jurisdiction.[219]

Second, the number of small entities likely to be specially impacted by the voluntary recognition bar doctrine is also low. Since the modified voluntary recognition bar became effective on July 31, 2020, the Board has tracked the number of requests for notices used to inform employees that a voluntary recognition had taken place and of their right to file a petition for an election. On average, the Board has received 130 requests per year for those notices. Assuming each request was made by a distinct employer and involved at least one distinct labor union, only 260 entities of any size were affected. Even assuming all 260 of those entities met the SBA's definition of small business, they would account for only .000042% of the 6,081,544 small entities that could be subject to the Board's jurisdiction.

b. Restoration of the Use of Contract Language To Serve as Sufficient Evidence of 9(a) Recognition in Representation Cases in the Construction Industry

The Board believes that restoring the use of contract language to serve as sufficient evidence of majority-supported voluntary recognition under section 9(a) in representation cases in the construction industry is only relevant to employers engaged primarily in the building and construction industry and labor unions of which building and construction employees are members. The need to differentiate between voluntary recognition under section 8(f) of the Act versus section 9(a) is unique to entities engaged in the building and construction industry because section 8(f) applies solely to those entities. Of the 701,477 building and construction-industry employers classified under the NAICS Section 23 Construction,[220] between 688,291 and 691,614 fall under the SBA ''small business'' standard for classifications in the NAICS Construction sector.[221] The Department of Labor's Office of Labor-Management Standards (OLMS) provides a searchable database of union annual financial reports.[222] However, OLMS does not identify unions by industry, *e.g.,* construction. Accordingly, the Board does not have the means to determine a precise number of unions of which building and construction employees are members. In its 2019 IRFA, the Board identified 3,929 labor unions primarily operating in the building and construction industry that met the SBA ''small business'' standard of annual receipts of less than $7.5 million.[223] Although unions that do not primarily operate in the building and construction industry could still be subject to the proposed rule if they seek to represent employees engaged in the building and construction industry, comments received in response to the 2019 IRFA did not reveal that the Board failed to consider any additional small labor unions, including those representing employees engaged in the building and construction industry, or any other

has not been published, so the 2017 data is the most recent available information regarding receipts. See U.S. Department of Commerce, Bureau of Census, 2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipts Size, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html* (from downloaded Excel Table entitled ''U.S., 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_rcptsize_2017.xlsx* (Classification #813930—Labor Unions and Similar Labor Organizations).

[217] Id.

[218] See id.

[219] Under the current rule regarding blocking charges, which has been effective since July 31, 2020, there were 3,867 petitions filed and 66 requests that unfair labor practice charges block an election, which means only 132 entities of the 6,081,544 small entities (.000021%) that could be subject to the Board's jurisdiction have been affected by the policy.

[220] 13 CFR 121.201. These NAICS construction-industry classifications include the following codes, 236115: New Single-Family Housing Construction; 236116: New Multifamily Housing Construction; 236117: New Housing For-Sale Builders; 236118: Residential Remodelers; 236210: Industrial Building Construction; 236220: Commercial and Institutional Building Construction; 237110: Water and Sewer Line and Related Structures Construction; 237120: Oil and Gas Pipeline and Related Structures Construction; 237130: Power and Communication Line and Related Structures Construction; 237210: Land Subdivision; 237310: Highway, Street, and Bridge Construction; 237990: Other Heavy and Civil Engineering Construction; 238110: Poured Concrete Foundation and Structure Contractors; 238120: Structural Steel and Precast Concrete Contractors; 238130: Framing Contractors; 238140: Masonry Contractors; 238150: Glass and Glazing Contractors; 238160: Roofing Contractors; 238170: Siding Contractors; 238190: Other Foundation, Structure, and Building Exterior Contractors; 238210: Electrical Contractors and Other Wiring Installation Contractors; 238220: Plumbing, Heating, and Air-Conditioning Contractors; 238290: Other Building Equipment Contractors; 238310: Drywall and Insulation Contractors; 238320: Painting and Wall Covering Contractors; 238330: Flooring Contractors; 238340: Tile and Terrazzo Contractors; 238350: Finish Carpentry Contractors; 238390: Other Building Finishing Contractors; 238910: Site Preparation Contractors; 238990: All Other Specialty Trade Contractors. See U.S. Department of Commerce, Bureau of Census, 2019 SUSB Annual Data Tables by Establishment Industry, *https://www2.census.gov/programs-surveys/susb/tables/2019/us_state_6digitnaics_2019.xlsx.*

[221] The Board could not determine a definitive number of construction-industry firms that are small businesses because the small business thresholds for the relevant NAICS codes are not wholly compatible with the manner in which the Census Bureau reports the annual receipts of firms. For example, the small business threshold is $16.5 million in annual receipts for NAICS codes 238110–238990 and $19.5 million in annual receipts for NAICS code 238290. But the Census Bureau groups together all firms with annual receipts between $15 million and $19,999,999. And, for NAICS codes 236115–237130 and 237310–237990, the small business threshold is $39.5 million in annual receipts, but the Census Bureau groups together firms with annual receipts between $35 million and $39,999,999. See 13 CFR 121.201; U.S. Department of Commerce, Bureau of Census, 2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipts Size, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html* (from downloaded Excel Table entitled ''U.S., 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_rcptsize_2017.xlsx* (Classification #813930—Labor Unions and Similar Labor Organizations).

[222] U.S. Department of Labor, Office of Labor-Management Standards, Online Public Disclosure Room, Download Yearly Data, Union Reports, Yearly Data Download for 2022, *https://olmsapps.dol.gov/olpdr/?_ga=2.218681689.137533490.1665060520-1600335935.1665060520#Union%20Reports/Yearly%20Data%20Download/.*

[223] 84 FR 39955 & fn. 136. The small business threshold for labor unions has since increased to include entities with annual receipts of less than $14.5 million. 13 CFR 121.201.

categories of small entities that would likely take special interest in a change in the standard for using contract language to prove majority-supported voluntary recognition.[224] Therefore, at this time, the Board assumes that this portion of the proposed rule could only affect 695,543 of the 6,081,544 small entities that could be subject to the Board's jurisdiction.

The Board is also unable to determine how many of those 691,614 small building and construction-industry employers elect to enter voluntarily into a 9(a) bargaining relationship with a labor union and use language in a collective-bargaining agreement to serve as evidence of the labor union's 9(a) status. However, to the extent it is an indicator of the number of building and construction-industry employers that enter into a 9(a) bargaining relationship with a small labor union, the number of cases that involve a question of whether a relationship is governed by section 8(f) or 9(a) is very small relative to the total number of building and construction industry employers and unions. As the Board noted in its 2019 IRFA, between October 1, 2015 and September 30, 2017, only two cases required the Board to determine whether a collective-bargaining agreement was governed by 8(f) or 9(a).[225] Since October 1, 2017, the issue has only come before the Board once.[226]

3. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The RFA requires an agency to determine the amount of ''reporting, recordkeeping and other compliance requirements'' imposed on small entities.[227] The Court of Appeals for the District of Columbia Circuit has explained that this provision requires an agency to consider direct burdens that compliance with a new regulation will likely impose on small entities.[228]

We believe that the proposed rule imposes no capital costs for equipment needed to meet the regulatory requirements; no direct costs of modifying existing processes and procedures to comply with the proposed rule; no lost sales and profits directly resulting from the proposed rule; no changes in market competition as a direct result of the proposed rule and its impact on small entities or specific submarkets of small entities; no extra costs associated with the payment of taxes or fees associated with the proposed rule; and no direct costs of hiring employees dedicated to compliance with regulatory requirements.[229] Instead, the proposed rule should help small entities conserve resources that they might otherwise expend by participating in an election under the current rules that would be blocked under the proposed rule or by engaging in a representation case proceeding that would have otherwise been barred by a voluntary recognition. And, the proposed rule removes the information collection, recordkeeping, and reporting requirements that the 2020 Rule imposed on small entities. Accordingly, for the purposes of the IRFA, and subject to comments, the Board assumes that the only direct cost to small entities will be reviewing the rule.

To become generally familiar with the proposed reversions to the traditional blocking charge policy and voluntary recognition bar doctrine, we estimate that a human resources or labor relations specialist at a small employer may take at most ninety minutes to read the text of the rule and the supplementary information published in the **Federal Register** and to consult with an attorney.[230] We estimate that an attorney would bill the employer for a one hour consult.[231] Using the Bureau of Labor Statistics' estimated wage and benefit costs, we have assessed these costs to be between $171.04 and $177.44.[232]

For the limited number of small employers and unions representing employees in the construction industry that will endeavor to become generally familiar with all three changes to the rule—including the portion of the rule that restores the use of contract language to serve as sufficient evidence of majority-supported voluntary recognition under section 9(a) in representation cases in the construction industry—we estimate that a human resources or labor relations specialist may take at most two hours to read all three changes and the supplementary information published in the **Federal Register** and to consult with an attorney. We estimate that an attorney would only bill the employer for a one-hour consult.[233] Thus, the Board has assessed labor costs for small employers and unions representing employees in the construction industry to be between $194.84 and $203.38.[234]

The Board is not inclined to find the costs of reviewing and understanding the rule to be significant within the meaning of the RFA. In making this finding, one important indicator is the cost of compliance in relation to the revenue of the entity or the percentage of profits affected.[235] Other criteria to be considered are whether the rule will cause long-term insolvency (*i.e.,* regulatory costs that may reduce the ability of the firm to make future capital investment, thereby severely harming its

[224] The Board has identified the following unions as primarily operating in the building and construction industry: The International Union of Bricklayers and Allied Craftworkers; Building and Construction Trades Department; International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers; Operative Plasterers' and Cement Masons' International Association; Laborers' International Union; The United Brotherhood of Carpenters and Joiners of America; International Union of Operating Engineers; International Union of Journeymen and Allied Trades; International Association of Sheet Metal, Air, Rail, and Transportation Workers; International Union of Painters and Allied Trades; International Brotherhood of Electrical Workers; United Association of Journeymen Plumbers; United Union of Roofers, Waterproofers and Allied Workers; United Building Trades; International Association of Heat and Frost Insulators and Allied Workers; and International Association of Tool Craftsmen. See U.S. Department of Labor, Office of Labor-Management Standards, Online Public Disclosure Room, Download Yearly Data for 2012, *https://olms.dol-esa.gov/olpdr/GetYearlyFileServlet?report=8H58.* Input from the public is still welcome as to any labor union not listed that would be affected by the proposed rule.

[225] 84 FR 39955.

[226] *Enright Seeding, Inc,* 371 NLRB No. 127 (2022).

[227] See 5 U.S.C. 603(b)(4), 604(a)(4).

[228] See *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (''[I]t is clear that Congress envisioned that the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'').

[229] See SBA Guide at 37.

[230] Data from the Bureau of Labor Statistics indicates that employers are more likely to have a human resources specialist (BLS #13–1071) than to have a labor relations specialist (BLS#13–1075). Compare Occupational Employment and Wages, May 2021, 13–1075 Labor Relations Specialists, found at *https://www.bls.gov/oes/current/oes131075.htm,* with Occupational Employment and Wages, May 2021, 13–1071 Human Resources Specialists, found at *https://www.bls.gov/oes/current/oes131071.htm.*

[231] The Board based its preliminary estimates of how much time it will take to review the proposed rule and consult with an attorney on the fact that the proposed rule returns to the pre-2020 rule standard, which most employers, human resources and labor relations specialists, and labor relations attorneys are already knowledgeable about if relevant to their businesses.

[232] For wage figures, see May 2021 National Occupancy Employment and Wage Estimates, found at *https://www.bls.gov/oes/current/oes_nat.htm.* The Board has been administratively informed that BLS estimates that fringe benefits are approximately equal to 40 percent of hourly wages. Thus, to calculate total average hourly earnings, BLS multiplies average hourly wages by 1.4. In May 2021, average hourly wages for labor relations specialists were $37.05 and for human resources specialists were $34. The same figure for a lawyer (BLS # 23–1011) is $71.17. Accordingly, the Board multiplied each of those wage figures by 1.4 and added them to arrive at its estimate.

[233] The Board estimates that a labor relations attorney would require one hour to consult with a small employer or labor union about all three rule changes.

[234] See fn. 232.

[235] See SBA Guide at 18.

competitive ability, particularly against larger firms) and whether the cost of the proposed regulation will eliminate more than 10 percent of the businesses' profits, exceed one percent of the gross revenues of the entities in a particular sector, or exceed five percent of the labor costs of the entities in the sector.[236] The minimal cost to read and understand the rule will not generate any such significant economic impacts.

Because the direct compliance costs do not exceed $203.38 for any one entity, the Board has no reason to believe that the cost of compliance is significant when compared to the revenue or profits of any entity. However, the Board welcomes input from the public regarding its calculations, initial conclusions, or additional direct costs of compliance not identified by the Board.

4. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The Board has not identified any Federal rules that conflict with the proposed rule. It welcomes comments that suggest any potential conflicts not noted in this section.

5. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Pursuant to 5 U.S.C. 603(c), agencies are directed to look at ''any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' Specifically, agencies must consider establishing different compliance or reporting requirements or timetables for small entities, simplifying compliance and reporting for small entities, using performance rather than design standards, and exempting small entities from any part of the rule.[237] The SBA has described this step as ''[t]he keystone of the IRFA,'' because ''[a]nalyzing alternatives establishes a process for the agency to evaluate proposals that achieve the regulatory goals efficiently and effectively without unduly burdening small entities, erecting barriers to competition, or stifling innovation.'' [238] The Board considered two primary alternatives to the proposed rule.

First, the Board considered taking no action. Inaction would leave in place the revised blocking charge policy, which we preliminarily believe, subject to comments, requires regional directors to conduct elections under potentially coercive conditions, and the modified voluntary recognition bar, which we preliminarily believe unfairly signals to employees that the Board views with suspicion their choices regarding representation and could hinder first contract bargaining. Additionally, inaction would place a unique burden on construction employers and unions to retain indefinitely proof of a union's showing of majority support. However, for the reasons stated in sections I through III above, the Board finds it desirable to revisit these policies. Consequently, the Board rejects maintaining the status quo.

Second, the Board considered creating exemptions for certain small entities. This was rejected as impractical, considering that exemptions for small entities would substantially undermine the purposes of the proposed rule because such a large percentage of employers and unions would be exempt under the SBA definition of ''small business.'' Also, if a large employer entered into a bargaining relationship with a small labor union, both entities would be exempted, further undermining these much-needed policy shifts. Additionally, because the Board considers the proposed rules to better protect employees' statutory rights, an exemption would adversely affect employees at all small entities. If small entities were exempt from the restored, historical blocking charge policy, a large swath of employees covered by the Act would be required to participate in elections held under coercive conditions. If small entities were exempt from the restored voluntary recognition bar, those employers and labor unions would have additional requirements for reporting and notice-posting. And, if small entities were exempt from the return to the use of contract language to serve as sufficient evidence of a 9(a) relationship in representation cases in the construction industry, they would be required to retain evidence of a union's majority status indefinitely. Further, it seems unlikely that drawing this distinction would be a permissible interpretation of the relevant statutory provisions.

Moreover, given the very small quantifiable cost of compliance, it is possible that the burden on a small business of determining whether it falls within a particular exempt category might exceed the burden of compliance. Congress gave the Board very broad jurisdiction, with no suggestion that it wanted to limit coverage of any part of the Act to only larger employers.[239] As the Supreme Court has noted, ''[t]he [NLRA] is [F]ederal legislation, administered by a national agency, intended to solve a national problem on a national scale.'' [240] As such, exempting or creating an exception for small entities is contrary to the objectives of this rulemaking and of the NLRA.

Because no alternatives considered will accomplish the objectives of this proposed rule while minimizing costs on small businesses, the Board believes that proceeding with this rulemaking is the best regulatory course of action. The Board welcomes public comment on any facet of this IRFA, including alternatives that it has failed to consider.

Paperwork Reduction Act

The NLRB is an agency within the meaning of the Paperwork Reduction Act (PRA). 44 U.S.C. 3502(1) and (5). The PRA creates rules for agencies when they solicit a ''collection of information,'' 44 U.S.C. 3507, which is defined as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' 44 U.S.C. 3502(3)(A). The PRA only applies when such collections are ''conducted or sponsored by those agencies.'' 5 CFR 1320.4(a).

The proposed rules do not involve a collection of information within the meaning of the PRA. Even if the proposed rules were construed to require disclosures of information to the NLRB, third parties, or the public, such disclosures would only occur in the course of the Board's administrative proceedings. For example, a party could file an unfair labor practice charge and request that the charge block the processing of a representation proceeding. Or, a party could raise in a representation proceeding that an employer has already voluntarily recognized a particular union. However, the PRA provides that collections of information related to ''an administrative action or investigation involving an agency against specific

[236] Id. at 19.

[237] 5 U.S.C. 603(c).

[238] Id. at 37.

[239] However, there are standards that prevent the Board from asserting authority over entities that fall below certain jurisdictional thresholds. This means that extremely small entities outside of the Board's jurisdiction will not be affected by the proposed rule. See 29 CFR 104.204.

[240] *NLRB* v. *Nat. Gas Util. Dist. of Hawkins Cty.,* 402 U.S. 600, 603–04 (1971) (quotation omitted).

individuals or entities'' are exempt from coverage. 44 U.S.C. 3518(c)(1)(B)(ii). A representation proceeding under section 9 of the Act, as well as an investigation into an unfair labor practice under section 10 of the Act, are administrative actions covered by this exemption. The Board's decisions in these proceedings are binding on and thereby alter the legal rights of the parties to the proceedings and thus are sufficiently ''against'' the specific parties to trigger this exemption.[241]

For the foregoing reasons, the proposed rules do not contain information collection requirements that require approval by the Office of Management and Budget under the PRA.

List of Subjects in 29 CFR Part 103

Colleges and universities, Election procedures, Health facilities, Jurisdictional standards, Labor management relations, Music, Remedial Orders, Sports.

Text of the Proposed Rule

For the reasons discussed in the preamble, the Board proposes to amend 29 CFR part 103 as follows:

PART 103—OTHER RULES

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

■ 2. Revise § 103.20 to read as follows:

§ 103.20 Election procedures and blocking charges; filing of blocking charges; simultaneous filing of offer of proof; prompt furnishing of witnesses.

Whenever any party to a representation proceeding files an unfair labor practice charge together with a request that it block the processing of the petition to the election, or whenever any party to a representation proceeding requests that its previously filed unfair labor practice charge block the further processing of a petition, the party shall simultaneously file, but not serve on any other party, a written offer of proof in support of the charge. The offer of proof shall provide the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block the processing of a petition shall also promptly make available to the regional director the witnesses identified in its offer of proof. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director shall continue to process the petition and conduct the election where appropriate.

■ 3. Revise § 103.21 to read as follows:

§ 103.21 Voluntary-recognition bar to processing of election petitions.

(a) An employer's voluntary recognition of a labor organization as exclusive bargaining representative of a unit of the employer's employees, based on a showing of the union's majority status, bars the processing of an election petition for a reasonable period of time for collective bargaining between the employer and the labor organization.

(b) A reasonable period of time for collective bargaining, during which the voluntary-recognition bar will apply, is defined as no less than 6 months after the parties' first bargaining session and no more than 1 year after that date.

(c) In determining whether a reasonable period of time for collective bargaining has elapsed in a given case, the following factors will be considered:

(1) Whether the parties are bargaining for an initial collective-bargaining agreement;

(2) The complexity of the issues being negotiated and of the parties' bargaining processes;

(3) The amount of time elapsed since bargaining commenced and the number of bargaining sessions;

(4) The amount of progress made in negotiations and how near the parties are to concluding an agreement; and

(5) Whether the parties are at impasse.

(d) In each case where a reasonable period of time is at issue, the burden of proof is on the proponent of the voluntary-recognition bar to show that further bargaining should be required before an election petition may be processed.

(e) This section shall be applicable to an employer's voluntary recognition of a labor organization on or after [EFFECTIVE DATE OF FINAL RULE].

§ 103.22 [Removed]

■ 4. Remove § 103.22.

Dated: October 28, 2022.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2022–23823 Filed 11–3–22; 8:45 am]

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[241] Legislative history indicates Congress wrote this exception to broadly cover many types of administrative action, not just those involving ''agency proceedings of a prosecutorial nature.'' See S. REP. 96–930 at 56, as reprinted in 1980 U.S.C.C.A.N. 6241, 6296. For the reasons more fully explained by the Board in prior rulemaking, 79 FR 74307, 74468–69 (2015), representation proceedings, although not qualifying as adjudications governed by the Administrative Procedure Act, 5 U.S.C. 552b(c)(1), are nonetheless exempt from the PRA under 44 U.S.C. 3518(c)(1)(B)(ii).

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