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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2429

Miscellaneous and General Requirements

Correction

In rule document 2023–14933, appearing on pages 43425–43426, in the issue of Monday, July 10, 2023, make the following corrections:

- On page 43425, in the first column, after the **DATES** heading, in the second line, ''July 11, 2023'' is corrected to read ''July 10, 2023''.
- On the same page, in the same column, in the fourth line, ''August 10, 2023'' is corrected to read ''August 9, 2023''.

[FR Doc. C1–2023–14399 Filed 7–11–23; 8:45 am]
BILLING CODE 0099–10–D

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 37

[Docket No. DHS–2023–0016]

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Corrections

AGENCY: Office of the Secretary, (DHS).

ACTION: Final rule; technical amendment.

SUMMARY: This final rule amends the Department of Homeland Security REAL ID regulations by making non-substantive technical revisions to two provisions that incorporate standards by reference. It also consolidates and updates the standardized incorporation by reference approval language into one centralized section for this part. This action is editorial in nature and does not impose any new regulatory requirements on affected parties.

DATES: This rule is effective July 12, 2023. The incorporation by reference of the material listed in this rule into § 37.4 is approved by the Director of the Federal Register as of July 12, 2023. The incorporation by reference of the material listed in this rule elsewhere was approved by the Director of the Federal Register as of March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Follick, Office of General Counsel, DHS; telephone: (202) 875–4913; email: *Julia.Follick@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The REAL ID Act sets minimum security requirements for the issuance and production of driver's licenses and identification cards in order for federal agencies to accept these documents for official purposes.[1] DHS regulations implementing the Act are codified at 6 CFR part 37.[2] Within this part, §§ 37.17 and 37.19 incorporate four standards by reference.

Incorporation by reference (IBR) allows federal agencies to comply with the requirement to publish rules in the **Federal Register** and Code of Federal Regulations (CFR) [3] by referring to material already published elsewhere.[4] The regulations agencies must follow to IBR publications into the CFR are found at 1 CFR part 51. Part 51 requires agencies to provide specific information related to the publications along with contact information for the publishers, the agency and the National Archives and Records Administration. In order to help Federal agencies meet this and the other requirements established in 1 CFR part 51, the Office of the Federal Register publishes the IBR Handbook.[5] The IBR Handbook provides standardized language that meets the requirements of part 51. It also provides examples of the ways agencies can set out this language in their regulations depending on whether the agency is incorporating one standard in one section or multiple standards into multiple sections in a part. When Federal agencies seek to IBR multiple standards into different sections, the OFR provides agencies the option to codify one section that contains the standardized approval language along with all the standards incorporated by reference into a discrete CFR unit, such as a Chapter, Subchapter, Part or Subpart. This ''centralized IBR section'' allows Federal agencies to consolidate IBR information into a single section instead of repeating this language in each section where the publication is incorporated.

II. Description of Technical Revisions

Currently, 6 CFR 37.17 and 37.19 are formatted so that the standardized IBR approval language required by 1 CFR part 51 is repeated in §§ 37.17(e), (g), (m) and 37.19. This means that the detailed information related to IBR approval, publisher information, and agency contact information is repeated in its entirety in four separate CFR paragraphs in two separate sections in part 37. This rule removes the IBR approval language from each of these individual paragraphs and consolidates the language into new § 37.4 *Incorporation by Reference.* This consolidation increases the readability of the part by removing duplicative language from §§ 37.17 and 37.19.

Finally, in the course of drafting this technical amendment, DHS realized that our contact information in these provisions was out of date. This rule also revises the IBR approval language in § 37.4 to update the email address to contact the department if you are interested in examining the standards incorporated by reference into 6 CFR part 37.

III. Administrative Procedure Act

DHS has determined that this rule is exempt from notice-and-comment rulemaking requirements under 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(b)(B). The revisions set out in this rule pertain to reformatting the current codified text and updating contact information and constitutes ''rules of agency organization, procedure, or practice''

[1] Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, Div. B. title II, sections 201 to 207, May 11, 2005, as amended (codified at 49 U.S.C. 30301 note) (the REAL ID Act). The REAL ID Act applies to the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] 73 FR 5272 (Jan. 29, 2008).

[3] 44 U.S.C. chapter 15.

[4] 5 U.S.C. 552(a). Congress in the Freedom of Information Act authorized the Director of the Federal Register (Director) to normalize the process used by federal agencies to IBR publications into the CFR.

[5] The Office of the Federal Register's IBR Handbook: Release 1–2022 can be found at: *https://www.archives.gov/federal-register/write/handbook/ibr-supplement.*

not subject to the Administrative Procedure Act's (APA) notice and comment requirements under 5 U.S.C. 553(b)(A). The revisions set out in this rule are technical or editorial non-substantive formatting changes, which are intended to consolidate standardized information already published in the CFR and to update out of date contact information for the department. These changes are necessary to consolidate redundant language into one centralized section to streamline CFR formatting to improve the clarity of the CFR. They also update department contact information. None of the revisions included in this action will have a substantive impact on the public nor will they alter the regulatory requirements in the affected part. Accordingly, DHS finds for good cause that this final rule is exempt from public notice-and-comment rulemaking procedures under 5 U.S.C. 553(b)(B) because such procedures are unnecessary.

For the same reasons that this rule is exempt from notice-and-comment rulemaking requirements, and because affected parties will not need time to adjust to the revisions made through this action, DHS finds that good cause exists to make this final rule effective upon publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act and Executive Order 12866

Because DHS has determined that this rule is exempt from notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action. This technical amendment also does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

V. Paperwork Reduction Act

There is no new or amended collection of information required by this document; therefore, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

List of Subjects in 6 CFR Part 37

Incorporation by reference, Licensing and registration, Motor vehicle safety, Motor vehicles, Personally identifiable information, Privacy, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble, the Department of Homeland Security corrects 6 CFR part 37 by making the following technical amendments:

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

■ 2. Add § 37.4 to read as follows:

§ 37.4 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Department of Homeland Security (DHS) and at the National Archives and Records Administration (NARA). For information on the availability of this material at DHS Headquarters in Washington DC, please email *requesttoreviewstandards@hq.dhs.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(a) American Association of Motor Vehicle Administrators (AAMVA) 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203; website: *www.aamva.org.*

(1) 2005 AAMVA Driver's License/Identification Card Design Specifications, Annex A, section A.7.7.2., March 2005 (AAMVA Specifications); IBR approved for § 37.17.

(2) [Reserved]

(b) International Civil Aviation Organization (ICAO), I CAO, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7; email: *sales@icao.int.*

(1) ICAO 9303, ''Machine Readable Travel Documents,'' Volume 1, part 1, Sixth Edition, 2006; IBR approved for § 37.17.

(2) [Reserved]

(c) International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland; phone: +41 22 749 01 11; email: *customerservice@iso.org;* website: *www.iso.org/contact-iso.html.* (Also available by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036 website: *www.ansi.org.*)

(1) ISO/IEC 19794–5:2005(E) Information technology—Biometric Data Interchange Formats—Part 5: Face Image Data, dated June 2005; IBR approved for § 37.17.

(2) ISO/IEC 15438:2006(E) Information Technology—Automatic identification and data capture techniques—PDF417 symbology specification, dated June 2006; IBR approved for § 37.19.

■ 3. In § 37.17, revise paragraphs (e)(1), (g)(1), and (m) to read as follows:

§ 37.17 Requirements for the surface of the driver's license or identification card.

* * * * *

(e) * * *

(1) States shall follow specifically ISO/IEC 19794–5:2005(E) (incorporated by reference; see § 37.4).

* * * * *

(g) * * *

(1) The card must include the signature of the card holder. The signature must meet the requirements of the AAMVA Specifications (incorporated by reference; see § 37.4). This standard includes requirements for size, scaling, cropping, color, borders, and resolution.

* * * * *

(m) *Printed information.* The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Latin alpha-numeric characters. The name must contain a field of no less than a total of 39 characters, and longer names shall be truncated following the standard established by ICAO 9303 (incorporated by reference; see § 37.4).

* * * * *

■ 4. In § 37.19, revise the introductory paragraph to read as follows:

§ 37.19 Machine readable technology on the driver's license or identification card.

For the machine readable portion of the REAL ID driver's license or identification card, States must use ISO/IEC 15438:2006(E) (incorporated by reference; see § 37.4). The PDF417 bar code standard must have the following defined minimum data elements:

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–14485 Filed 7–11–23; 8:45 am]

BILLING CODE 9110–9M–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2022–0063]

Regulatory Guide: Performance-Based Containment Leak-Test Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG), 1.163, ''Performance-Based Containment Leak-Test Program.'' This RG provides guidance on an acceptable performance-based leak-test program and leakage rate test methods, procedures, and analyses that may be used to comply with ''Option B—Performance-Based Requirements'' in NRC regulations for primary reactor containment leakage testing for water-cooled power reactors.

DATES: Revision 1 to RG 1.163 is available on July 12, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0063 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–2022–0063. 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 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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 1 to RG 1.163 and the regulatory analysis may be found in ADAMS under Accession Nos. ML23073A154 and ML22007A009, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Brian Lee, Office of Nuclear Reactor Regulation, telephone: 301–415–2916; email: *Brian.Lee@nrc.gov* and Ramon L. Gascot Lozada, Office of Nuclear Regulatory Research, telephone: 301–415–2004; email: *Ramon.Gascot@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 1 to RG 1.163 was issued with a temporary identification of Draft Regulatory Guide, DG–1391. This revision of the guide (Revision 1) endorses the guidance in Nuclear Energy Institute 94–01, Revision 3–A, issued July 2012, for implementing option B, ''Performance-Based Requirements,'' of appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), subject to the regulatory positions listed in Section C of this RG. This guidance includes (1) extending Type A test intervals up to 15 years and (2) extending Type C test intervals up to 75 months.

II. Additional Information

The NRC published a notice of the availability of DG–1391 in the **Federal Register** on November 17, 2022 (87 FR 69052) for a 30-day public comment period. The public comment period closed on December 19, 2022. Public comments on DG–1391 and the staff responses to the public comments are available under ADAMS under Accession No. ML23073A150.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

The NRC staff may use this RG as a reference in its regulatory processes, such as licensing, inspection, or enforcement. However, the NRC staff does not intend to use the guidance in this RG to support NRC staff actions in a manner that would constitute backfitting as that term is defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' nor does the NRC staff intend to use the guidance to affect the issue finality of an approval under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The staff also does not intend to use the guidance to support NRC staff actions in a manner that constitutes forward fitting as that term is defined and described in MD 8.4. If a licensee believes that the NRC is using this RG in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfitting or forward fitting appeal with the NRC in accordance with the process in MD 8.4.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: July 6, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–14603 Filed 7–11–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1407; Project Identifier MCAI–2023–00788–T; Amendment 39–22501; AD 2023–14–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2023–06–13, which applied to all Bombardier, Inc., Model BD–700–2A12 airplanes. AD 2023–06–13 required revising the existing airplane flight manual (AFM) with new limitations to mitigate identified hazards due to interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band) as identified by Notices to Air Missions (NOTAMs). Since the FAA issued AD 2023–06–13, the FAA determined that additional limitations are needed due to the continued deployment of new 5G C-Band stations whose signals are expected to cover most of the contiguous United States at transmission frequencies between 3.7–3.98 GHz. This AD requires revising the limitations section of the existing AFM to incorporate limitations prohibiting dispatch under certain master minimum equipment list (MMEL) items. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 27, 2023.

The FAA must receive comments on this AD by August 28, 2023.

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–2023–1407; 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 final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1407; Project Identifier MCAI–2023–00788–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@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 issued AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) (AD 2021–23–12), to address the effect of interference from wireless broadband operations in the 5G C-Band on all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. AD 2021–23–12 was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 5G C-Band. AD 2021–23–12 required revising the limitations section of the existing AFM to incorporate limitations prohibiting certain operations, which require radio altimeter data to land in low visibility conditions, when in the presence of 5G C-Band interference as identified by NOTAMs. Transport Canada, which is the aviation authority for Canada, issued corresponding AD CF–2021–52, dated December 24, 2021, to prohibit certain flight operations requiring radio altimeter data in U.S. airspace affected by 5G C-Band wireless signals.

Transport Canada subsequently evaluated additional 5G-related hazards presented by 5G C-Band interference on Bombardier Model BD–700–2A12 airplanes and issued Transport Canada AD CF–2022–61, dated November 4, 2022 (AD CF–2022–61). AD CF–2022–61 was prompted by a determination that 5G C-Band interference can result in unavailable or misleading radio altimeter information, adversely affecting the performance of the automatic flight control system (AFCS) and fly-by-wire systems. Based on AD CF–2021–52, the FAA issued AD 2023–06–13, Amendment 39–22399 (88 FR 19811, April 4, 2023) (AD 2023–06–13), for all Bombardier, Inc., Model BD–700–2A12 airplanes. AD 2023–06–13 required revising the existing AFM to incorporate limitations prohibiting dispatch under a certain MMEL items and prohibiting autopilot and autothrottle operation below 400 feet above ground level when in the presence of 5G C-Band interference as identified by NOTAMs. The FAA issued AD 2023–06–13 to address the effects of 5G C-Band interference on the performance of the AFCS, which could

result in increased flightcrew workload and adversely affect the safe operation of the airplane.

Actions Since AD 2023–06–13 Was Issued

The FAA subsequently determined that NOTAMs identifying the 5G environment are no longer practical because of the continued deployment of new 5G C-Band base stations, whose signals are expected to cover most of the contiguous United States at transmission frequencies between 3.7–3.98 GHz. Accordingly, the FAA superseded AD 2021–23–12 and issued AD 2023–10–02 (88 FR 34065, May 26, 2023) (AD 2023–10–02). AD 2023–10–02 prohibits transport and commuter category airplanes from performing certain low-visibility landing operations at any airport unless they have upgraded their radio altimeters (*i.e.,* are ''radio altimeter tolerant'').

In addition, Transport Canada superseded AD CF–2022–61 and issued Transport Canada AD CF–2023–45, dated June 26, 2023 (Transport Canada AD CF–2023–45) (also referred to after this as ''the MCAI''), for all Model BD–700–1A12 airplanes. Transport Canada determined that although anomalies with the AFCS and autothrottle remain possible in the presence of harmful interference, there are sufficient mitigating factors such that Transport Canada no longer considers this an unsafe condition. As a result, the MCAI removes the AFM limitation on the AFCS and autothrottle. The MCAI also replaces the prohibition of dispatch under certain MMEL items at airports identified by NOTAM with the same prohibition, for non-radio altimeter tolerant airplanes, at all airports in the contiguous United States. For radio altimeter tolerant airplanes, the MCAI does not prohibit dispatch under the MMEL items at 5G C-Band mitigated airports (CMAs) as identified in an FAA Domestic Notice. Transport Canada issued the MCAI to prevent dispatch under certain MMEL items which, in combination with 5G interference and a weight-on-wheels (WOW) signal failure, could result in inadvertent ground spoiler deployment in flight, reversion to ground mode control laws in the air, or air mode control laws on the ground.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1407.

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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires, before further flight, revising the AFM to incorporate limitations prohibiting dispatch with certain MMEL items at all airports for non-radio altimeter tolerant airplanes. For radio altimeter tolerant airplanes, the prohibited operations are allowed at 5G CMAs as identified in an FAA Domestic Notice.

Interim Action

The FAA considers that this AD is an interim action. Once the Technical Standard Order (TSO) standard for radio altimeters is established, which will follow the existing international technical consensus on the establishment of the minimum operational performance standards (MOPS), the FAA anticipates that the MOPS will be incorporated into the TSO. Once a new radio altimeter TSO is developed, approved, and available, the FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because dispatch under certain MMEL items, in combination with 5G interference and a WOW signal failure, could result in inadvertent ground spoiler deployment in flight, reversion to ground mode control laws in the air, or air mode control laws on the ground. This may lead to loss of continued safe flight and landing. To address this unsafe condition, the actions required by this AD must be accomplished before further flight. The FAA based this compliance time on the changes to the 5G C-Band environment beginning on July 1, 2023. These changes include increased wireless broadband deployment and transmissions closer to the parameters authorized by the FCC. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B), and this AD.

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 52 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revisions	1 work-hour × $85 [1] per hour = $85	$0	$85	[2] $4,420

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2023–06–13, Amendment 39 22399 (88 FR 19811, April 4, 2023); and

■ b. Adding the following new airworthiness directive:

2023–14–01 Bombardier, Inc.: Amendment 39–22501; Docket No. FAA–2023–1407; Project Identifier MCAI–2023–00788–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 27, 2023.

(b) Affected ADs

This AD replaces AD 2023–06–13, Amendment 39–22399 (88 FR 19811, April 4, 2023) (AD 2023–06–13).

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that this interference may affect the ground spoiler deployment system, ground mode control laws, and air mode control laws. The FAA is issuing this AD to address inadvertent ground spoiler deployment in flight that could lead to increased flightcrew workload and loss of continued safe flight and landing.

(f) Compliance

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

(g) Definitions

(1) For purposes of this AD, a ''5G C-Band mitigated airport'' (5G CMA) is an airport at which the telecommunications companies have agreed to voluntarily limit their 5G deployment at the request of the FAA, as identified by an FAA Domestic Notice.

(2) For purposes of this AD, a ''radio altimeter tolerant airplane'' is one for which the radio altimeter, as installed, demonstrates the tolerances specified in paragraphs (g)(2)(i) and (ii) of this AD, using a method approved by the FAA.

(i) Tolerance to radio altimeter interference, for the fundamental emissions (3.7–3.98 GHz), at or above the power spectral density (PSD) curve threshold specified in figure 1 to paragraph (g)(2)(i) of this AD.

[1] The labor rate of $85 per hour is the average wage rate for an aviation mechanic.

[2] The estimated cost for this revision does not constitute a significant economic impact (even for small entities) because $85 is a minimal cost compared to the regular costs of maintaining and operating a Model BD–700–2A12 transport category airplane.

Figure 1 to Paragraph (g)(2)(i)—Fundamental Effective Isotropic PSD at Outside Interface of Aircraft Antenna

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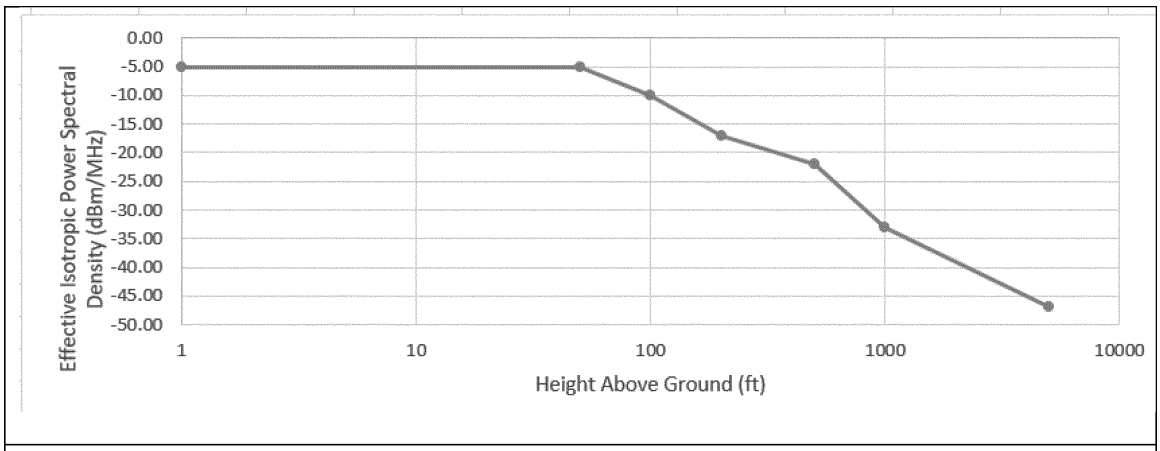
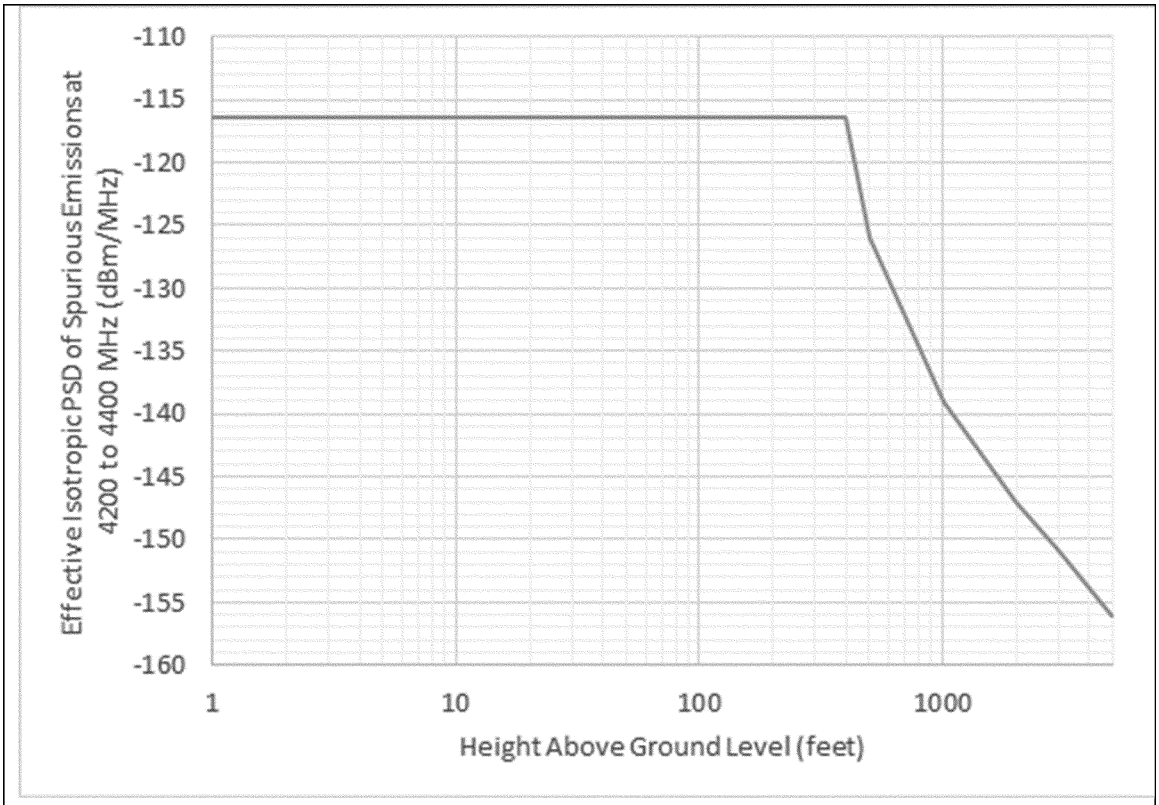


Height above ground (ft)	Effective Isotropic PSD (dBm/MHz)
Aircraft on the ground	-5
50	-5
100	-10
200	-17
500	-22
1000	-33
5000	-47

(ii) Tolerance to radio altimeter interference, for the spurious emissions (4.2–4.4 GHz), at or above the PSD curve threshold specified in figure 2 to paragraph (g)(2)(ii) of this AD.

Figure 2 to Paragraph (g)(2)(ii)—Spurious Effective Isotropic PSD at Outside Interface of Aircraft Antenna



Aircraft Altitude (ft AGL)	Effective Isotropic PSD (dBm/MHz)
1	-116.50
400	-116.50
500	-126.00
1000	-139.00
2000	-147.00
3000	-151.00
5000	-156.00

(3) For purposes of this AD, a ''non-radio altimeter tolerant airplane'' is one for which the radio altimeter, as installed, does not demonstrate the tolerances specified in paragraphs (g)(2)(i) and (ii) of this AD.

(h) Airplane Flight Manual (AFM) Revision for Non-Radio Altimeter Tolerant Airplanes: MMEL Restriction

For non-radio altimeter tolerant airplanes, before further flight, revise the Limitations Section of the existing AFM to include the information specified in figure 3 to paragraph (h) of this AD. This may be done by inserting a copy of figure 3 to paragraph (h) of this AD into the existing AFM.

Figure 3 to Paragraph (h)—AFM Revision for Non-Radio Altimeter Tolerant Airplanes: MMEL Restriction

Radio Altimeter 5G C-Band Interference, MMEL Restrictions

Due to the presence of 5G C-Band wireless broadband interference, dispatch or release is prohibited under the following MMEL Sections into or out of airports in the contiguous U.S. airspace.

a. Section 1 Line Replaceable Unit (LRU) Component Relief:
   i. 32-43-33 – MAIN WHEEL AXLE-INTERFACE-MODULE/WHEEL SPEED TRANSDUCER 1) WHEEL SPEED TRANSDUCER
   ii. 32-61-09 – MAIN LANDING GEAR WEIGHT ON WHEELS PROXIMITY SWITCHES
   iii. 34-44-00 – RADIO ALTIMETER SYSTEM

b. Section 2 Crew Alerting System (CAS) Message Relief:
   i. 27-0645 – 27 FLT CTRL – PFCC BCU INPUT REDUND LOSS
   ii. 27-0660 – 27 FLT CTRL – PFCC LGSCU INPUT REDUND LOSS
   iii. 27-0665 – 27 FLT CTRL – PFCC RAD ALT INPUT REDUND LOSS
   iv. 32-0048 – 32 GEAR – GEAR WOW / WOFFW REDUND LOSS
   v. 32-1005 – ANTISKID DEGRADED (CAUTION)
   vi. 34-1200 – RAD ALT 1 FAIL (Advisory)

(i) AFM Revision for Radio Altimeter Tolerant Airplanes: MMEL Restriction

For radio altimeter tolerant airplanes, before further flight, revise the Limitations Section of the existing AFM to include the information specified in figure 4 to paragraph (i) of this AD. This may be done by inserting a copy of figure 4 to paragraph (i) of this AD into the existing AFM.

Figure 4 to Paragraph (i)—AFM Revision for Radio Altimeter Tolerant Airplanes: MMEL Restriction

Radio Altimeter 5G C-Band Interference, MMEL Restriction

Due to the presence of 5G C-Band wireless broadband interference, dispatch or release is prohibited under the following MMEL Sections into or out of airports in the contiguous U.S. airspace, unless operating at a 5G C-Band mitigated airport as identified in an FAA Domestic Notice.

a. Section 1 Line Replaceable Unit (LRU) Component Relief:
   i. 32-43-33 – MAIN WHEEL AXLE-INTERFACE-MODULE/WHEEL SPEED TRANSDUCER 1) WHEEL SPEED TRANSDUCER
   ii. 32-61-09 – MAIN LANDING GEAR WEIGHT ON WHEELS PROXIMITY SWITCHES
   iii. 34-44-00 – RADIO ALTIMETER SYSTEM

b. Section 2 Crew Alerting System (CAS) Message Relief:
   i. 27-0645 – 27 FLT CTRL – PFCC BCU INPUT REDUND LOSS
   ii. 27-0660 – 27 FLT CTRL – PFCC LGSCU INPUT REDUND LOSS
   iii. 27-0665 – 27 FLT CTRL – PFCC RAD ALT INPUT REDUND LOSS
   iv. 32-0048 – 32 GEAR – GEAR WOW / WOFFW REDUND LOSS
   v. 32-1005 – ANTISKID DEGRADED (CAUTION)
   vi. 34-1200 – RAD ALT 1 FAIL (Advisory)

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Operational Safety 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 Operational Safety Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *AMOC@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.

(k) Additional Information

(1) Refer to Transport Canada AD CF–2023–45, dated June 26, 2023, for related information. This Transport Canada AD may be found in the AD docket at regulations.gov under Docket No. FAA–2023–1407.

(2) For more information about this AD, contact Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov*.

(l) Material Incorporated by Reference

None.

Issued on July 3, 2023.

Michael Linegang,

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

[FR Doc. 2023–14770 Filed 7–7–23; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1408; Project Identifier MCAI–2023–00791–T; Amendment 39–22502; AD 2023–14–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that this interference may affect other airplane systems using radio altimeter data, including the ground spoiler deployment system. This AD requires revising the limitations section of the existing AFM to incorporate limitations prohibiting the use of a certain master minimum equipment list (MMEL) item. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 27, 2023.

The FAA must receive comments on this AD by August 28, 2023.

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–2023–1408; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1408; Project Identifier MCAI–2023–00791–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@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 issued AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) (AD 2021–23–12), to address the effect of interference from wireless broadband operations in the 5G C-Band on all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. AD 2021–23–12 was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 5G C-Band. The FAA subsequently superseded AD 2021–23–12 and issued AD 2023–10–02 (88 FR 34065, May 26, 2023) (AD 2023–10–02). AD 2023–10–02 requires revising the limitations section of the existing AFM to incorporate limitations prohibiting transport and commuter category airplanes from performing certain low-visibility landing operations at any airport unless they have upgraded their radio altimeters (*i.e.,* are ''radio altimeter tolerant''). Transport Canada, which is the aviation authority for Canada, issued corresponding AD CF–

2023–46, dated June 26, 2023, to prohibit certain flight operations requiring radio altimeter data in U.S. airspace affected by 5G C-Band wireless signals.

Transport Canada evaluated additional 5G-related hazards presented by 5G C-Band interference on certain Airbus Canada Limited Partnership (formerly C Series Aircraft Limited Partnership and Bombardier) model airplanes and issued Transport Canada AD CF–2023–47, dated June 26, 2023 (AD CF–2023–47) (also referred to after this as ''the MCAI''). AD CF–2023–60 was prompted by a determination that 5G C-Band interference can result in unavailable or misleading radio altimeter information, which in combination with dispatch under certain minimum equipment list (MEL) items and a weight-on-wheels (WOW) signal failure, could result in a reversion to ground mode in air or the deployment of ground spoilers in the air.

Transport Canada AD CF–2023–47 applies to all Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes and prohibits dispatch under certain MEL items, for non-radio altimeter tolerant airplanes, at all airports in the contiguous United States. For radio altimeter tolerant airplanes, AD CF–2023–47 does not prohibit dispatch under the MEL items at 5G C-Band mitigated airports (CMAs) as identified in an FAA Domestic Notice.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–1408.

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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires, before further flight, revising the AFM to incorporate limitations prohibiting dispatch under MMEL item WOW Proximity Sensor at all airports for non-radio altimeter tolerant airplanes. For radio altimeter tolerant airplanes, the prohibited operations are allowed at 5G CMAs as identified in an FAA Domestic Notice.

Differences Between the MCAI and This AD

The MCAI prohibits dispatch under four items in the Airbus Canada Limited Partnership MEL approved by Transport Canada, which include the brake data concentrator unit (BDCU) and three WOW items. The Airbus Canada Limited Partnership MMEL approved by the FAA does not include provisions for the BDCU and only has one provision for the WOW system. Therefore, instead of the MEL items listed in the MCAI, this AD prohibits dispatch under the WOW proximity sensor as specified in the FAA-approved Airbus Canada Limited Partnership MMEL.

Interim Action

The FAA considers that this AD is an interim action. Once the Technical Standard Order (TSO) standard for radio altimeters is established, which will follow the existing international technical consensus on the establishment of the minimum operational performance standards (MOPS), the FAA anticipates that the MOPS will be incorporated into the TSO. Once a new radio altimeter TSO is developed, approved, and available, the FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule, because radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 5G C-Band. Further, this interference may affect other airplane systems using radio altimeter data, including the ground spoiler deployment system, which, in combination with a WOW signal failure, could lead to loss of continued safe flight and landing. To address this unsafe condition, the actions required by this AD must be accomplished before further flight. The FAA based this compliance time on the changes to the 5G C-Band environment beginning on July 1, 2023. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B), and this AD.

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 90 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 [1] per hour = $85	$0	$85	[2] $7,650

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–14–02 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership; Bombardier, Inc.): Amendment 39–22502; Docket No. FAA–2023–1408; Project Identifier MCAI–2023–00791–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 27, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership; Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that this interference may affect other airplane systems using radio altimeter data, including the ground spoiler deployment system. The FAA is issuing this AD to address inadvertent ground spoiler deployment in flight that could lead to increased flightcrew workload and loss of continued safe flight and landing.

(f) Compliance

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

(g) Definitions

(1) For purposes of this AD, a ''5G C-Band mitigated airport'' (5G CMA) is an airport at which the telecommunications companies have agreed to voluntarily limit their 5G deployment at the request of the FAA, as identified by an FAA Domestic Notice.

(2) For purposes of this AD, a ''radio altimeter tolerant airplane'' is one for which the radio altimeter, as installed, demonstrates the tolerances specified in paragraphs (g)(2)(i) and (ii) of this AD, using a method approved by the FAA.

(i) Tolerance to radio altimeter interference, for the fundamental emissions (3.7–3.98 GHz), at or above the power spectral density (PSD) curve threshold specified in figure 1 to paragraph (g)(2)(i) of this AD.

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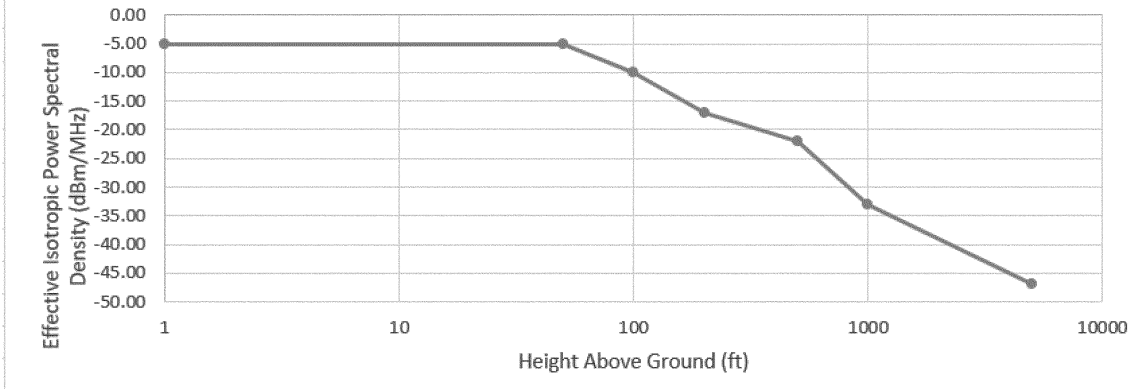
[1] The labor rate of $85 per hour is the average wage rate for an aviation mechanic.

[2] The estimated cost for this revision does not constitute a significant economic impact (even for small entities) because $85 is a minimal cost compared to the regular costs of maintaining and operating a Model BD–500–1A10 or BD–500–1A11 transport category airplane.

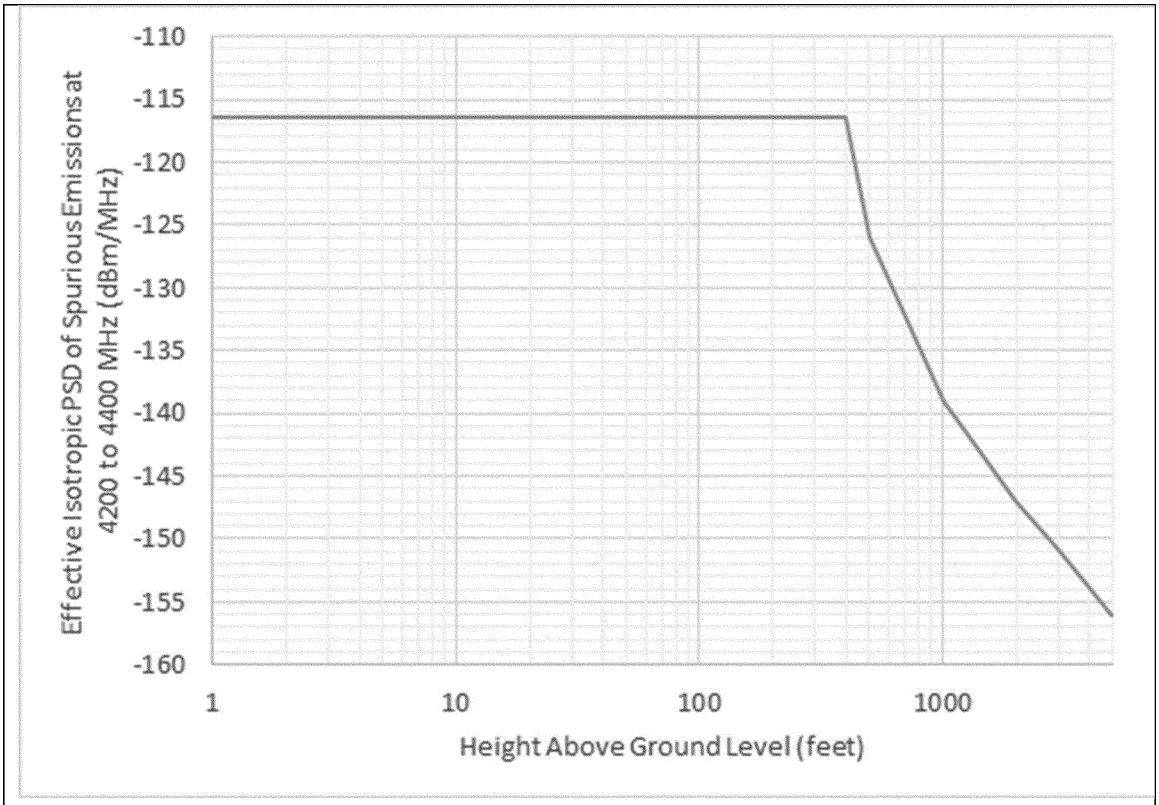
Figure 1 to Paragraph (g)(2)(i)—Fundamental Effective Isotropic PSD at Outside Interface of Aircraft Antenna



Height above ground (ft)	Effective Isotropic PSD (dBm/MHz)
Aircraft on the ground	-5
50	-5
100	-10
200	-17
500	-22
1000	-33
5000	-47

(ii) Tolerance to radio altimeter interference, for the spurious emissions (4.2–4.4 GHz), at or above the PSD curve threshold specified in figure 2 to paragraph (g)(2)(ii) of this AD.

Figure 2 to Paragraph (g)(2)(ii)—Spurious Effective Isotropic PSD at Outside Interface of Aircraft Antenna



Aircraft Altitude (ft AGL)	Effective Isotropic PSD (dBm/MHz)
1	-116.50
400	-116.50
500	-126.00
1000	-139.00
2000	-147.00
3000	-151.00
5000	-156.00

(3) For purposes of this AD, a ''non-radio altimeter tolerant airplane'' is one for which the radio altimeter, as installed, does not demonstrate the tolerances specified in paragraphs (g)(2)(i) and (ii) of this AD.

(h) Revision of Existing Airplane Flight Manual (AFM): Master Minimum Equipment List (MMEL) Restriction for Non-Radio Altimeter Tolerant Airplanes

Before further flight, revise the Limitations section of the existing AFM to include the information specified in figure 3 to paragraph (h) of this AD. This may be done by inserting a copy of figure 3 to paragraph (h) of this AD into the existing AFM.

Figure 3 to Paragraph (h)—MMEL Restriction for Non-Radio Altimeter Tolerant Airplanes

Radio Altimeter 5G C-Band Interference, MMEL Restriction

Due to the presence of 5G C-Band wireless broadband interference, dispatch or release is prohibited under MMEL No. 32-61-05(3), item "Weight on Wheel (WOW) Proximity Sensor" into or out of airports in the contiguous U.S. airspace.

(i) Revision of Existing AFM: MMEL Restriction for Radio Altimeter Tolerant Airplanes

Before further flight, revise the Limitations section of the existing AFM to include the information specified in figure 4 to paragraph (i) of this AD. This may be done by inserting a copy of figure 4 to paragraph (i) of this AD into the existing AFM.

Figure 4 to Paragraph (i)—MMEL Restriction for Radio Altimeter Tolerant Airplanes

Radio Altimeter 5G C-Band Interference, MMEL Restriction

Due to the presence of 5G C-Band wireless broadband interference, dispatch or release is prohibited under MMEL No. 32-61-05(3), item "Weight on Wheel (WOW) Proximity Sensor" into or out of airports in the contiguous U.S. airspace, unless operating at a 5G C-Band mitigated airport as identified in an FAA Domestic Notice.

(j) Additional AD Provisions

(1) The Manager, Operational Safety 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 Operational Safety Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *AMOC@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.

(k) Additional Information

(1) Refer to Transport Canada AD CF–2023–47, dated June 26, 2023, for related information. This Transport Canada AD may be found in the AD docket at regulations.gov under Docket No. FAA–2023–1408.

(2) For more information about this AD, contact Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov*.

(l) Material Incorporated by Reference

None.

Issued on July 3, 2023.

Michael Linegang,

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

[FR Doc. 2023–14771 Filed 7–7–23; 4:15 pm]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1406; Project Identifier MCAI–2023–00787–T; Amendment 39–22500; AD 2023–13–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2023–03–06, which applied to all Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. AD 2023–03–06 required revising the existing airplane flight manual (AFM) to incorporate limitations to mitigate identified hazards when in the presence of interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band) as identified by Notices to Air Missions (NOTAMs). Since the FAA issued AD 2023–03–06, the FAA determined that additional limitations are needed due to the continued deployment of new 5G C-Band stations whose signals are expected to cover most of the contiguous United States at transmission frequencies between 3.7–3.98 GHz. This AD requires revising the limitations section of the existing AFM to incorporate limitations prohibiting dispatch under a certain master minimum equipment list (MMEL) item. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 27, 2023.

The FAA must receive comments on this AD by August 28, 2023.

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–2023–1406; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1406; Project Identifier MCAI–2023–00787–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) (AD 2021–23–12), to address the effect of interference from wireless broadband operations in the 5G C-Band on all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. AD 2021–23–12 was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 5G C-Band. AD 2021–23–12 required revising the limitations section of the existing AFM to incorporate limitations prohibiting certain operations, which require radio altimeter data to land in low visibility conditions, when in the presence of 5G C-Band interference as identified by NOTAMs. Transport Canada, which is the aviation authority for Canada, issued corresponding AD CF–2021–52, dated December 24, 2021, to prohibit certain flight operations requiring radio altimeter data in U.S. airspace affected by 5G C-Band wireless signals.

Transport Canada subsequently evaluated additional 5G-related hazards presented by 5G C-Band interference on Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes and issued Transport Canada AD CF–2022–60, dated November 4, 2022 (AD CF–2022–60). AD CF–2022–60 was prompted by a determination that 5G C-Band interference can result in unavailable or misleading radio altimeter information, adversely affecting the performance of the automatic flight control system (AFCS). Based on AD CF–2022–60, the FAA issued AD 2023–03–06, Amendment 39–22331 (88 FR 11784, February 24, 2023) (AD 2023–03–06), for all Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. AD 2023–03–06 required revising the existing AFM to incorporate limitations prohibiting dispatch under a certain MMEL item and prohibiting autopilot and autothrottle operation below 400 feet above ground level (AGL) when in the presence of 5G C-Band interference as identified by NOTAMs. The FAA issued AD 2023–03–06 to address the effects of 5G C-Band interference on the performance of the AFCS, which could result in increased flightcrew workload and adversely affect the safe operation of the airplane.

Actions Since AD 2023–03–06 Was Issued

The FAA subsequently determined that NOTAMs identifying the 5G environment are no longer practical because of the continued deployment of new 5G C-Band base stations, whose signals are expected to cover most of the contiguous United States at transmission frequencies between 3.7–3.98 GHz. Accordingly, the FAA superseded AD 2021–23–12 and issued AD 2023–10–02 (88 FR 34065, May 26, 2023) (AD 2023–10–02). AD 2023–10–02 prohibits transport and commuter category airplanes from performing certain low-visibility landing operations at any airport unless they have upgraded their radio altimeters (*i.e.,* are ''radio altimeter tolerant'').

In addition, Transport Canada superseded AD CF–2022–60 and issued Transport Canada AD CF–2023–44, dated June 26, 2023 (Transport Canada AD CF–2023–44) (also referred to after this as ''the MCAI''), for all Model BD–700–1A10 and BD–700–1A11 airplanes. Transport Canada determined that although anomalies with the AFCS and autothrottle remain possible in the presence of harmful interference, there are sufficient mitigating factors such that Transport Canada no longer considers this an unsafe condition. As a result, the MCAI removes the AFM limitation on the AFCS and autothrottle. The MCAI also replaces the prohibition of dispatch under a certain MMEL item at airports identified by NOTAM with the same prohibition, for non-radio altimeter tolerant airplanes, at all airports in the contiguous United States. For radio altimeter tolerant airplanes, the MCAI does not prohibit dispatch under the MMEL item at 5G C-Band mitigated airports (CMAs) as identified in an FAA Domestic Notice. Transport Canada issued the MCAI to prevent dispatch under MMEL item ''WOW

FAULT (ADVISORY)'' which, in combination with 5G interference and a weight-on-wheels (WOW) signal failure, could result in the radio altimeter deploying the two pairs of ground spoilers at heights above 7 feet AGL. This may lead to increased flightcrew workload and adversely affect the safe operation of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1406.

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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires, before further flight, revising the AFM to incorporate limitations prohibiting dispatch with use of a certain MMEL item at all airports for non-radio altimeter tolerant airplanes. For radio altimeter tolerant airplanes, the prohibited operations are allowed at 5G CMAs as identified in an FAA Domestic Notice.

Interim Action

The FAA considers that this AD is an interim action. Once the Technical Standard Order (TSO) standard for radio altimeters is established, which will follow the existing international technical consensus on the establishment of the minimum operational performance standards (MOPS), the FAA anticipates that the MOPS will be incorporated into the TSO. Once a new radio altimeter TSO is developed, approved, and available, the FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because dispatch under MMEL item ''WOW FAULT (ADVISORY),'' in combination with 5G interference and a WOW signal failure, could result in the radio altimeter deploying the two pairs of ground spoilers at heights above 7 feet AGL. This may lead to increased flightcrew workload and loss of continued safe flight and landing. To address this unsafe condition, the actions required by this AD must be accomplished before further flight. The FAA based this compliance time on the changes to the 5G C-Band environment beginning on July 1, 2023. These changes include increased wireless broadband deployment and transmissions closer to the parameters authorized by the FCC. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 165 airplanes of U.S. registry of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 [1] per hour = $85	$0	$85	[2] $14,025

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

[1] The labor rate of $85 per hour is the average wage rate for an aviation mechanic.

[2] The estimated cost for this revision does not constitute a significant economic impact (even for small entities) because $85 is a minimal cost compared to the regular costs of maintaining and operating a Model BD–700–1A10 or BD–700–1A11 transport category airplane.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive 2023–03–06, Amendment 39–22331 (88 FR 11784, February 24, 2023); and
■ b. Adding the following new airworthiness directive:

2023–13–15 Bombardier, Inc.: Amendment 39–22500; Docket No. FAA–2023–1406; Project Identifier MCAI–2023–00787–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 27, 2023.

(b) Affected ADs

This AD replaces AD 2023–03–06, Amendment 39–22331 (88 FR 11784, February 24, 2023) (AD 2023–03–06).

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that this interference may affect other airplane systems using radio altimeter data, including the ground spoiler deployment system. The FAA is issuing this AD to address inadvertent ground spoiler deployment in flight that could lead to increased flightcrew workload and loss of continued safe flight and landing.

(f) Compliance

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

(g) Definitions

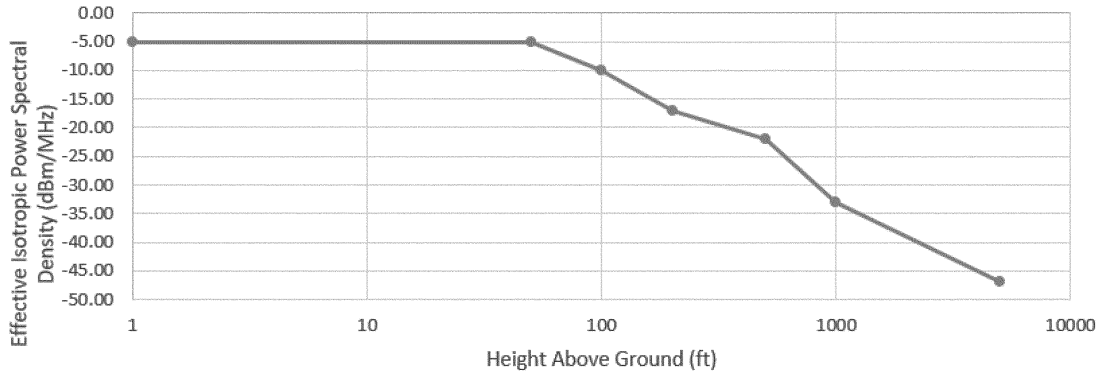
(1) For purposes of this AD, a ''5G C-Band mitigated airport'' (5G CMA) is an airport at which the telecommunications companies have agreed to voluntarily limit their 5G deployment at the request of the FAA, as identified by an FAA Domestic Notice.

(2) For purposes of this AD, a ''radio altimeter tolerant airplane'' is one for which the radio altimeter, as installed, demonstrates the tolerances specified in paragraphs (g)(2)(i) and (ii) of this AD, using a method approved by the FAA.

(i) Tolerance to radio altimeter interference, for the fundamental emissions (3.7–3.98 GHz), at or above the power spectral density (PSD) curve threshold specified in figure 1 to paragraph (g)(2)(i) of this AD.

BILLING CODE 4910–13–P

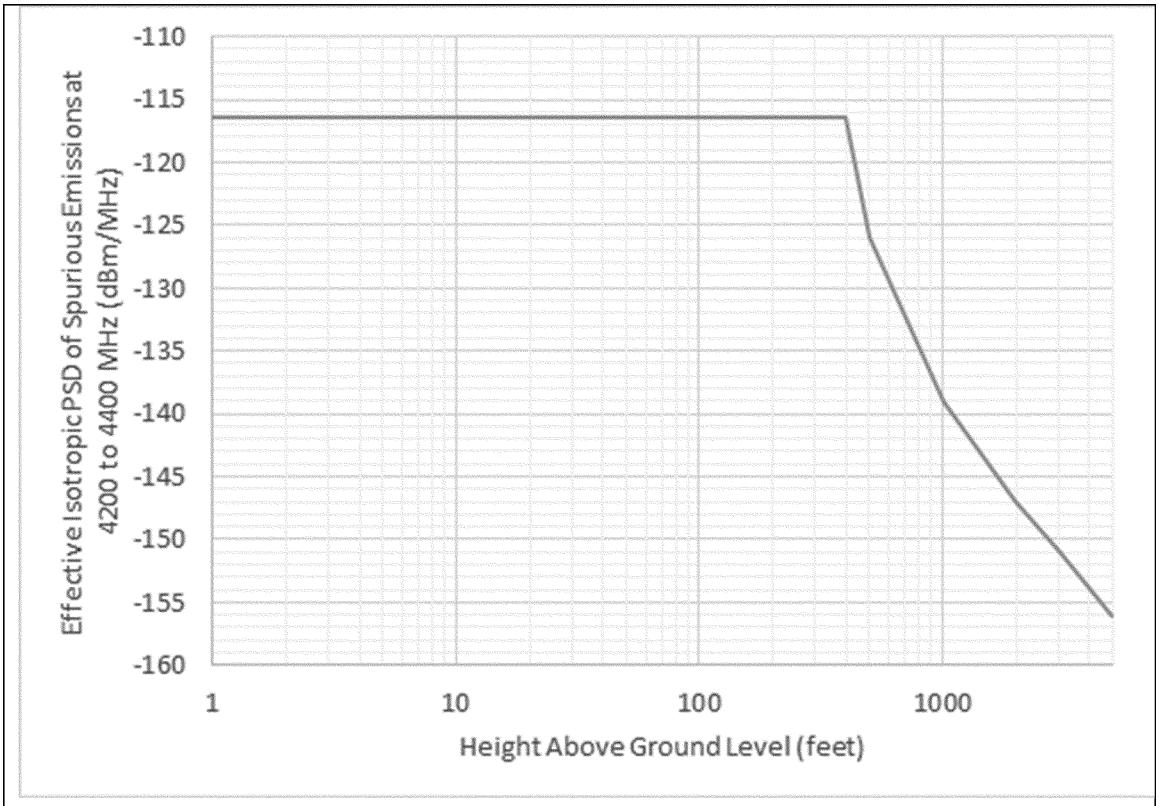
Figure 1 to Paragraph (g)(2)(i)—Fundamental Effective Isotropic PSD at Outside Interface of Aircraft Antenna



Height above ground (ft)	Effective Isotropic PSD (dBm/MHz)
Aircraft on the ground	-5
50	-5
100	-10
200	-17
500	-22
1000	-33
5000	-47

(ii) Tolerance to radio altimeter interference, for the spurious emissions (4.2–4.4 GHz), at or above the PSD curve threshold specified in figure 2 to paragraph (g)(2)(ii) of this AD.

Figure 2 to Paragraph (g)(2)(ii)—Spurious Effective Isotropic PSD at Outside Interface of Aircraft Antenna



Aircraft Altitude (ft AGL)	Effective Isotropic PSD (dBm/MHz)
1	-116.50
400	-116.50
500	-126.00
1000	-139.00
2000	-147.00
3000	-151.00
5000	-156.00

(3) For purposes of this AD, a ''non-radio altimeter tolerant airplane'' is one for which the radio altimeter, as installed, does not demonstrate the tolerances specified in paragraphs (g)(2)(i) and (ii) of this AD.

(h) Airplane Flight Manual (AFM) Revision for Non-Radio Altimeter Tolerant Airplanes: MMEL Restriction

For non-radio altimeter tolerant airplanes, before further flight, revise the Limitations Section of the existing AFM to include the information specified in figure 3 to paragraph (h) of this AD. This may be done by inserting a copy of figure 3 to paragraph (h) of this AD into the existing AFM.

Figure 3 to Paragraph (h)—AFM Revision for Non-Radio Altimeter Tolerant Airplanes: MMEL Restriction

Radio Altimeter 5G C-Band Interference, MMEL Restriction

Due to the presence of 5G C-Band wireless broadband interference, dispatch or release is prohibited under MMEL Section 2, CAS Messages, item "WOW FAULT (ADVISORY)" into or out of airports in the contiguous U.S. airspace.

(i) AFM Revision for Radio Altimeter Tolerant Airplanes: MMEL Restriction

For radio altimeter tolerant airplanes, before further flight, revise the Limitations Section of the existing AFM to include the information specified in figure 4 to paragraph (i) of this AD. This may be done by inserting a copy of figure 4 to paragraph (i) of this AD into the existing AFM.

Figure 4 to Paragraph (i)—AFM Revision for Radio Altimeter Tolerant Airplanes: MMEL Restriction

Radio Altimeter 5G C-Band Interference, MMEL Restriction

Due to the presence of 5G C-Band wireless broadband interference, dispatch or release is prohibited under MMEL Section 2, CAS Messages, item "WOW FAULT (ADVISORY)" into or out of airports in the contiguous U.S. airspace, unless operating at a 5G C-Band mitigated airport as identified in an FAA Domestic Notice.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) The Manager, Operational Safety 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 Operational Safety Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *AMOC@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.

(k) Related Information

(1) Refer to Transport Canada AD CF–2023–44, dated June 26, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1406.

(2) For more information about this AD, contact Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued on July 3, 2023.

Michael Linegang,

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

[FR Doc. 2023–14769 Filed 7–7–23; 4:15 pm]

BILLING CODE 4910–13–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9977]

RIN 1545–BP84

Carryback of Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; removal of temporary regulations.

SUMMARY: This document contains final regulations that affect corporations filing consolidated returns. These regulations permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of the carryback period for certain losses attributable to the acquired members where there is a retroactive statutory extension of the net operating loss (NOL) carryback period. This document finalizes certain provisions in proposed regulations that were published on July 8, 2020, and removes temporary regulations published on the same date.

DATES:

Effective date: These final regulations are effective on July 10, 2023.

Applicability date: For the date of applicability, *see* § 1.1502–21(h)(9).

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary at (202) 317–5353 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This Treasury decision amends the Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code (Code). Section 1502 authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group, as defined in § 1.1502–1(h)) to clearly reflect the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502–1.

On July 8, 2020, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–125716–18) in the **Federal Register** (85 FR 40927) under section 1502 (2020 proposed regulations). The 2020 proposed regulations provided guidance that, in part, implemented amendments to section 172 under Public Law 115–97, 131 Stat. 2054 (Dec. 22, 2017), commonly known as the Tax Cuts and Jobs Act (TCJA), and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020). Specifically, the 2020 proposed regulations provided guidance for consolidated groups regarding (i) the application of the 80-percent limitation in section 172(a)(2), as originally enacted as part of the TCJA and subsequently amended by the CARES Act, and (ii) the absorption of NOL carrybacks and carryovers.

In connection with the 2020 proposed regulations, the Treasury Department and the IRS published on the same date temporary regulations (TD 9900) in the **Federal Register** (85 FR 40892) under section 1502 (2020 temporary regulations). The Treasury Department and the IRS issued the 2020 temporary regulations to provide guidance to consolidated groups regarding the application of the NOL carryback rules under section 172(b), as amended by (i) section 2303(b) of the CARES Act, and (ii) any similar future statutory amendments to section 172. Specifically, if there is a retroactive statutory extension of the NOL carryback period under section 172 (retroactive statutory extension), the 2020 temporary regulations permit consolidated groups that, before the enactment of the retroactive statutory extension, acquired new members that were members of another consolidated group to elect to waive, in a taxable year subsequent to the taxable year of the acquisition, all or part of the pre-acquisition portion of the carryback period for consolidated net operating losses (CNOLs) attributable to the acquired members. The preamble to the 2020 temporary regulations includes a background discussion of the rules

regarding NOL carrybacks and carryovers under section 172 and the related consolidated return regulations. Part II of this Background describes the 2020 temporary regulations in greater detail.

A correction to the 2020 temporary regulations was published in the **Federal Register** (85 FR 53162) on August 28, 2020. The text of the 2020 temporary regulations also serves as the text of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations.

The 2020 proposed regulations, other than proposed § 1.1502–21(b)(3)(ii)(C) and (D), were adopted as final regulations on October 27, 2020. *See* TD 9927 (85 FR 67966).

The IRS received one comment in response to the 2020 temporary regulations. A copy of the comment is available for public inspection at *https://www.regulations.gov* (type IRS–2020–0020 in the search field on the *https://www.regulations.gov* homepage) or upon request. No public hearing was requested or held.

As described in greater detail in the Summary of Comment and Explanation of Revisions, the Treasury Department and the IRS have considered the commenter's recommendations and concluded that their adoption would necessitate conforming changes to the split-waiver election provisions set forth in § 1.1502–21(b)(3)(ii)(B) (general split-waiver election), which are beyond the scope of this guidance. Therefore, the Treasury Department and the IRS have determined that, aside from non-substantive revisions to incorporate the rules regarding retroactive statutory extensions into § 1.1502–21(b), improve readability, and make other perfecting edits, § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations should be adopted as final regulations without change, and that the 2020 temporary regulations should be removed. The Treasury Department and the IRS continue to study the commenter's recommendations for purposes of potential future guidance.

II. 2020 Temporary Regulations

On prior occasions, enacted legislation has amended section 172 to retroactively extend the carryback period for NOLs. *See* Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92, 123 Stat. 2984 (November 6, 2009); Job Creation and Worker Assistance Act of 2002, Public Law 107–147, 116 Stat. 21 (March 9, 2002). Most recently, section 2303(b) of the CARES Act added section 172(b)(1)(D) to the Code. Section 172(b)(1)(D) requires (in the absence of a waiver under section 172(b)(3)) a five-year carryback period for an NOL that arises in a taxable year beginning after December 31, 2017, and before January 1, 2021.

Such retroactive statutory extensions of NOL carryback periods uniquely impact a consolidated group (acquiring group) that acquires one or more corporations (acquired member) before the enactment of the retroactive statutory extension of the carryback period. During the past two decades, the Treasury Department and the IRS have provided an acquiring group with certain additional elections for waiving carrybacks of losses into another consolidated group of which an acquired member previously was a member (former group). *See* 75 FR 35643 (June 23, 2010) (2010 split-waiver regulations); 67 FR 38000 (May 31, 2002) (2002 split-waiver regulations). These additional elections, while responsive to particular retroactive statutory extensions, have reflected common policy objectives of providing affected groups with the ability to waive all or a portion of the NOL carryback period of acquired members extended by retroactive statutory extensions applicable before, but enacted after, the acquisition(s).

The Treasury Department and the IRS determined that it is appropriate to provide similar rules with regard to the NOL carryback rules retroactively amended by section 2303(b) of the CARES Act in particular, or by future legislation enacting retroactive statutory amendments to NOL carryback rules more generally. Therefore, the 2020 temporary regulations provided principle-based rules, referred to in these regulations as ''amended carryback rules,'' applicable to CNOLs arising in taxable years to which amended carryback rules become applicable after the acquisition of a member. Under these rules, an acquiring group possesses the opportunity to waive, on a taxable-year-by-taxable-year basis, all or a portion of the carryback period with regard to CNOLs attributable to acquired members for pre-acquisition years during which the acquired members were members of a former group.

The 2020 temporary regulations provide two types of split-waiver elections for consolidated groups that (i) include one or more acquired members, and (ii) have CNOLs that, under amended carryback rules, become eligible to be carried back for a greater number of years than under statutory law in effect at the time of the acquisition (default carryback period). One type of election (amended statute split-waiver election) permits an acquiring group to relinquish that part of the carryback period during which an acquired member was a member of a former group (for the portion of a CNOL attributable to the acquired member), even though the acquiring group did not file a split-waiver election for the year in which the acquired member became a member of the acquiring group (as required by § 1.1502–21(b)(3)(ii)(B)). *See* § 1.1502–21T(b)(3)(ii)(C)(*2*)(*v*). The other type of election (extended split-waiver election) applies solely to the extended carryback period (that is, the additional carryback years provided under amended carryback rules). Through an extended split-waiver election, an acquiring group can ensure that amended carryback CNOLs are carried back to taxable years of former groups only to the extent those losses would have been carried back under prior law (that is, limiting CNOL carrybacks to the default carryback period). *See* § 1.1502–21T(b)(3)(ii)(C)(*2*)(*ix*). These two additional types of split-waiver elections provide relief, and are subject to conditions and procedures, consistent with the applicable split-waiver elections set forth in the 2002 and 2010 split-waiver regulations.

Summary of Comment and Explanation of Revisions

The Treasury Department and the IRS received one comment that recommended two changes to the split-waiver election provisions set forth in the 2020 temporary regulations (2020 split-waiver elections).

As discussed in the preamble to the 2020 temporary regulations, a general split-waiver election and the 2020 split-waiver elections may be made only with respect to the portion of the carryback period for which the acquired member was a member of a former group. Thus, such an election would not be effective with respect to any portion of the carryback period during which the acquired member was a stand-alone corporation. The commenter recommended that split-waiver elections be available whenever a portion of a CNOL attributable to an acquired member would be carried back to a separate return year, regardless of whether the acquired member was a member of a former group or a stand-alone corporation in that carryback year.

The commenter also suggested that, although the rules governing split-waiver elections are too narrow insofar as they exclude acquisitions of stand-alone corporations, such rules also are too broad insofar as they apply to situations in which the acquired member was the common parent of a former group (whole-group

acquisitions). *See* § 1.1502–21(b)(3)(ii)(B) (allowing the acquiring group to make a general split-waiver election with respect to the portion of the carryback period for which the acquired member was ''a member of another group''); § 1.1502–21T(b)(3)(ii)(C)(*2*)(*v*) and (*ix*) (allowing the acquiring group to make a 2020 split-waiver election with respect to the portion of the carryback period for which the acquired member was ''a member of any former group''); § 1.1502–1(b) (defining the term ''member'' to include the common parent of the group).

For example, assume that P is the common parent of Group 1 in Years 1 and 2. At the beginning of Year 3, Group 2 acquires all the stock of P. In Year 6, Group 2 incurs a CNOL, a portion of which is attributable to P. In Year 7, Congress amends section 172 by extending the carryback period for NOLs arising in Year 6 to five years. Group 2 would be eligible to make either a general split-waiver election (if it filed the requisite statement with its Federal income tax return for Year 3) or one of the 2020 split-waiver elections. The commenter contended that a split-waiver election should not be available in such a situation because disputes regarding NOL carrybacks should not arise between the former group and the acquiring group (which controls the former group after the acquisition).

The changes recommended by the commenter, if adopted, would necessitate revisions not only to the 2020 split-waiver elections, but also to the general split-waiver election provisions in § 1.1502–21(b)(3)(ii)(B). Both the general split-waiver election and the 2020 split-waiver elections may be made only with respect to the portion of the carryback period for which the acquired member was a member of a former group. Moreover, both the general split-waiver election and the 2020 split-waiver elections may apply to situations in which the acquired member was the common parent of a former group (that is, whole-group acquisitions). Consequently, after considering the comment, the Treasury Department and the IRS have determined that the scope of the changes suggested by the commenter exceed the scope of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations.

Thus, as noted in part I of the Background, the Treasury Department and the IRS have concluded that the split-waiver election provisions provided by the 2020 proposed regulations should be adopted without substantive change. The Treasury Department and the IRS continue to study the commenter's recommendations for purposes of potential future guidance. Accordingly, the final regulations contained in this Treasury decision adopt the provisions of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations without substantive change.

Although no substantive changes are made to the rules of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations, the final regulations make the following non-substantive changes to incorporate those rules into § 1.1502–21(b) and to improve readability: (1) the provisions of § 1.1502–21(b)(3)(ii)(A) have been redesignated as § 1.1502–21(b)(3)(ii); (2) the provisions of § 1.1502–21(b)(3)(ii)(B) have been redesignated as § 1.1502–21(b)(4); (3) the provisions of § 1.1502–21(b)(3)(ii)(C) and (D) of the 2020 proposed regulations have been redesignated as § 1.1502–21(b)(5) and (6); (4) the provisions of § 1.1502–21(b)(3)(iii) have been redesignated as § 1.1502–21(b)(7); (5) the provisions of § 1.1502–21(b)(3)(iv) and (v) have been removed; and (6) corresponding perfecting edits have been made.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, *Review of Treasury Regulations under Executive Order 12866* (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The collections of information in these final regulations are in § 1.1502–21(b)(5)(v)(A) and (B). The information is required to inform the IRS on whether, and to what extent, an acquiring group makes either of the elections described in these final regulations.

The collection of information provided by these final regulations has been approved by the Office of Management and Budget (OMB) under control number 1545–0123. For purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), the reporting burden associated with the collection of information in Form 1120, *U.S. Corporation Income Tax Return,* will be reflected in the PRA Submission associated with OMB control number 1545–0123.

In general, if the acquiring group makes an election under § 1.1502–21(b)(5), the acquiring group is required to attach a separate statement to its Form 1120 as provided in § 1.1502–21(b)(5)(v)(A) and (B), respectively. This statement must be filed as provided in § 1.1502–21(b)(5)(vi).

The following table displays the number of respondents estimated to be required to report on Form 1120 with respect to the collections of information required by these final regulations. Due to the absence of historical tax data, direct estimates of the number of respondents required to attach a statement to other types of tax returns, as applicable, are not available.

	Number of respondents (estimated)
Amended Statute Split-Waiver Election & Extended Split-Waiver Election	
Form 1120	17,500

Source: RAAS:CDW.

The numbers of respondents in the table were estimated by the Research, Applied Analytics, and Statistics Division (RAAS) of the IRS from the Compliance Data Warehouse (CDW). Data for Form 1120 represents estimates of the total number of taxpayers that may attach an election statement to their Form 1120 to make the elections in § 1.1502–21(b)(5)(v)(A) and (B).

It is estimated that 17,500 consolidated entities will be required to attach a statement under these final regulations. The burden estimates associated with the information collections in these final regulations are included in aggregated burden estimates for the OMB control number 1545–0123. The burden estimates provided in the OMB control numbers in the following table are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include, but not isolate, the estimated burden of those information collections associated with these final regulations. To guard against over-counting the burden that consolidated tax provisions imposed prior to § 1.1502–21, the Treasury Department and the IRS urge readers to recognize that these burden estimates have also been cited by regulations that rely on the applicable OMB control numbers in order to collect information from the applicable types of filers.

Form	Type of filer	OMB No(s).	Status
Form 1120	Corporation	1545–0123	Published in the **Federal Register** on 12/22/2022. Public Comment period closed on 01/19/2023. Approved by OMB through 12/31/2023.
	Link: *https://www.federalregister.gov/documents/2022/12/20/2022-27628/comment-request-us-business-income-tax-returns.*		

Source: RAAS:CDW.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. This certification is based on the fact that these final regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120, *U.S. Corporation Income Tax Return.* However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these final regulations will not create additional obligations for, or impose an economic impact on, small entities, and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments on that notice of proposed rulemaking were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

VII. Congressional Review Act

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

Drafting Information

The principal author of these final regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–21 is amended by:

■ 1. Removing the language ''paragraph (b)(3)(iii)'' in paragraph (b)(2)(iii) and adding the language ''paragraph (b)(7)'' in its place.

■ 2. Revising paragraph (b)(3).

■ 3. Adding paragraphs (b)(4) through (7).

■ 4. Removing the language ''(b)(3)(ii)(B)'' in paragraph (h)(5) and adding the language ''(b)(4)'' in its place.

■ 5. Revising paragraph (h)(9).

The additions and revisions read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(3) *Election to relinquish entire carryback period*—(i) *In general.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraphs (b)(4) and (5) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement titled ''THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT.'' The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(ii) *Groups that include insolvent financial institutions.* For rules applicable to relinquishing the entire carryback period with respect to losses attributable to insolvent financial

institutions, *see* § 301.6402–7 of this chapter.

(4) *General split-waiver election.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement titled ''THIS IS AN ELECTION UNDER § 1.1502–21(b)(4) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].'' The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

(5) *Split-waiver elections to which amended carryback rules apply*—(i) *In general.* An acquiring group may make either (but not both) an amended statute split-waiver election or an extended split-waiver election with respect to a particular amended carryback CNOL. These elections are available only if the statutory amendment to the carryback period referred to in paragraph (b)(5)(ii)(D) of this section occurs after the date of acquisition of an acquired member. A separate election is available for each taxable year to which amended carryback rules apply. An acquiring group may make an amended statute split-waiver election or an extended split-waiver election only if the acquiring group, with regard to that election—

(A) Satisfies the requirements in paragraph (b)(5)(iii) of this section; and

(B) Follows the procedures in paragraphs (b)(5)(v) and (vi) of this section, as relevant to that election.

(ii) *Definitions.* The definitions provided in this paragraph (b)(5)(ii) apply for purposes of paragraphs (b)(5) and (6) of this section.

(A) *Acquired member.* The term *acquired member* means a member of a consolidated group that joins another consolidated group.

(B) *Acquiring group.* The term *acquiring group* means a consolidated group that has acquired a former member of another consolidated group (that is, an acquired member).

(C) *Amended carryback CNOL.* The term *amended carryback CNOL* means the portion of a CNOL attributable to an acquired member (determined pursuant to paragraph (b)(2)(iv)(B) of this section) arising in a taxable year to which amended carryback rules apply.

(D) *Amended carryback rules.* The term *amended carryback rules* means the rules of section 172 of the Code after amendment by statute to extend the carryback period for NOLs attributable to an acquired member (determined pursuant to paragraph (b)(2)(iv)(B) of this section).

(E) *Amended statute split-waiver election.* The term *amended statute split-waiver election* means, with respect to any amended carryback CNOL, an irrevocable election made by an acquiring group to relinquish the portion of the carryback period (including the default carryback period and the extended carryback period) for that loss during which an acquired member was a member of any former group.

(F) *Amended statute split-waiver election statement.* The term *amended statute split-waiver election statement* has the meaning provided in paragraph (b)(5)(v)(A) of this section.

(G) *Default carryback period.* The term *default carryback period* means the NOL carryback period existing at the time the acquiring group acquired the acquired member, before the applicability of amended carryback rules.

(H) *Extended carryback period.* The term *extended carryback period* means the additional taxable years added to a default carryback period by any amended carryback rules.

(I) *Extended split-waiver election.* The term *extended split-waiver election* means, with respect to any amended carryback CNOL, an irrevocable election made by an acquiring group to relinquish solely the portion of the extended carryback period (and no part of the default carryback period) for that loss during which an acquired member was a member of any former group.

(J) *Extended split-waiver election statement.* The term *extended split-waiver election statement* has the meaning provided in paragraph (b)(5)(v)(B) of this section.

(K) *Former group.* The term *former group* means a consolidated group of which an acquired member previously was a member.

(iii) *Conditions for making an amended statute split-waiver election or an extended split-waiver election.* An acquiring group may make an amended statute split-waiver election or an extended split-waiver election (but not both) with respect to an amended carryback CNOL only if—

(A) The acquiring group has not filed a valid election described in paragraph (b)(4) of this section with respect to the acquired member on or before the effective date of the amended carryback rules;

(B) The acquiring group has not filed a valid election described in section 172(b)(3) and paragraph (b)(3)(i) of this section with respect to a CNOL of the acquiring group from which the amended carryback CNOL is attributed to the acquired member;

(C) Any other corporation joining the acquiring group that was affiliated with the acquired member immediately before the acquired member joined the acquiring group is included in the waiver; and

(D) A former group does not claim any carryback (as provided in paragraph (b)(5)(iv) of this section) to any taxable year in the carryback period (in the case of an amended statute split-waiver election) or in the extended carryback period (in the case of an extended split-waiver election) with respect to the amended carryback CNOL on a return or other filing filed on or before the date the acquiring group files the election.

(iv) *Claim for a carryback.* For purposes of paragraph (b)(5)(iii)(D) of this section, a carryback is claimed with respect to an amended carryback CNOL if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the NOL in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on the period provided for in the amended carryback rules.

(v) *Procedures for making an amended statute split-waiver election or an extended split-waiver election*—(A) *Amended statute split-waiver election.* An amended statute split-waiver election must be made in a separate amended statute split-waiver election

statement titled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21(b)(5)(i) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]''. The amended statute split-waiver election statement must be filed as provided in paragraph (b)(5)(vi) of this section.

(B) *Extended split-waiver election.* An extended split-waiver election must be made in a separate extended split-waiver election statement titled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21(b)(5)(i) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]''. The extended split-waiver election statement must be filed as provided in paragraph (b)(5)(vi) of this section.

(vi) *Time and manner for filing statement*—(A) *In general.* Except as otherwise provided in paragraph (b)(5)(vi)(B) or (C) of this section, an amended statute split-waiver election statement or extended split-waiver election statement must be filed with the acquiring group's timely filed consolidated return (including extensions) for the year during which the amended carryback CNOL is incurred.

(B) *Amended returns.* This paragraph (b)(5)(vi)(B) applies if the date of the filing required under paragraph (b)(5)(vi)(A) of this section is not at least 150 days after the date of the statutory amendment to the carryback period referred to in paragraph (b)(5)(ii)(D) of this section. Under this paragraph (b)(5)(vi)(B), an amended statute split-waiver election statement or extended split-waiver election statement may be attached to an amended return filed by the date that is 150 days after the date of the statutory amendment referred to in paragraph (b)(5)(ii)(D) of this section.

(C) *Certain taxable years beginning before January 1, 2021.* This paragraph (b)(5)(vi)(C) applies to taxable years beginning before January 1, 2021, for which the date of the filing required under paragraph (b)(5)(vi)(A) of this section precedes November 30, 2020. Under this paragraph (b)(5)(vi)(C), an amended statute split-waiver election statement or extended split-waiver election statement may be attached to an amended return filed by November 30, 2020.

(6) *Examples.* The following examples illustrate the rules of paragraph (b)(5) of this section. For purposes of these examples: All affiliated groups file consolidated returns; all corporations are includible corporations that have calendar taxable years; each of P, X, and T is a corporation having one class of stock outstanding; each of P and X is the common parent of a consolidated group (P Group and X Group, respectively); neither the P Group nor the X Group includes an insolvent financial institution or an insurance company; no NOL is a farming loss; there are no other relevant NOL carrybacks to the X Group's consolidated taxable years; except as otherwise stated, the X Group has sufficient consolidated taxable income determined under § 1.1502–11 (CTI) to absorb the stated NOL carryback by T; T has sufficient SRLY register income within the X Group to absorb the stated NOL carryback by T; all transactions occur between unrelated parties; and the facts set forth the only relevant transactions.

(i) *Example 1: Computation and absorption of amended carrybacks*—(A) *Facts.* In Year 1, T became a member of the X Group. On the last day of Year 5, P acquired all the stock of T from X. At the time of P's acquisition of T stock, the default carryback period was zero taxable years. The P Group did not make an irrevocable split-waiver election under paragraph (b)(4) of this section to relinquish, with respect to all CNOLs attributable to T while a member of the P Group, the portion of the carryback period for which T was a member of the X Group (that is, a former group). In Year 7, the P Group sustained a $1,000 CNOL, $600 of which was attributable to T pursuant to paragraph (b)(2)(iv)(B) of this section. In that year, P did not make an irrevocable general waiver election under section 172(b)(3) and paragraph (b)(3)(i) of this section with respect to the $1,000 CNOL when the P Group filed its consolidated return for Year 7. In Year 8, legislation was enacted that amended section 172 to require a carryback period of five years for NOLs arising in a taxable year beginning after Year 5 and before Year 9.

(B) *Analysis.* As a result of the amended carryback rules enacted in Year 8, the P Group's $1,000 CNOL in Year 7 must be carried back to Year 2. Therefore, T's $600 attributed portion of the P Group's Year 7 CNOL (that is, T's amended carryback CNOL) must be carried back to taxable years of the X Group. *See* paragraphs (b)(1) and (b)(2)(i) of this section. To the extent T's amended carryback CNOL is not absorbed in the X Group's Year 2 taxable year, the remaining portion must be carried to the X Group's Year 3, Year 4, and Year 5 taxable years, as appropriate. *See id.* Any remaining portion of T's amended carryback CNOL is carried to consolidated return years of the P Group. *See* paragraph (b)(1) of this section.

(ii) *Example 2: Amended statute split-waiver election*—(A) *Facts.* The facts are the same as in paragraph (b)(6)(i)(A) of this section (*Example 1*), except that, following the change in statutory carryback period in Year 8, the P Group made a valid amended statute split-waiver election under paragraph (b)(5)(i) of this section to relinquish solely the carryback of T's amended carryback CNOL.

(B) *Analysis.* Because the P Group made a valid amended statute split-waiver election, T's amended carryback CNOL is not eligible to be carried back to any taxable years of the X Group (that is, a former group). However, the amended statute split-waiver election does not prevent T's Year 7 amended carryback CNOL from being carried back to years of the P group (that is, the acquiring group) during which T was a member. *See* paragraph (b)(5)(ii)(E) of this section. As a result, the entire amount of T's amended carryback CNOL is eligible to be carried back to taxable Year 6 of the P Group. Any remaining CNOL may then be carried over within the P Group. *See* paragraph (b)(1) of this section.

(iii) *Example 3: Computation and absorption of extended carrybacks*—(A) *Facts.* The facts are the same as in paragraph (b)(6)(i)(A) of this section (*Example 1*), except that the X Group had $300 of CTI in Year 4 and $200 of CTI in Year 5 and, at the time of the P Group's acquisition of T, the default carryback period was two years. Therefore, T's $600 attributed portion of the P Group's Year 7 CNOL was required to be carried back to the X Group's Year 5 taxable year, and the X Group was able to offset $200 of CTI in Year 5.

(B) *Analysis.* As a result of the amended carryback rules, the X Group must offset its $300 of CTI in Year 4 against T's amended carryback CNOL. *See* paragraphs (b)(1) and (b)(2)(i) of this section. The remaining $100 ($600-$300-$200) of T's amended carryback CNOL is carried to taxable years of the P Group. *See* paragraph (b)(1) of this section.

(iv) *Example 4: Extended split-waiver election*—(A) *Facts.* The facts are the

same as in paragraph (b)(6)(iii)(A) of this section (*Example 3*), except that, following the change in law in Year 8, the P Group made a valid extended split-waiver election under paragraph (b)(5)(i) of this section to relinquish the extended carryback period for T's amended carryback CNOL for years in which T was a member of the X Group.

(B) *Analysis.* As a result of the P Group's extended split-waiver election, T's amended carryback CNOL is not eligible to be carried back to any portion of the extended carryback period (that is, any taxable year prior to Year 5). *See* paragraph (b)(5)(ii)(I) of this section. As a result, the X Group absorbs $200 of T's $600 loss in Year 5, and the remaining $400 ($600-$200) is carried to taxable years of the P Group. *See* paragraph (b)(1) of this section.

(7) *Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net operating loss may be carried.

* * * * *

(h) * * *

(9) *Amended carryback rules.* Paragraphs (b)(5) and (6) of this section apply to any CNOLs arising in a taxable year ending after July 2, 2020. However, taxpayers may apply paragraphs (b)(5) and (6) of this section to any CNOLs arising in a taxable year beginning after December 31, 2017.

* * * * *

§ 1.1502–21T [Removed]

■ **Par. 3.** Section 1.1502–21T is removed.

§ 1.1502–78 [Amended]

■ **Par. 4.** Section 1.1502–78 is amended by removing the language ''§ 1.1502–21(b)(3)(ii)(B)'' in paragraph (a) and adding the language ''§ 1.1502–21(b)(4)'' in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, amend the table in paragraph (b) by:

■ a. Revising the entry for ''§ 1.1502–21''; and

■ b. Removing the entry for ''§ 1.1502.21T''.

The revision reads as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–21	1545–0123
* * * * *	

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: June 21, 2023.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2023–14644 Filed 7–10–23; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0461]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters, located in Baltimore County, MD, during activities associated with an air show event which will be held on three separate occasions between July 14, 2023 and July 16, 2023. This rule prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

DATES: This rule is effective from 6 p.m. on July 14, 2023 through 4 p.m. on July 16, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0461 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows LLC of Clearfield, PA, notified the Coast Guard that they will be conducting the 2023 Tiki Lee's Shootout on the River Airshow from 7 p.m. to 8 p.m. on July 14, 2023, from 2 p.m. to 3 p.m. on July 15, 2023, and from 2 p.m. to 3 p.m. on July 16, 2023. High speed, low-flying civilian and military aircraft air show performers will operate within a designated, marked aerobatics box located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being held adjacent to Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and from near or actual collisions between waterway users and participants or spectator vessels if normal vessel traffic were allowed to interfere with the event. Additionally, these hazards could affect vessels in a designated navigation channel and adjacent to waterside residential communities if the locations of these activities were not restricted. In response to these potential hazards, on June 1, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Back River, Baltimore County, MD (88 FR 35802). There, we stated why we issued the NPRM to promulgate the special local regulation, which will be subject to enforcement beginning an hour before each show begins and ending an hour after it ends, and we invited comments on our proposed regulatory action related to this air show. During the comment period,

which ended July 3, 2023, we received no comments.

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**. Because there are less than 30 days between now and the date of the event, it would be impracticable and contrary to the public interest to make the regulation effective 30 days after publication in the **Federal Register**. Doing so would delay safety measures necessary to respond to potential safety hazards associated with this marine event. Immediate action is needed to protect participants, spectators, and other persons and vessels during the air show event on these navigable waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port, Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the air show being held on three occasions, occurring between July 14, 2023 and July 16, 2023, will be a safety concern for anyone operating within certain waters of Back River in Baltimore County, MD near the event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 1, 2023. Except for the addition of language stating the rule's effective period, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes special local regulations from 7 p.m. on July 14, 2023 through 4 p.m. on July 16, 2023. The regulated area will cover all navigable waters of Back River within an area bounded by a line connecting the following point: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This rule provides additional information about areas within the regulated area and their definitions. These areas include ''Aerobatics Box'' and ''Spectator Areas.''

The duration of the periods the special local regulations will be subject to enforcement, and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after activities associated with the air show, which is scheduled from 7 p.m. to 8 p.m. on July 14, 2023, from 2 p.m. to 3 p.m. on July 15, 2023, and from 2 p.m. to 3 p.m. on July 16, 2023. The COTP and the Coast Guard Event PATCOM have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area is required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2023 Tiki Lee's Shootout on the River Airshow participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Operators of vessels already at berth desiring to move those vessels when the event is subject to enforcement are required to obtain permission before doing so. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols is considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels are required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels will direct spectators to the designated spectator area. Only participant vessels will be allowed to enter the aerobatics box. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which will impact a small, designated area of Back River for the 9 total hours during which the rule will be subject to enforcement. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule allows vessels and persons to seek permission to enter the regulated area, and vessel traffic will be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.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 implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 9 total enforcement hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–0461 to read as follows:

§100.501T05–0461 2023 Tiki Lee's Shootout on the River Airshow, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Aerobatics Box.* The aerobatics box is a polygon in shape measuring approximately 5,000 feet in length by 1,000 feet in width. The area is bounded by a line commencing at position latitude 39°16′01.2″ N, longitude 076°27′05.7″ W, thence east to latitude 39°16′04.7″ N, longitude 076°26′53.7″ W, thence south to latitude 39°15′16.9″ N, longitude 076°26′35.2″ W, thence west to latitude 39°15′13.7″ N, longitude 076°26′47.2″ W, thence north to and terminating at the point of origin.

(3) *Spectator Areas.*—(i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15′20.16″ N, longitude 076°26′17.99″ W, thence west to latitude 39°15′17.47″ N, longitude 076°26′27.41″ W, thence north to latitude 39°16′18.48″ N, longitude 076°26′48.42″ W, thence east to latitude 39°16′25.60″ N, longitude 076°26′27.14″ W, thence south to latitude 39°15′40.90″ N, longitude 076°26′31.30″ W, thence

south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16′01.64″ N, longitude 076°27′11.62″ W, thence south to latitude 39°15′47.80″ N, longitude 076°27′06.50″ W, thence southwest to latitude 39°15′40.11″ N, longitude 076°27′08.71″ W, thence northeast to latitude 39°15′45.63″ N, longitude 076°27′03.08″ W, thence northeast to latitude 39°16′01.19″ N, longitude 076°27′05.65″ W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15′30.81″ N, longitude 076°27′05.58″ W, thence south to latitude 39°15′21.06″ N, longitude 076°26′56.14″ W, thence east to latitude 39°15′21.50″ N, longitude 076°26′52.59″ W, thence north to latitude 39°15′29.75″ N, longitude 076°26′56.12″ W, thence west to and terminating at the point of origin.

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

Aerobatics Box is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of an aerobatics box within the regulated area defined by this section.

Captain of the Port (COTP), Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the ''2023 Tiki Lee's Shootout on the River Airshow'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.*

(1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Effective period.* This section will be in effect from 6 p.m. on July 14, 2023 to 4 p.m. on July 16, 2023.

(f) *Enforcement periods.* This section will be subject to enforcement from 6 p.m. to 9 p.m. on July 14, 2023, from 1 to 4 p.m. on July 15, 2023, and from 1 to 4 p.m. on July 16, 2023.

Dated: July 6, 2023.

David E. O'Connell,

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

[FR Doc. 2023–14681 Filed 7–11–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AR81

Names for National Cemeteries and Features

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is removing its regulation concerning the naming of cemeteries and features because, after reviewing internal policy and processes, VA determined this regulation is obsolete and unnecessary.

DATES: *Effective Date:* This rule is effective August 11, 2023.

FOR FURTHER INFORMATION CONTACT: Michelle Myers, Management and Program Analyst, Legislative and Regulatory Service (42E), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone: (202) 717–2979 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On March 22, 2023, VA published a proposed rule in the **Federal Register** (88 FR 17169) that proposed to remove its regulation concerning the naming of cemeteries and features. The public comment period ended on May 22, 2023, and VA received no comments in response to the proposed rule. Since there were no comments, VA is removing 38 CFR 38.602.

Executive Orders 12866, 13563 and 14904

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is that the naming of national cemeteries and features is an internal operations function that only affects VA national cemeteries and did not require a regulation to effectuate. This rule revokes the existing regulation and will have no economic impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Congressional Review Act

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

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 3, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, and under the authority of 38 U.S.C. 501, the Department of Veterans Affairs amends 38 CFR part 38 as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

§ 38.602 [Removed]

■ 2. Remove § 38.602.

[FR Doc. 2023–14517 Filed 7–11–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2023–0286; FRL–10894–02–OAR]

Phasedown of Hydrofluorocarbons: Adjustment to the Hydrofluorocarbon Production Baseline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency is taking final action to correct the production baseline to reflect corrected calculations for the phasedown of hydrofluorocarbons pursuant to the American Innovation and Manufacturing Act.

DATES: This final rule is effective on September 11, 2023.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2023–0286. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. 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 is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–1230; or email address: *feather.john@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

SUPPLEMENTARY INFORMATION: Acronyms that are used in this rulemaking that may be helpful include:

AIM Act—American Innovation and Manufacturing Act of 2020
CAA—Clean Air Act
CBI—Confidential Business Information
CFR—Code of Federal Regulations
CRA—Congressional Review Act
e-GGRT—Electronic Greenhouse Gas Reporting Tool
EPA—U.S. Environmental Protection Agency
FR—Federal Register
GHGRP—Greenhouse Gas Reporting Program
GWP—Global Warming Potential
HFC—Hydrofluorocarbon
ICR—Information Collection Request
MTEVe—Metric Tons of Exchange Value Equivalent
NAICS—North American Industry Classification System
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act

RIA—Regulatory Impact Analysis
SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
UMRA—Unfunded Mandates Reform Act

Regulated Entities. You may be potentially affected by this action if you produce HFCs. Potentially affected categories, North American Industry Classification System (NAICS) codes, and examples of potentially affected entities are included in Table 1.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

I. Background

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (42 U.S.C. 7675). Subsection (e) of the AIM Act gives EPA authority to phase down the production and consumption of listed HFCs through an allowance allocation and trading program. Subsection (c)(1) of the AIM Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, that are covered by the statute's provisions, referred to as ''regulated substances'' under the Act. Congress also assigned an ''exchange value'' [1] [2] to each regulated substance (along with other chemicals that are used to calculate the baseline). The AIM Act requires EPA to phase down the consumption and production of the statutorily listed HFCs on an exchange value-weighted basis according to the schedule in subsection (e)(2)(C) of the AIM Act. The AIM Act requires that the EPA Administrator ensures the annual quantity of all regulated substances produced or consumed [3] in the United States does not exceed the applicable percentage listed for the production or consumption baseline.

To implement the directive that the production and consumption of regulated substances in the United States does not exceed the statutory targets, the AIM Act in subsection (e)(3) requires EPA to issue regulations establishing an allowance allocation and trading program to phase down the production and consumption of the listed HFCs. Under the terms of subsection (e)(2)(D)(ii), these allowances do not constitute a property right, but rather are limited authorizations for the production or consumption of regulated substances. Subsection (e)(2) of the Act has a general prohibition that no person [4] shall produce or consume a quantity of regulated substances in the United States without a corresponding quantity of allowances.

EPA published a final rule on October 5, 2021 (86 FR 55116; hereinafter called the Allocation Framework Rule), that, among other things, established the HFC production and consumption baselines and codified the phasedown schedule at 40 CFR 84.7. Unless otherwise stated in the sections included in this notice, EPA's corrections are based on the same interpretations of the AIM Act, and the Clean Air Act (CAA) as applicable under subsection (k) of the AIM Act, as discussed in the Allocation Framework Rule.

II. How is EPA correcting the production baseline?

Subsection (e)(1) of the AIM Act directs EPA to establish a production baseline and a consumption baseline and provides the equations for doing so. In the Allocation Framework Rule, EPA initially calculated and codified the production and consumption baselines according to the formulas outlined in subsection (e)(1) of the AIM Act. The AIM Act instructs EPA to calculate the production and consumption baseline by, among other things, using the average annual quantity of all regulated substances produced and consumed in the United States from January 1, 2011, through December 31, 2013. In subsection (e)(2)(C) of the AIM Act, Congress provided the HFC phasedown schedule measured as a percentage of the baseline. In the Allocation Framework Rule EPA codified the production and consumption baselines at 40 CFR 84.7(b)(2) and the total allowance quantities that could be allocated for each year at 40 CFR 84.7(b)(3). A complete description of EPA's process in developing the codified baseline figures can be found in the Allocation Framework Rule at 86 FR 55137–55142.

After EPA finalized the Allocation Framework Rule, one company informed EPA that the 2011 and 2012 HFC import data that it had reported to the Greenhouse Gas Reporting Program (GHGRP) and certified per 40 CFR 98.4(e)(1) as true, accurate, and complete under penalty of law, was, in fact, significantly more than its actual import quantities. The company submitted and certified revised reports to the GHGRP for the relevant years on March 16, 2022. Because EPA used the company's 2011 and 2012 HFC import data in the calculation of the consumption baseline, the Agency's calculated and codified consumption baseline was high. The company then submitted and certified revised reports. EPA verified the corrected data by reviewing the importer's invoices and comparing the reported data to import data provided by CBP. In a separate rulemaking, ''Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years'' (87 FR 66372, November 3, 2022), the Agency proposed to revise

[1] EPA has determined that the exchange values included in subsection (c) of the AIM Act are identical to the global warming potentials (GWPs) included in the Intergovernmental Panel on Climate Change (IPCC) (2007). EPA uses the terms ''global warming potential'' and ''exchange value'' interchangeably in this proposal.

[2] IPCC (2007): Solomon, S., D. Qin, M. Manning, R.B. Alley, T. Berntsen, N.L. Bindoff, Z. Chen, A. Chidthaisong, J.M. Gregory, G.C. Hegerl, M. Heimann, B. Hewitson, B.J. Hoskins, F. Joos, J. Jouzel, V. Kattsov, U. Lohmann, T. Matsuno, M. Molina, N. Nicholls, J. Overpeck, G. Raga, V. Ramaswamy, J. Ren, M. Rusticucci, R. Somerville, T.F. Stocker, P. Whetton, R.A. Wood and D. Wratt, 2007: Technical Summary. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA *https://www.ipcc.ch/report/ar4/wg1.*

[3] In the context of allocating and expending allowances, EPA interprets the word ''consume'' as the verb form of the defined term ''consumption.'' For example, subsection (e)(2)(A), states the phasedown consumption prohibition as ''no person shall . . . *consume* a quantity of a regulated substance without a corresponding quantity of consumption allowances.'' While a common usage of the word ''consume'' means ''use,'' EPA does not believe that Congress intended for everyone who, for example, charges an appliance or fills an aerosol can with an HFC to expend allowances.

[4] Under the Act's term, this general prohibition applies to any ''person.'' Because EPA anticipates that the parties that produce or consume HFCs—and that would thus be subject to the Act's production and consumption controls—are companies or other entities, we frequently use those terms to refer to regulated parties in this rule. Using this shorthand, however, does not alter the applicability of the Act's or regulation's requirements and prohibitions. Similarly, in certain instances EPA may use these terms interchangeably in this rule preamble, but such differences in terminology should not be viewed to carry a material distinction in how EPA interprets or is planning to apply the requirements discussed herein.

the consumption baseline and its associated phasedown schedule to account for corrected data. Specifically, EPA proposed to revise the consumption baseline from 303,887,017 metric tons of exchange value equivalent (MTEVe) to 300,257,386 MTEVe, a decrease of 3,629,631 MTEVe, to account for that error. The Agency also stated that it would include any additional verified data revisions from the 2011 through 2013 timeline in the revision to the consumption baseline. Because the erroneous data related only to imports, EPA did not propose to reopen the production baseline in that rulemaking.

As described in that proposal, EPA separately requested entities verify, and if necessary correct, the data [5] available to EPA on those entities' historic consumption activities from 2011 through 2021 for purposes of the AIM Act. EPA sent an electronic communication or letter to all entities that were known, or likely, to have had production or consumption activity of regulated substances from 2011 through 2021 that they had until September 26, 2022, to verify, and if necessary correct, the data available to EPA on those entities' historic consumption activities from 2011 through 2021.[6] EPA provided further notice through the aforementioned November 3, 2022 proposal of a final opportunity to submit corrected data to the Agency through the electronic Greenhouse Gas Reporting Tool (e-GGRT) by the close of the comment period on December 19, 2022, in the case that any entity with historic activity related to regulated substances from 2011 through 2021 did not receive a letter or electronic communication from EPA.

As part of EPA's review process of the data corrections and submissions while preparing to finalize the revised consumption baseline, EPA also identified an additional correction to be made to the baseline calculation necessary to maintain accuracy. Specifically, EPA reviewed offsite transformation and destruction totals reported by companies for the 2011–2013 period and made the following additional calculation steps:

(1) Eliminated redundant totals already reported elsewhere as onsite transformation and destruction

(2) eliminated redundant totals sent to another facility for destruction and that are already excluded from reported production because the gases are removed from the production process as a byproduct or other waste

(3) took the remaining reported offsite transformation and destruction totals and subtracted that from overall production.

Previously, offsite transformation and destruction totals had not been factored into the calculation as EPA did not have sufficient verification of this data. However, during this most recent review of the baseline calculation and underlying data, EPA was able to conduct additional data verification to determine the quantity of material sent offsite which was not reported elsewhere and therefore should be subtracted from total production. Specifically, for all companies with offsite transformation and destruction activity from 2011–2013, EPA reviewed reporting forms which identify the facility to which material was sent for offsite transformation or destruction. EPA then determined whether these recipient facilities separately report activity to 40 CFR part 98, subpart OO. If a recipient facility did not separately report destruction activity, EPA subtracted totals of material sent offsite for destruction from total production.

This corrected calculation step led to a corrected input that is used in both the production and consumption baselines since the same calculation step was used to determine both the production and consumption baselines in the Allocation Framework Rule. Accordingly, in this rulemaking EPA is correcting the codified production baseline and the associated phasedown schedule. Specifically, EPA is correcting the production baseline to be 382,535,439 MTEVe, down from the originally codified figure of 382,554,619 MTEVe. This correction of the production baseline amounts to a 0.005 percent change in the baseline. Once EPA applies the relevant phasedown step to the baseline and then allocates the resulting allowances among eligible recipients, the change in the production baseline is expected to have an extremely small effect on individual entities' allocations. This corrected production baseline starts affecting allowance allocations for calendar year 2024. Because of the prior framing of EPA's regulations, specifically the fact that there was no prior allocation methodology that would apply to calendar year 2024 allowances and beyond, no entities should have had a reasonable expectation of allowance allocation levels for any individual entity. Therefore, this alteration of the production baseline will not affect any reasonable reliance interests of the regulated communities.

Correcting the production baseline changes the total consumption cap in MTEVe for regulated substances in the United States in each year. Therefore, EPA is correcting the table of production and consumption limits at 40 CFR 84.7(b)(3) by replacing the previously codified total production values in Table 2, column 2 of this preamble with the corrected total production values in column 3.

TABLE 2—CORRECTED LIMIT OF TOTAL PRODUCTION ALLOWANCES

Year	Previously codified total production (MTEVe)	Corrected total production (MTEVe)
2024–2028	229,532,771	229,521,264
2029–2033	114,766,386	114,760,632
2034–2035	76,510,924	76,507,088
2036 and thereafter	57,383,193	57,380,316

III. Good Cause Findings

EPA is promulgating this rule as a final action without prior notice or opportunity for public comment because the good cause exception under APA section 553(b)(B), 5 U.S.C. 553(b)(B), applies here. If APA section 553(b)(B) did not apply, this rule would be subject to the rulemaking procedures

[5] These data were certified per 40 CFR 98.4(e)(1) by the importer as true and accurate under penalty of the CAA at the time of original submission.

[6] This request was for purposes of implementing the AIM Act. Nothing in this letter or in the complementary process described below relieves any entity of obligations under the GHGRP regulations codified in 40 CFR part 98. EPA notes that failure to submit a report or submitting a fraudulent report may be considered a violation of the CAA subject to penalties and fines.

in CAA section 307(d).[7] However, CAA section 307(d) does not apply ''in the case of any rule or circumstance referred to in [APA section 553(b)(B)]'' [8]—*i.e.,* the good cause exception noted above—making this rule subject to the rulemaking procedures in APA section 553 instead, other than subsection 553(b).[9] APA section 553(b)(B) allows an agency to promulgate a rule without providing prior notice and opportunity for public comment ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

EPA finds that there is good cause for promulgating this final rule without providing prior notice and an opportunity for public comment because providing such notice and opportunity for comment, with respect to the amendments promulgated in this action, is impracticable, unnecessary, and contrary to the public interest. The correction made through this rulemaking is necessary to maintain accuracy of EPA's internal processing of data used to calculate the AIM Act production baseline. The overall formula used to calculate the production baseline was defined by Congress in the statute, and therefore EPA has no discretion in the formula used to calculate the production baseline. Accordingly, there would be no purpose in seeking public comment on a formula prescribed by statute to calculate the production baseline.

The data that is input into this formula is based on individual company reports on historic production of HFCs. This is relevant to EPA's good cause finding for several reasons. First, company-level production data has been regulatorily determined to be CBI. As a result, company-specific data, including production data, used to establish the baselines are confidential and cannot be publicly released. As discussed in the Allocation Framework Rule (86 FR 55192), many of the data elements reported to 40 CFR part 98, subpart OO were determined to be, and are treated as, confidential by EPA (see, *e.g.,* 76 FR 30782, May 26, 2011; 76 FR 73886, November 29, 2011; 77 FR 48072, August 13, 2012, 78 FR 71904, November 29, 2013; and, 81 FR 89188, December 9, 2016).[10] Given the confidentiality of most data involved in the Agency's baseline calculation, EPA cannot release detailed demonstrations of the baseline calculation. This has limited the information provided in prior notices on EPA's baseline calculations such that under any rulemaking scenario, the public does not have full access to view the Agency's baseline calculations given the need to respect existing confidentiality determinations and governing regulations.

Second, EPA has already gone through significant effort to ensure that this historic production data is as accurate as possible. EPA published a notice of data availability concerning this specific data on February 11, 2021 (86 FR 9059). EPA also requested, and received, new and revised versions of the data at issue in this rulemaking in response to the notice of proposed rulemaking for the Allocation Framework Rule. As described earlier in this notice, EPA requested that entities verify, and if necessary correct, the data [11] available to EPA on those entities' historic production activities from 2011 through 2021 for purposes of the AIM Act. EPA sent an electronic communication or letter to all entities that were known, or likely, to have had production activity of regulated substances from 2011 through 2021 that they had until September 26, 2022, to verify, and if necessary correct, the data available to EPA on those entities' historic consumption activities from 2011 through 2021.[12] Therefore, there is no reasonable basis to expect correction to the baseline calculation inputs if EPA were to provide for notice and comment of this action.

Third, when EPA initially established the production baseline for the phasedown of HFCs, the Agency did so through a notice and comment rulemaking process. Accordingly, the public has already had an opportunity to review and comment on EPA's general approach to establishing the production baseline. This rulemaking simply corrects the baseline calculation to maintain accuracy.

EPA has also determined that it is in the public interest to correct the production baseline such that the change can take effect ahead of EPA's allocation of production allowances on or before October 1, 2023. Under the AIM Act, by October 1 of each calendar year EPA must calculate and determine the quantity of production and consumption allowances for the following year. The quantity of production allowances available each year is based on taking a percentage of the calculated baseline. The Agency intends to issue allowances for the 2024 calendar year no later than October 1, 2023. As noted in the Allocation Framework Rule, while the Kigali Amendment adopted under the Montreal Protocol has certain marked differences from the AIM Act, the two documents have a nearly identical list of HFCs to be phased down following the same schedule. The United States ratified the Kigali Amendment on October 31, 2022, and according to obligations pursuant to that ratification, provided the Secretariat to the Montreal Protocol with the country's calculated consumption and production baselines on April 28, 2023. The production baseline provided to the Secretariat matches the production baseline being finalized in this rulemaking. There are important policy reasons to align the operative production baselines for domestic and international purposes. If the production baseline correction is not effective by October 1, 2023, EPA would allocate 229,532,771 MTEVe production allowances. However, the United States would have an international obligation under the Kigali Amendment to not produce more than 229,521,264 MTEVe of HFCs. Unaligned production baselines would mean that the United States domestic system would allow for production of 11,507 MTEVe of HFCs beyond the international obligation. There would not be sufficient time to allow for public notice and comment on the correction to the production baseline made through this rulemaking for AIM Act purposes and still have the baseline correction effective in time for allocation of calendar year 2024 allowances. Therefore, EPA has determined it is contrary to public interest to provide an opportunity for comment in this instance.

Finally, as noted earlier in this notice, the alteration made to the production baseline is very small. Specifically, the

[7] The AIM Act provides that the Clean Air Act's § 307 ''shall apply to'' actions under the AIM Act ''as though [Section 7675] were expressly included in title VI'' of the Clean Air Act. 42 U.S.C. 7675(k)(1)(C). Clean Air Act Section 307(d) applies to ''promulgation or revision of regulations under subchapter VI of [the CAA].'' 307(d)(1)(I). See also CAA section 307(d)(3); 42 U.S.C. 7607(d)(3) (requiring publication of a proposed rule with an opportunity for public comment).

[8] See CAA section 307(d)(1); 42 U.S.C. 7607(d)(1).

[9] APA section 553(b) generally requires notice-and-comment rulemaking procedures unless, as here, an exception applies under section 553(b)(A) or (B). 5 U.S.C. 553(b).

[10] For a summary, see *https://www.epa.gov/sites/production/files/2020-09/documents/ghgrp_cbi_tables_for_suppliers_8-28-20_clean_v3_508c.pdf.*

[11] These data were certified per 40 CFR 98.4(e)(1) by the producer as true and accurate under penalty of the CAA at the time of original submission.

[12] This request was for purposes of implementing the AIM Act. Nothing in this letter or in the complementary process described below relieves any entity of obligations under the GHGRP regulations codified in 40 CFR part 98. EPA notes that failure to submit a report or reporting a fraudulent report may be considered a violation of the CAA subject to penalties and fines.

change is a 0.005 percent reduction in the production baseline. EPA does not anticipate that any stakeholder would be meaningfully affected by this baseline correction and therefore EPA has determined that providing notice and an opportunity for comment is unnecessary.

Thus, EPA finds good cause under APA section 553(b)(B) to take this final action without prior notice or opportunity for comment because providing notice and an opportunity for comment would be unnecessary, impracticable, and contrary to the public interest.

IV. Judicial Review

The AIM Act provides that certain sections of the CAA ''shall apply to'' the AIM Act and actions ''promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].'' 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Section 307(b)(1) provides, in part, that petitions for review must only be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

The final action herein noticed is ''nationally applicable'' within the meaning of CAA section 307(b)(1). The AIM Act imposes a national cap on the total number of allowances available for each year for all entities nationwide. 42 U.S.C. 7675(e)(2)(B)–(D). In this rulemaking, EPA is adjusting the production baseline from which the total number of production allowances is derived. In the alternative, to the extent a court finds the final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that the action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[13] In deciding to invoke this exception, the Administrator has taken into account a number of policy considerations, including his judgment regarding the benefit of obtaining the D.C. Circuit's authoritative centralized review, rather than allowing development of the issue in other contexts, in order to ensure consistency in the Agency's approach to allocation of production allowances in accordance with EPA's national regulations in 40 CFR part 84. The final action treats all affected entities consistently in how the 40 CFR part 84 regulations are applied. The Administrator finds that this is a matter on which national uniformity is desirable to take advantage of the D.C. Circuit's administrative law expertise and facilitate the orderly development of the basic law under the AIM Act and EPA's implementing regulations. The Administrator also finds that consolidated review of the action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different regulated entities. The Administrator also finds that a nationally consistent approach in this rulemaking constitutes the best use of agency resources. The Administrator is publishing his finding that the action is based on a determination of nationwide scope or effect in the **Federal Register** as part of this notice. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that the final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by September 11, 2023.

V. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0734. There are no additional or revisions to existing reporting or recordkeeping requirements associated with this rule, which simply corrects the production baseline.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA. This action will not impose any requirements on small entities because there are no small entities subject to this rule.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. EPA is not aware of tribal businesses engaged in activities that would be directly affected by this action. Based on the Agency's assessments, the Agency also does not believe that potential effects, even if direct, would be substantial. Accordingly, this action will not have substantial direct effects on 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the

[13] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

National Tribal Air Association and has shared information on this rulemaking through this and other fora.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As noted, the production baseline correction is only 0.005 percent so is not anticipated to have meaningful impact on children.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action applies to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act and Incorporation by Reference

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. EPA did extensive environmental justice analysis as part of the Allocation Framework Rule, which is documented in the preamble to that rulemaking and in the associated RIA.

This action is not likely to result in new disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate Change, Emissions, Imports, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, EPA is amending 40 CFR part 84 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

Subpart A [Amended]

■ 2. Amend § 84.7 by:

■ a. In paragraph (b)(1), removing the language ''382,554,619'' and adding in its place ''382,535,439'';

■ b. Revising the table in paragraph (b)(3) to read as follows:

§ 84.7 Phasedown schedule.

* * * * *

(b) * * *

(3) * * *

TABLE 2 TO PARAGRAPH (b)(3)

Year	Total production (MTEVe)	Total consumption (MTEVe)
(i) 2022–2023	344,299,157	273,498,315
(ii) 2024–2028	229,521,263	182,332,210
(iii) 2029–2033	114,760,632	91,166,105
(iv) 2034–2035	76,507,088	60,777,403
(v) 2036 and thereafter	57,380,316	45,583,053

[FR Doc. 2023–14189 Filed 7–11–23; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 88, No. 132
Wednesday, July 12, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1404; Project Identifier MCAI–2023–00451–T]

RIN 2120–AA64

Airworthiness Directives; Airworthiness Directives; MHI RJ Aviation ULC (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 all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by a report of missing insulation in the engine pylon area. This proposed AD would require, for certain airplanes, inspecting the engine pylon structure for discrepancies and repair if necessary. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate a new certification maintenance requirement (CMR) task. 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 August 28, 2023.

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–2023–1404; 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 service information identified in this NPRM, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; email: *thd.crj@mhirj.com;* website: mhirj.com.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Fatin Saumik, Aviation Safety Engineer, FAA, 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–2023–1404; Project Identifier MCAI–2023–00451–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 Fatin Saumik, Aviation Safety Engineer, FAA, 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, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–19, dated March 13, 2023 (Transport Canada AD CF–2023–19) (also referred to after this as the MCAI), to correct an unsafe condition on all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The MCAI states there was a report of a missing 12-inch piece of insulation in the 14th stage bleed ducts installed in both left hand (LH) and right hand (RH) engine pylon areas.

The FAA is proposing this AD to address missing insulation in the engine pylon area. The unsafe condition, if not addressed, could result in the bleed duct to radiate heat to the surrounding structure and, if not corrected, could lead to the loss of the structural integrity of the engine pylon and possible loss of the engine. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1404.

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023. This service information specifies procedures for doing a detailed visual inspection of spar FS654.50, spar FS672.20, and the firewall for discrepancies, including corrosion, cracks, web waviness or flatness and damaged fasteners.

The FAA reviewed MHI RJ Temporary Revision 2A–76, dated September 29, 2022. This service information specifies a new or more restrictive CMR task, number C36–12–133–01, ''Detailed Visual Inspection for missing insulation/heat shield on the 14th stage bleed duct, running through the pylon area between FS654 and FS672.''

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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. 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.

Proposed AD Requirements in This NPRM

This proposed AD would require, for certain airplanes, inspecting the engine pylon structure for discrepancies and repair if necessary. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate a new CMR task.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions 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)(1) of this proposed AD.

Differences Between This NPRM and the MCAI or Service Information

Part I of the Transport Canada AD does not include a corrective action requirement for the inspection of the spars and firewall specified in MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023. Paragraph 3.B.(2) of MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023, only specifies contacting the manufacturer and that the manufacturer will provide additional action. Therefore, this proposed AD specifies that corrective actions must be done if any discrepancies are found during the inspection required by paragraph (g) of the proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 338 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
6 work-hours × $85 per hour = $510	$0	$510	$172,380

* This table does not include the cost of revising the existing maintenance or inspection program.

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 agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

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:

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2023–1404; Project Identifier MCAI–2023–00451–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by a report of missing insulation in the engine pylon area. The FAA is issuing this AD to address missing insulation in the engine pylon area. The unsafe condition, if not addressed, could result in the bleed duct to radiate heat to the surrounding structure and, if not corrected, could lead to the loss of the structural integrity of the engine pylon and possible loss of the engine.

(f) Compliance

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

(g) Detailed Visual Inspection

For airplanes having serial numbers 7031, 7045, 7069, 7078, 7089, 7102, 7110, 7168, 7188, 7203, 7212, 7217, 7229, 7231, 7236, 7243, 7257, 7258, 7269, 7271, 7276, 7284, 7290, 7302, 7304, 7306, 7310, 7328, 7339, 7342, 7355, 7358, 7360, 7401, 7404, 7437, 7441,7448, 7458, 7474, 7476, 7479, 7495, 7502, 7503, 7517, 7527, 7530, 7532, 7548, 7551, 7574, 7575, 7579, 7582, 7586, 7588, 7599, 7600, 7606, 7609, 7623, 7632, 7648, 7657, 7658, 7664, 7667, 7674, 7681, 7682, 7683, 7687, 7715, 7727, 7743, 7748, 7749, 7750, 7758, 7760, 7769, 7780, 7810, 7817, 7818, 7821, 7822, 7857, 7859, 7871, 7873, 7889, 7892, 7895, 7909, 7912, 7913, 7920, 7922, 7923, 7926, 7929, 7932, 7935, 7937, 7954, 7961, 7964, and 8011: Within 48 months or 6,600 flight hours, whichever occurs first after the effective date of this AD, do a detailed visual inspection for discrepancies of spar FS654.50, spar FS672.20, and the firewall, in accordance with Section 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023. If any discrepancies are found, before further flight, repair using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada or MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(h) 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 MHI RJ Temporary Revision 2A–76, dated September 29, 2022, for certification maintenance requirements task number C36–12–133–01. The initial compliance time for doing the task is within 48 months or 6,600 flight hours, whichever occurs first after the effective date of this AD.

(i) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using MHI RJ Service Bulletin 601R–54–006, dated September 13, 2022.

(k) 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 manager, International Validation Branch, mail it to the address identified in paragraph (l)(2) of this AD or email 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 Transport Canada or MHI RJ Aviation ULC's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Additional Information

(1) Refer to Transport Canada AD CF–2023–19, dated March 13, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1404.

(2) For more information about this AD, contact Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(m) 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) MHI RJ Service Bulletin 601R–54–006, Revision A, dated May 24, 2023.

(ii) MHI RJ Temporary Revision 2A–76, dated September 29, 2022.

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; email: *thd.crj@mhirj.com;* website: *mhirj.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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 July 6, 2023.

Michael Linegang,

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

[FR Doc. 2023–14616 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1405; Project Identifier MCAI–2023–00381–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–04–16, which applies to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2023–04–16 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023–04–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2023–04–16 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, 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 August 28, 2023.

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–2023–1405; 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 is proposed for IBR in this NPRM, 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: *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email *tom.rodriguez@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–2023–1405; Project Identifier MCAI–2023–00381–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 Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email *tom.rodriguez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–04–16, Amendment 39–22363 (88 FR 20738, April 7, 2023) (AD 2023–04–16), for certain Dassault Aviation Model FALCON 900EX airplanes. AD 2023–04–16 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0141, dated July 7, 2022 (EASA AD 2022–0141), to correct an unsafe condition.

AD 2023–04–16 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2023–04–16 to address reduced structural integrity of the airplane. AD 2023–04–16 specifies that accomplishing the actions required by paragraph (g) or (i) of that AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05) for Dassault Aviation Model FALCON 900EX airplanes, serial number (S/N) 97, and S/Ns 120 and higher only. This proposed AD would therefore continue to allow that terminating action.

Actions Since AD 2023–04–16 Was Issued

Since the FAA issued AD 2023–04–16, EASA superseded AD 2022–0141 and issued EASA AD 2023–0047, dated March 2, 2023 (EASA AD 2023–0047) (referred to after this as the MCAI), for certain Dassault Aviation Model FALCON 900EX airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 15, 2022 must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1405.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0047. This service information specifies

new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2022–0141, dated July 7, 2022, which the Director of the Federal Register approved for incorporation by reference as of May 12, 2023 (88 FR 20738, April 7, 2023).

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 **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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced 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 retain all requirements of AD 2023–04–16. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2023–0047 already described, as proposed for incorporation by reference. Any differences with EASA AD 2023–0047 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions 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 (AMOC) according to paragraph (n)(1) 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 retain the IBR of EASA AD 2022–0141 and incorporate EASA AD 2023–0047 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0047 and EASA AD 2022–0141 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 2023–0047 or EASA AD 2022–0141 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 2023–0047 or EASA AD 2022–0141. Service information required by EASA AD 2023–0047 and EASA AD 2022–0141 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1405 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 144 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–04–16 to be $7,650 (90 work-hours × $85 per work-hour).

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.

The FAA estimates the total cost per operator for the new proposed actions 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:

■ a. Removing airworthiness directive 2023–04–16, Amendment 39–22363 (88 FR 20738, April 7, 2023); and

■ b. Adding the following new airworthiness directive:

Dassault Aviation: Docket No. FAA–2023–1405; Project Identifier MCAI–2023–00381–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

(1) This AD replaces AD 2023–04–16, Amendment 39–22363 (88 FR 20738, April 7, 2023) (AD 2023–04–16).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, serial number (S/N) 97 and S/Ns 120 and higher, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 15, 2022.

(d) Subject

Air Transport Association (ATA) of America Code: 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (j) of AD 2023–04–16, with a new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 15, 2021: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0141, dated July 7, 2022 (EASA AD 2022–0141). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2022–0141, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–04–16, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0141 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0141 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after May 12, 2023 (the effective date of AD 2023–04–16).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0141 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0141, or within 90 days after May 12, 2023 (the effective date of AD 2023–04–16), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0141 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0141 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2023–04–16, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0141.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0047, dated March 2, 2023 (EASA AD 2023–0047). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2023–0047

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0047.

(2) Paragraph (3) of EASA AD 2023–0047 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0047 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0047, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0047.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0047.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0047.

(m) Terminating Action for AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FALCON 900EX airplanes, S/N 97 and S/Ns 120 and higher only.

(n) 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 (o) 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 Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Additional Information

For more information about this AD, contact Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3226; email *tom.rodriguez@faa.gov.*

(p) 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.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2023–0047, dated March 2, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on May 12, 2023 (88 FR 20738, April 7, 2023).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0141, dated July 7, 2022.

(ii) [Reserved]

(5) For EASA ADs 2022–0141 and 2023–0047, 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 these EASA ADs on the EASA website: *ad.easa.europa.eu.*

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

(7) 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 July 6, 2023.

Michael Linegang,

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

[FR Doc. 2023–14617 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1397; Project Identifier MCAI–2023–00014–E]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca S.A.) 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 all Safran Helicopter Engines, S.A. (Safran) (type certificate previously held by Turbomeca S.A.) Model Arrius 2R engines. This proposed AD was prompted by reports of inconsistencies between the torque (TQ) and measured gas temperature (MGT) conformation values recorded in the avionics and the TQ and MGT conformation values recorded on the engine log cards following replacement of the M01 and M02 modules installed on the engine. This proposed AD would require a one-time check of the consistency between the TQ and MGT conformation values recorded in the avionics and the values recorded on the engine log cards, and, if necessary, recalibrating the values and updating the engine logs, 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 NPRM by August 28, 2023.

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–2023–1397; 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 service information that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1397.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@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–2023–1397; Project Identifier MCAI–2023–00014–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 Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. 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 2022–0265R1, dated January 6, 2023 (EASA AD 2022–0265R1) (referred to after this as the MCAI), to address an unsafe condition for all Safran Model Arrius 2R engines. The MCAI states that inconsistencies were reported between the TQ and MGT conformation values recorded in the avionics and the values recorded on the engine log cards following replacement of the M01 or M02 modules installed on the engine. This condition, if not corrected, could affect the engine power assurance check and lead to underestimated or overestimated TQ and MGT conformation values. Underestimated MGT conformation values could lead to an exceedance of the certified thermal limit of the high-pressure (HP) blades, possibly resulting in HP blade rupture with consequent sudden power loss and release of low-energy debris. Underestimated TQ conformation values could lead to overpassing the helicopter transmission limit. Overestimated TQ and MGT conformation values could lead to an electronic engine control unit embedded value that could result in power non-availability. Each of the above conditions could result in reduced control of the helicopter.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1397.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0265R1, which specifies instructions for a one-time check of the consistency between the TQ and MGT conformation values recorded in the avionics and the values recorded in the engine log cards, and, if necessary, recalibrating the values and updating the engine logs.

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**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that 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 MCAI, 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 since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0265R1 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0265R1 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 the EASA AD 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 2022–0265R1. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1397 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 145 engines installed on helicopters 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
Perform consistency check	1 work-hour × $85 per hour = $85	$0	$85	$12,325

The FAA estimates the following costs to do any necessary recalibration that would be required based on the results of the proposed consistency check. The agency has no way of determining the number of aircraft that might need recalibration:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Recalibrate conformation values and update records	1 work-hour × $85 per hour = $85	$0	$85

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:

Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.): Docket No. FAA–2023–1397; Project Identifier MCAI–2023–00014–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A. (type certificate previously held by Turbomeca S.A.) Model Arrius 2R engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7700, Engine Indicating System.

(e) Unsafe Condition

This AD was prompted by reports of inconsistencies between the torque (TQ) and measured gas temperature (MGT) conformation values recorded in the avionics and the TQ and MGT conformation values recorded on the engine log cards following replacement of the M01 or M02 modules installed on the engine. The FAA is issuing this AD to address inconsistencies between the TQ and MGT conformation values recorded. The unsafe condition, if not addressed, could result in reduced control of the helicopter due to one or more of the following: a power non-availability; a high-pressure blade rupture with consequent power loss and release of low-energy debris; or an overpassing of the helicopter transmission limit.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0265R1, dated January 6, 2023 (EASA AD 2022–0265R1).

(h) Exceptions to EASA AD 2022–0265R1

(1) Where EASA AD 2022–0265R1 refers to January 4, 2023 (the effective date of the original issue of AD 2022–0265), this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2022–0265R1.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0265R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the branch, 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) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0265R1, dated January 6, 2023.

(ii) [Reserved]

(3) For EASA AD 2022–0265R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on June 30, 2023.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–14469 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1399; Project Identifier MCAI–2022–01533–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–15–07, which applies to certain Rolls-Royce Deutschland Ltd & Co KG (RRD) (type certificate previously held by Rolls-Royce plc) Model RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36, and RB211–524H–T–36 engines. AD 2020–15–07 requires replacement of the low-pressure turbine (LPT) stage 1 disk with part number (P/N) UL37606, UL37607, UL37608, UL37722 or UL37790, installed. Since the FAA issued AD 2020–15–07, RRD determined that additional LPT stage 1 disks are affected by the unsafe condition, and updated the Aircraft Maintenance Manual (AMM) to add new component life limits. This proposed AD would retain the requirement to replace the LPT stage 1 disk and would include additional LPT stage 1 disks, 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 NPRM by August 28, 2023.

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–2023–1399; 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 service information that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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*. It is also available at *regulations.gov* under Docket No. FAA–2023–1399.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *Sungmo.D.Cho@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–2023–1399; Project Identifier MCAI–2022–01533–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 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 Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. 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 issued AD 2020–15–07, Amendment 39–21170 (85 FR 43682, July 20, 2020), (AD 2020–15–07), for RRD Model B211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36, and RB211–524H–T–36 engines with LPT stage 1 disks, part number (P/N) UL37606, UL37607, UL37608, UL37722 or UL37790, installed. AD 2020–15–07 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2020–0059, dated March 17, 2020 (EASA AD 2020–0059), to address an unsafe condition identified as an updated analysis by the engine manufacturer indicating that certain part-numbered and serial-numbered LPT stage 1 disks that have undergone rework could fail before the current published life limits.

AD 2020–15–07 requires replacement of the LPT stage 1 disk before it reaches its new Declared Safe Cycle Limit (DSCL) or within 25 flight cycles after the effective date of AD 2020–15–07, whichever occurs later. The FAA issued AD 2020–15–07 to prevent failure of the LPT stage 1 disk.

Actions Since AD 2020–15–07 Was Issued

Since the FAA issued AD 2020–15–07, EASA superseded EASA AD 2020–0059 and issued EASA AD 2022–0237, dated December 2, 2022 (EASA AD 2022–0237) (referred to after this as the MCAI). The MCAI states that further investigation by the manufacturer identified additional part numbered LPT stage 1 disks affected by the unsafe

condition. As a result of this finding, RRD published revised service information, which includes the additional affected LPT stage 1 disk part numbers.

The FAA is proposing this AD to prevent failure of the LPT stage 1 disk. This condition, if not addressed, could result in uncontained release of high-energy debris from the engine, in-flight shutdown of the engine, damage to the engine, and damage to the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1399.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0237, which specifies procedures for replacement of the LPT stage 1 disk and reducing the DSCL for LPT stage 1 disks. 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 **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that 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 retain none of the requirements of AD 2020–15–07. This proposed AD would include additional LPT stage 1 disks and require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of this proposed.

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 since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0237 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0237 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 the EASA AD 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 2022–0237. Service information required by the EASA AD for compliance will be available at regulations.gov under Docket No. FAA–2023–1399 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 18 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
Remove and replace LPT stage 1 disk.	120 work-hours × $85 per hour = $10,200	$30,000	$40,200	$723,600

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 that the 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:

■ a. Removing Airworthiness Directive 2020–15–07, Amendment 39–21170 (85 FR 43682, July 20, 2020); and

■ b. Adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd. & Co. KG: Docket No. FAA–2023–1399; Project Identifier MCAI–2022–01533–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 28, 2023.

(b) Affected ADs

This AD replaces AD 2020–15–07, Amendment 39–21170 (85 FR 43682, July 20, 2020).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co. KG (RRD) Model RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19, RB211–524H–36, and RB211–524H–T–36 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an updated analysis by the engine manufacturer, which indicates certain part-numbered and serial-numbered low-pressure turbine (LPT) stage 1 disks that have undergone rework could fail before the current published life limits. The FAA is issuing this AD to prevent failure of the LPT stage 1 disk. The unsafe condition, if not addressed, could result in uncontained release of high-energy debris from the engine, in-flight shutdown of the engine, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0237, dated December 2, 2022 (EASA AD 2022–0237).

(h) Exceptions to EASA AD 2022–0237

(1) Where EASA AD 2022–0237 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2022–0237.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety 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 (j) 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.

(j) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

(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 the AD specifies otherwise.

(i) European Union Aviation Safety Agency AD 2022–0237, dated December 2, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0237 contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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 FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on June 30, 2023.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–14468 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0219; FRL–8813–01–R3]

Air Plan Approval; Pennsylvania; Liberty Borough Area Second 10-Year PM_{10} Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Liberty Borough area second 10-year maintenance plan submitted by the Commonwealth of Pennsylvania Department of Environmental Protection (PADEP or Commonwealth) on behalf of the Allegheny County Health Department (ACHD). This plan addresses the second 10-year maintenance period after redesignation for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). A limited maintenance plan (LMP) is used to meet the Clean Air Act (CAA or the Act) requirements for formerly designated nonattainment areas that meet certain qualification criteria. EPA is proposing to determine that ACHD's second maintenance plan meets applicable CAA requirements. The plan relies upon control measures contained in the attainment plan and the first 10-year maintenance plan and the determination that the Liberty Borough area currently monitors PM_{10} levels well below the PM_{10} national ambient air quality standards (NAAQS or standard).

DATES: Written comments must be received on or before August 11, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0219 at *www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania

19103. The telephone number is (215) 814–5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 21, 2021, EPA received from PADEP, on behalf of ACHD, a revision to the Commonwealth's state implementation plan (SIP) for the Liberty Borough area.[1] The Liberty Borough area is comprised of the Boroughs of Liberty, Lincoln, Port Vue, and Glassport and the City of Clairton in Allegheny County, Pennsylvania. This action is expected to ensure that the Commonwealth of Pennsylvania meets CAA requirements. There is no information on the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

I. Background

On July 1, 1987, EPA promulgated two primary standards for PM_{10}: A 24-hour standard of 150 micrograms per cubic meter (μg/m^3) and an annual standard of 50 μg/m^3. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards.[2] Effective December 18, 2006, EPA revoked the annual PM_{10} standards but retained the 24-hour standards.[3] In this document, references to the PM_{10} NAAQS or PM_{10} standard refer to the 24-hour average standard of 150 μg/m^3, unless otherwise noted. Because they are identical, we refer to the primary and secondary 24-hour standards using the single term, NAAQS.

On November 15, 1990, amendments to the CAA were enacted, and pursuant to section 107(d)(4)(B) of the Act, the Liberty Borough area was designated nonattainment by operation of law.[4] To support an attainment demonstration, ACHD and the Commonwealth submitted to EPA several SIP revisions that included permanent and enforceable pollution controls in the Liberty Borough area, resulting in reduced ambient air quality concentrations.[5]

On September 8, 1998 (63 FR 47493), EPA finalized a determination that the Liberty Borough area had attained the PM_{10} NAAQS based on 1995–1997 air quality data. In that same action, EPA approved the attainment demonstration and contingency measures for the area, concluding that the Liberty Borough area attainment plan was sufficient to help the Liberty Borough area attain and maintain the NAAQS.

On October 28, 2002, the Commonwealth, on behalf of ACHD, submitted to EPA a redesignation request and maintenance plan for the Liberty Borough area. EPA redesignated the Liberty Borough area from nonattainment to attainment for the PM_{10} NAAQS and approved the maintenance plan for this first 10-year maintenance period on September 11, 2003 (68 FR 53515).[6] The first 10-year maintenance period ended in 2013 and the second 10-year maintenance plan, which is the subject of this proposed rulemaking, extends through 2023.

Since the redesignation request in 2002, ACHD has been operating an ambient PM_{10} monitoring network with monitors at four sites within the Liberty Borough area, in accordance with 40 Code of **Federal Register** (CFR) part 58. The Liberty Borough area PM_{10} monitors are the Lincoln monitor (air quality system (AQS) site ID 42–003–7003), the Liberty monitor (AQS site ID 42–003–0064),[7] the Glassport monitor (AQS site ID 42–003–3006), and the Clairton monitor (AQS site ID 42–003–3007). The Lincoln, Liberty, and Glassport monitors are Federal Equivalent Method (FEM) continuous monitors for PM_{10}. Liberty is also considered a multi-pollutant site with monitors for other air pollutants at the same site, including a Federal Reference Method (FRM) filter-based monitor for PM_{10}. The Clairton site has an FRM filter-based monitor.

II. Limited Maintenance Plan Option for PM_{10} Areas

A. Requirements for the Limited Maintenance Plan Option

Section 175A of the CAA sets forth the elements for maintenance plans. Under section 175A, a state or locality must submit a maintenance plan to demonstrate continued attainment of the applicable NAAQS for at least ten years after an area is redesignated to attainment. Eight years into the first maintenance period, the applicable state or local agency must submit a second maintenance plan demonstrating that the area will continue to attain for the following 10-year period. On September 4, 1992, EPA issued guidance on the content of a maintenance plan (Memorandum from John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (Calcagni Memo)).[8] The Calcagni Memo states that a maintenance plan should include the following provisions: (1) an attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM_{10} nonattainment areas (see Memorandum from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' (LMP Option Memo).[9] The LMP Option Memo contains a statistical demonstration air agencies can use to show that areas are meeting certain air quality criteria with a high degree of probability, and therefore will maintain the standard ten years into the future. By providing this statistical demonstration, EPA can consider the maintenance demonstration requirement of the CAA to be satisfied for the moderate PM_{10} nonattainment area meeting these air quality criteria. If the tests described in section IV of the LMP Option Memo are met, EPA will treat that as a demonstration that the area will maintain the NAAQS. Consequently, the state or local agency is not required to submit in its SIP certain future year emission inventories for these areas nor some of the standard transportation conformity analyses.

[1] In its SIP submission, ACHD refers to the area at issue as the Liberty-Clairton area. In this proposed rulemaking, EPA refers to this area as the Liberty Borough area to distinguish it from the Liberty-Clairton fine particulate matter ($PM_{2.5}$) area and to be consistent with what the Agency called the area in our approval of the first 10-year maintenance plan and attainment plan. See 63 FR 47343 (September 8, 1998) and 68 FR 53515 (September 11, 2003).

[2] 52 FR 24634 (July 1, 1987).

[3] 71 FR 61144 (October 17, 2006).

[4] On August 7, 1987 (56 FR 56694), EPA designated portions of Allegheny County as a PM_{10} nonattainment area due to measured violations of the 24-hour PM_{10} NAAQS (52 FR 29383). The publication announcing the nonattainment designation upon enactment of the 1990 CAA Amendments was published on March 15, 1991 (56 FR 11101). On November 6, 1991, the area was subsequently classified as moderate nonattainment under sections 107(d)(4)(B) and 188(a) of the CAA.

[5] 61 FR 29664 (June 12, 1996). 63 FR 47434 (September 8, 1998). 63 FR 32126 (June 12, 1998).

[6] Effective on October 14, 2003.

[7] The Liberty monitor site has two monitors, one is filter-based and the other is continuous.

[8] The Memorandum from the EPA's Air Quality Management Division Director to EPA Regional Air Directors entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' dated September 4, 1992 (Calcagni Memo) can be found at *www.epa.gov/sites/default/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.*

[9] The ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' can be found at *www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20010809_wegman_lmp_moderate_pm10_naa.pdf* and in the docket for this proposed rulemaking.

To qualify for the LMP option, the applicable state or local agency must demonstrate that the area meets the following criteria. First, the area should have attained the PM_{10} NAAQS. Second, the most recent five years of air quality data at all monitors in the area, referred to as the 24-hour average design value, should be at or below 98 $\mu g/m^3$. Third, the applicable state or local agency should expect only limited growth in on-road motor vehicle PM_{10} emissions and should have passed a motor vehicle regional emissions analysis test. Lastly, the LMP Option Memo identifies core provisions that must be included in all limited maintenance plans. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

B. Conformity Under the Limited Maintenance Option

The transportation conformity rule and the general conformity rule (set forth in 40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the on-road mobile emissions budget for the area.

While EPA's LMP option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without conforming to an emissions budget. Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much on-road mobile source emissions growth in that period that a violation of the PM_{10} NAAQS would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required.

While areas with maintenance plans approved under the LMP option are not subject to the budget test (see 40 CFR 93.109(e)), those areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state must document and ensure that:

a. Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

b. Transportation plans and projects comply with the fiscal constraint element as set forth in 40 CFR 93.108;

c. The MPO's interagency consultation procedures meet the applicable requirements of 40 CFR 93.105;

d. Conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

e. The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

f. Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

g. Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

If EPA approves the second 10-year LMP, the Liberty Borough area will continue to be exempt from performing a regional emissions analysis, but must meet project-level conformity analyses as well as the transportation conformity criteria described previously.

III. Review of the SIP Submittal

A. Qualifying for the Limited Maintenance Plan Option

As discussed in Section II.A. of this preamble, the LMP Option Memo outlines the requirements for an area to qualify for an LMP. First, the area should be attaining the PM_{10} NAAQS. The PM_{10} NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (40 CFR 50.6). EPA has evaluated recent ambient air quality data and the Liberty Borough area continues to attain the 24-hour standard for PM_{10}, not exceeding the standard on any day at any of the four monitoring sites for over ten years (2011–2021).[10] Table 1, in this document, shows the highest and second highest 24-hour PM_{10} concentrations measured at the five Liberty Borough area monitors from 2011–2021, all of which are consistently below the NAAQS of 150 $\mu g/m^3$.

TABLE 1—HIGHEST/SECOND HIGHEST ANNUAL 24-HOUR PM_{10} CONCENTRATIONS ($\mu g/m^3$) AT THE CLAIRTON, GLASSPORT, LIBERTY, AND LINCOLN MONITORS, 2011–2021[a]

Year	Clairton (FRM)	Glassport (FEM)	Liberty (FEM)	Liberty (FRM)	Lincoln (FEM)
2011	37/37	83/74	70/70	93/72	115/94
2012	34/32	91/72	71/66	73/72	84/75
2013	25/25	60/57	49/48	59/47	76/65
2014	39/32	64/52	63/50	64/55	70/56
2015	41/34	91/56	78/61	64/59	85/79
2016	46/27	68/49	65/63	70/62	93/84
2017	29/28	68/68	87/58	106/61	108/93
2018	27/21	57/48	54/53	50/50	83/67
2019	26/22	105/86	74/68	72/71	75/57
2020	31/24	46/45	49/48	39/38	73/71
2021	24/24	58/54	57/54	Shutdown 11/11/20	Shutdown 12/31/20

[a] Data provided by EPA's Air Quality System (AQS).

[10] There are four monitoring sites within the Liberty Borough area, three sites with one monitor each and one site with two monitors.

The second criteria for the PM_{10} LMP option is that the 24-hour average design value for the most recent five years of monitoring data must be at or below 98 μg/m³.[11] ACHD calculated the design values for the Liberty Borough area as the 3-year averages of the yearly second-highest 24-hour PM_{10} concentration at each monitoring site, which was provided through 2020 in Table A–10 in its July 2021 LMP SIP submittal.[12] [13] EPA looked at the most recent five years of 3-year averages from that table (2016–2020) [14] and determined that the Lincoln monitor showed the uppermost second-highest design value with a value of 85 μg/m³, well below the LMP Option Memo threshold of 98 μg/m³.

EPA used the table look-up procedure as one of the acceptable approaches for determining appropriate 24-hour PM_{10} design concentrations.[15] The Agency calculated the 5-year average design value for the Liberty Borough based on PM_{10} monitoring data from 2017 through 2021, the most recently available certified data from the Liberty Borough area monitoring sites.

For the tabular approach for the 24-hour PM_{10} standard, EPA first determined the total number of 24-hour PM_{10} concentrations at each monitoring site and the number of available 24-hour concentrations to determine which of the highest concentrations is chosen as the design concentration. Table 2, in this document, which is the tabular estimation taken from EPA's PM_{10} SIP Development Guideline, specifies which rank value corresponds to the probable annual maximum value.[16]

TABLE 2—TABULAR ESTIMATION OF PM_{10} DESIGN CONCENTRATIONS

Number of daily values	Data point used for design concentration
≤347	Highest Value.
348–695	Second Highest Value.
696–1042	Third Highest Value.
1043–1390	Fourth Highest Value.
1391–1738	Fifth Highest Value.
1739–2086	Sixth Highest Value.
2087–2434	Seventh Highest Value.
>2345	Eighth Highest Value.

With multiple monitoring sites, the highest PM_{10} concentrations at each site would have to be considered and a design concentration established for each location and the ''controlling'' design concentration for an area with multiple sites would be the highest values. For routine model applications with five full years of 24-hour concentration estimates, the PM_{10} design concentration of critical interest becomes the highest of the sixth-highest concentrations for the entire receptor network.

Tables 3, 4, and 5, in this document, provide the average design values based on the tabular estimation method for the three Liberty Borough area monitors that remained in operation through 2021. EPA averaged the design values two ways for each of these monitors. First, we conducted the 5-year design value by looking at the five years as a whole set. For example, we counted the number of samples that occurred between January 1, 2017 and December 31, 2021. Then, as guided by in Table 2, in this document, we found the appropriate data point from amongst the 5-year data set.

Alternatively, EPA also conducted the same process of reviewing the number of samples and finding the appropriate data point, but with each 3-year design value period for the following five years: 2017, 2018, 2019, 2020, and 2021. We then calculated the average of the five 3-year design values. The results can be found in Tables 3 through 5, in this document.

TABLE 3—PM_{10} AVERAGE DESIGN VALUE FOR THE CLAIRTON MONITOR (FRM), TABULAR ESTIMATION METHOD

Design value years	Number of daily samples	Data point used for design concentration	Limited maintenance plan average design value (μg/m³)	
2017–2021	290	Highest Value	31	
2015–2017	167	Highest Value	46	36.6
2016–2018	170	Highest Value	46	
2017–2019	173	Highest Value	29	
2018–2020	175	Highest Value	31	
2019–2021	177	Highest Value	31	

[11] While the 2001 PM_{10} LMP Option Memo refers to a June 1987 ''PM_{10} SIP Development Guideline'' document for methods in calculating design values for PM_{10}, neither document provides specific information on how to calculate a design value using five years of air quality data. In October 2022, after ACHD submitted its PM_{10} LMP for the Liberty Borough area, EPA gave further clarification of how to compute a design value using five years of air quality data in a document titled ''Guidance on the Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas.''

[12] ACHD took this method from EPA's NetAssess2020 tool for monitored network assessments. *https://sti-r-shiny.shinyapps.io/EPA_Network_Assessment/.*

[13] See Table A–10 of ACHD's July 21, 2021 LMP SIP located in the docket for this proposed rulemaking.

[14] The 3-year design values for 2016–2020 include the following years: 2014–2016 (2016 3-year design value); 2015–2017 (2017 3-year design value); 2016–2018 (2018 3-year design value); 2017–2019 (2019 3-year design value); and 2018–2020 (2020 3-year design value).

[15] The methods for calculating design values for PM_{10} are presented in a document entitled the ''PM_{10} SIP Development Guideline,'' EPA–450/2–86–001, June 1987.

[16] The look-up procedure is a tabular technique for determining what point on the empirical frequency distribution corresponds to a frequency of 1/365. By construction, the table look-up procedure tends to provide a design concentration slightly lower than would be derived using a continuous curve representing a theoretical frequency distribution for PM_{10} values. Additional explanation regarding the use of tabular estimation can be found in EPA's PM_{10} SIP Development Guideline document.

TABLE 4—PM_{10} AVERAGE DESIGN VALUE FOR THE GLASSPORT (FEM) MONITOR, TABULAR ESTIMATION METHOD

Design value years	Number of daily samples	Data point used for design concentration	Limited maintenance plan average design value (μg/m³)	
2017–2021	1797	Sixth Highest Value	59	
2015–2017	1084	Fourth Highest Value	68	62.6
2016–2018	1082	Fourth Highest Value	59	
2017–2019	1080	Fourth Highest Value	68	
2018–2020	1079	Fourth Highest Value	59	
2019–2021	1080	Fourth Highest Value	59	

TABLE 5—PM_{10} AVERAGE DESIGN VALUE FOR THE LIBERTY (FEM) MONITOR, TABULAR ESTIMATION METHOD

Design value years	Number of daily samples	Data point used for design concentration	Limited maintenance plan average design value (μg/m³)	
2017–2021	1799	Sixth Highest Value	57	
2015–2017	1051	Fourth Highest Value	63	59.6
2016–2018	1055	Fourth Highest Value	62	
2017–2019	1071	Fourth Highest Value	60	
2018–2020	1083	Fourth Highest Value	56	
2019–2021	1086	Fourth Highest Value	57	

As shown in Tables 3 through 5, in this document, all of the average design values determined using the table look-up method through 2021 are below the LMP option design value criteria of 98 μg/m³. The highest average values obtained using EPA's method were at the Glassport monitor (as seen in Table 4 in this document), but both methods of calculating average design value provided results well below 98 μg/m³. Therefore, EPA finds that the Liberty Borough area meets the design value criteria outlined in the LMP Option Memo.

Third, the area must meet the motor vehicle regional emissions analysis test described in the LMP Option Memo. The Commonwealth and ACHD submitted an analysis showing that growth of on-road mobile PM_{10} emissions was minimal and would not threaten the assumption of maintenance that underlies the LMP policy. Using EPA's methodology, ACHD calculated total projected growth in on-road motor vehicle PM_{10} emissions through 2031 [17] for the Liberty Borough area. This calculation is derived using Attachment B of the EPA's LMP Option Memo, where the projected percentage increase in vehicle miles traveled over the next ten years (VMT_{pi}) is multiplied by the on-road mobile portion of the attainment year inventory (DV_{mv}), including re-entrained road dust. This test is met when ($VMT_{pi} \times DV_{mv}$) plus the design value for the most recent five years of quality assured data is below the margin of safety (MOS) for the relevant PM_{10} standard in μg/m³ for a given area. This MOS value can be 98 μg/m³, as ACHD chose to use, or a site-specific value computed from data collected at the site of interest using methods outlined in Attachment A of the LMP Option Memo.

ACHD used the motor vehicle regional analysis methodology with the average design value of 85 μg/m³ for the Liberty Borough area using the highest 3-year design value for 2015, 2016, and 2017. Additionally, for the motor vehicle regional analysis calculation, ACHD used a VMT_{pi} of 3.6 percent and a DV_{mv} of 4.3 μg/m³. ACHD's motor vehicle regional emissions test analysis indicated a resulting value of 85.2 μg/m³, which is below the MOS of 98 μg/m³.[18] EPA reviewed the calculations in the Liberty Borough area LMP SIP submission and the Agency proposes to find that the area meets the motor vehicle regional emissions analysis test.

As described previously, the Liberty Borough area PM_{10} maintenance area meets the qualification criteria set forth in the LMP Option Memo and accordingly qualifies for the LMP option. To ensure these requirements continue to be met, ACHD commits to recalculating the design value on an annual basis through the end of 2023. The motor vehicle emissions test will also be recalculated annually using the updated maximum design value over the past five years for the area. If the test cannot be met (*i.e.,* the equation shows a value above the MOS), ACHD will submit a full maintenance plan for the area according to CAA 175A requirements within one year after the determination of the updated design values.

B. Attainment Inventory

Pursuant to the LMP Option Memo, an LMP SIP submission should include an emissions inventory, which can be used to demonstrate attainment of the relevant NAAQS. The inventory should represent emissions during the same 5-year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP option.

The redesignation request and first 10-year maintenance plan for the Liberty Borough area included a 1994 emissions inventory.[19] The inventory focused on stationary sources in Allegheny County and surrounding counties, as well as wood burning, public roads, and fugitive sources without permitted limits. Since the initial maintenance plan and redesignation request, many of the sources have lowered their permitted emissions rates of PM_{10} due to the installation of controls, equipment upgrades, fuel switches, as well as other factors, including shutting down. In the LMP SIP submittal, ACHD noted several of the emission reductions from over the

[17] Although this LMP applies to maintenance through 2023, ACHD still used ten years as the vehicle miles traveled (VMT) projection to be conservative. An interpolation of 2025 and 2035 VMT projections was calculated to project for the year 2031. Projections for Allegheny County were used to represent the area, since there are no projections specific to the Liberty Borough area.

[18] Additional information on the data and calculations used for ACHD's analysis can be found in ACHD's SIP submission which is located in the docket for this proposed rulemaking.

[19] The inventory was updated in 1999.

years, including several modifications at the United States Steel Corporation (USS) Mon Valley Works (MVW) Clairton Plant,[20] representing an overall reduction of 268 tons per year (tpy) of PM_{10} from the previous allowable inventory, as well as shutdowns at several large sources outside of the area that provided over 3,000 tpy of PM_{10} reductions from the previous allowable inventory.[21]

According to ACHD, the total reductions in permitted allowable rates since the initial redesignation request represent an almost 13,000 tpy overall reduction of PM_{10} allowable emissions. This is approximately 55 percent lower than the allowable inventory from the first 10-year maintenance period.

To illustrate the current emissions in the Liberty Borough area, ACHD's current LMP SIP submission included an inventory of actual emissions using base year 2017. ACHD refers to this as the ''Liberty Borough area maintenance emissions inventory.'' ACHD used the 2017 national emissions inventory (NEI), which was the most recent comprehensive inventory that was available to ACHD at the time it was preparing the LMP for the Liberty Borough area. The 2017 NEI is representative of the typical emissions during which continued attainment has occurred since the end of the Liberty Borough area's first 10-year maintenance plan period in 2013.[22] Table 6 includes the following four main categories from the 2017 inventory: Stationary point sources, area (nonpoint) sources, nonroad mobile sources, and on-road mobile sources.[23] Stationary point sources contribute the largest amount of primary PM_{10} emissions (82 percent) and its precursors (87 percent),[24] within the Liberty Borough area. Among all the stationary sources in the Liberty Borough area, the USS MVW Clairton Plant contributes the most PM_{10} primary and precursor emissions.

TABLE 6—LIBERTY BOROUGH AREA 2017 EMISSIONS INVENTORY

[tpy] [a]

Liberty borough area	PM_{10} [c]	SO_2	NO_X	VOCs	NH_3
Stationary Point Sources [b]	877.93	1,129.86	2,626.26	184.45	118.87
Area (Nonpoint) Sources [d]	175.07	4.01	95.80	275.23	9.85
Nonroad Mobile Sources [d]	4.33	0.10	37.83	33.19	0.09
Onroad Mobile Sources [d]	10.48	0.83	94.11	57.41	3.60
Total	1,067.81	1,134.80	2,854.00	550.28	132.41

[a] Taken from ACHD's PM_{10} LMP for the Liberty Borough area.
[b] Inventoried stationary sources within the Liberty Borough area include USS MVW Clairton Plant, Tech Met, Inc., Koppers Inc., and AKJ Steel Industries.
[c] Total primary PM_{10}.
[d] Since NEI emissions are located to the county-level, ACHD used the U.S. Census's estimates for the 2017 population percentage of the Liberty Borough area to scale down emissions from the total Allegheny County population.

1. Expected Emissions

In the July 21, 2021, second maintenance plan SIP submission, ACHD noted that there is little growth in emissions expected for the Liberty Borough area through the end of the maintenance period in 2023. ACHD attributes the lack of potential for emissions growth through 2023 to several factors, including a 2019 settlement agreement and order with USS MVW Clairton Plant that requires the facility to conduct upgrades and work practice enhancements through 2023.[25] ACHD provides additional information in their LMP submission regarding other programs and actions that will help to maintain or lower PM_{10} emissions in the Liberty Borough area.

2. PM_{10} SIP Controls

In accordance with the CAA, areas seeking to use the LMP approach for maintenance must have an attainment plan that has been approved by EPA. That LMP should clearly indicate that all controls that were relied on to demonstrate attainment will remain in place. The July 21, 2021, LMP SIP submission identifies the control strategies approved into the Liberty Borough area's attainment plan to bring the area into compliance. These controls were approved into the Pennsylvania SIP as permanent and enforceable measures and assisted the Liberty Borough area in attaining the PM_{10} NAAQS.[26] These controls are to remain in place for the duration of the second maintenance period.

The July 21, 2021 SIP submission meets EPA guidance for purposes of an attainment emissions inventory, and the emissions inventory data supports ACHD's conclusions that the existing control measures will continue to protect and maintain the PM_{10} NAAQS.

C. Maintenance Demonstration

ACHD provided a maintenance demonstration for the Liberty Borough area in the first 10-year maintenance plan, which EPA approved on September 11, 2003 (68 FR 53515). According to EPA's 2001 PM_{10} LMP Option Memo, if an area qualifies for the LMP option, EPA will treat that as a demonstration that the area will maintain the NAAQS and that, consequently, there is no need to model projected emissions over the maintenance period. Therefore, the Liberty Borough area is exempt from projecting emissions levels through the end date of the second 10-year maintenance plan.

D. Air Quality Monitoring Network

Once an area is redesignated, the applicable state or local agency must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify the attainment

[20] Mon Valley Works—Clairton Plant ''is an integrated steelmaking operation that includes four separate facilities: Clairton Plant, Edgar Thomson Plant, Irvin Plant and Fairless Plant.'' Taken from *www.ussteel.com/about-us/locations.*

[21] See the PADEP/ACHD's July 21, 2021 SIP submission, located in the docket for this proposed rulemaking, for additional changes to the initial emissions allowable inventory.

[22] Additional information on ACHD's actual inventory can be found in the SIP submission located in the docket for this proposed action.

[23] A more detailed version of the inventory can be found in Appendix A of PADEP/ACHD's July 2021 SIP submission.

[24] Precursors for PM_{10} include sulfur dioxide (SO_2), nitrogen oxides (NO_X), volatile organic compounds (VOCs), and ammonia (NH_3).

[25] Allegheny County Health Department Air Quality Program. Settlement Agreement and Order #19060.

[26] 61 FR 29664 (June 12, 1996) and 63 FR 32126 (June 12, 1998).

status of the area. ACHD has operated PM_{10} monitors according to 40 CFR part 58 requirements at four sites within the Liberty Borough area since submittal of the redesignation request in 2002. A description, as well as a map, of the four Liberty Borough area PM_{10} monitors can be found in ACHD's LMP plan.[27] On December 21, 2022, ACHD submitted its 2021 Annual Monitoring Network Plan, which EPA approved on February 24, 2023.[28] ACHD indicated in the Liberty Borough area second 10-year maintenance plan that it will continue to operate the air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area, with no changes to the existing network unless preapproved by EPA.

E. Verification of Continued Attainment

The level of the PM_{10} NAAQS is 150 $\mu g/m^3$, 24-hour average concentration. The NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one.[29] As stated in the previous section of this preamble, ACHD plans to continue to operate a regulatory monitoring network and will continue to track the attainment status of the Liberty Borough area for the PM_{10} NAAQS by reviewing monitored air quality concentrations during the maintenance period through 2023. ACHD will also continue to operate the air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area, with no changes to the existing network unless pre-approved by EPA. Included in its second 10-year maintenance plan SIP submission, ACHD evaluated the complete, quality-assured, maximum 24-hour PM_{10} concentrations at each Liberty Borough area monitor from 2001–2020 to verify continued attainment of the standard.

F. Contingency Provisions

Section 175A of the CAA states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the LMP Option Memo and the Calcagni Memo, these contingency provisions are an enforceable part of a federally approved SIP. The maintenance plan should clearly identify the events that would ''trigger'' the adoption and implementation of a contingency provision, the contingency provision(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state and/or locality would adopt and implement the provision(s). The LMP Option Memo and the Calcagni Memo state that EPA will determine the adequacy of a contingency plan on a case-by-case basis. At a minimum, it must require that the applicable state or local agency implement all measures contained in the CAA part D nonattainment plan for the area prior to redesignation.

In the Liberty Borough area PM_{10} LMP, ACHD indicated that the contingency provisions for the second 10-year maintenance plan are identical the contingency measures included in the area's attainment plan that was approved on September 8, 1998 (63 FR 47434). The contingency provisions include a requirement that the USS MVW Clairton Plant improve the capture of pushing emissions from its coke batteries. Within 60 days after determination of a violation of the 24-hour PM_{10} NAAQS at any Liberty Borough area monitor, the contingency measures will be implemented. No contingency provisions or measures have been triggered at any time since the attainment plan SIP was approved in 1998.

EPA proposes to determine that the contingency provisions submitted in the Liberty Borough area PM_{10} LMP are adequate to meet CAA section 175A requirements and the contingency provisions as outlined in the LMP Option Memo.

III. Proposed Action

EPA is proposing to approve the second 10-year PM_{10} limited maintenance plan for the Liberty Borough area. EPA has reviewed the air quality data for this area and determined that it continues to show attainment of the PM_{10} NAAQS and meets all the LMP requirements as described in this action. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. If finalized, EPA's approval of this LMP will satisfy the section 175A CAA requirements for PM_{10} for the second 10-year maintenance period for the Liberty Borough area.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (E.J.) as ''the fair treatment and meaningful involvement of all people regardless of race, color,

[27] Located in the docket for this proposed rulemaking. Docket No. EPA–R03–OAR–2023–0219, *www.regulations.gov.*

[28] EPA's approval letters for ACHD's past several Annual Monitoring Network Plans are included in the docket for this proposed rulemaking.

[29] See 40 CFR 50.6.

national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The ACHD did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an E.J. analysis and did not consider E.J. in this proposed rulemaking. Due to the nature of the proposed action being taken here, this proposed rulemaking is expected to have a neutral to positive impact on the air quality of the affected area.

In addition, this proposed rulemaking, regarding the second 10-year maintenance plan for the Liberty Borough PM_{10} area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator, Region III.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230629–0159]

RIN 0648–BL93

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 49

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 49 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). For greater amberjack, this proposed rule would revise the sector annual catch limits (ACLs), the commercial minimum size limit, the commercial seasonal trip limits, and the April spawning season closure. In addition, Amendment 49 would revise the overfishing limit (OFL), acceptable biological catch (ABC), annual optimum yield (OY), and sector allocations of the total ACL, as well as remove the recreational annual catch targets (ACTs) for species in the FMP. The purpose of this proposed rule and Amendment 49 is to ensure catch limits are based on the best scientific information available and to ensure overfishing does not occur for the South Atlantic greater amberjack stock, while increasing social and economic benefits.

DATES: Written comments must be received by August 11, 2023.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2023–0061'', by either 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–2023–0061'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Mary Vara, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments—enter ''N/A'' in the required fields if you wish to remain anonymous.

An electronic copy of Amendment 49, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/node/150641.*

FOR FURTHER INFORMATION CONTACT: Mary Vara, telephone: 727–824–5305, or email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery includes greater amberjack and is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires that NMFS and the regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

In 2008, a stock assessment for greater amberjack was completed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 15), and it was determined that the stock was not overfished or undergoing overfishing. As a result of that stock status, the Comprehensive ACL Amendment to the FMP (77 FR 15915, March 16, 2012) established the current total ACL and annual OY.

The most recent SEDAR stock assessment for South Atlantic greater amberjack (SEDAR 59) was completed in 2020. The assessment included data through 2018. The assessment used revised estimates for recreational catch from the Marine Recreational Information Program (MRIP) based on the Fishing Effort Survey (FES). In 2018, the MRIP fully transitioned its estimation of recreational effort from the Coastal Household Telephone Survey (CHTS) to the mail-based FES. Estimates of recreational catch for greater amberjack included in the previous assessment were made using the Marine Recreational Fisheries Statistics Survey (MRFSS) methodology. As explained in Amendment 49, total recreational fishing effort estimates generated from MRIP FES are different than those from the MRIP CHTS and MRFSS. This difference in estimates is because MRIP

FES is designed to more accurately measure fishing activity, not because there was a sudden change in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's Scientific and Statistical Committee (SSC), the Council, and NMFS, and more robust compared to the MRFSS method previously used to estimate recreational catches for greater amberjack. The SSC reviewed SEDAR 59 (2020) and found that the assessment was conducted using the best scientific information available, and was adequate for determining stock status and supporting fishing level recommendations. The findings of the assessment indicated that the South Atlantic greater amberjack stock is not overfished or undergoing overfishing.

Updated catch and data changes incorporated in the assessment provided information to update the OFL, ABC, annual OY, and ACLs. In response to the results of SEDAR 59 (2020), the Council subsequently developed Amendment 49.

In addition to the proposed revisions to the sector ACLs and seasonal commercial quotas, the Council determined that further modifications to greater amberjack management measures are needed to ensure that overfishing does not occur, while increasing social and economic benefits through sustainable harvest of greater amberjack in the South Atlantic exclusive economic zone (EEZ). The proposed rule would reduce the commercial minimum size limit, increase the season 2 (September 1 through the end of February) commercial trip limit, and revise the April spawning closure for greater amberjack. Amendment 49 would also make changes to the FMP by removing recreational ACTs from the FMP to make administrative efforts more efficient, since the Council has not used, and does not anticipate using, recreational ACTs for management.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the sector annual ACLs, seasonal commercial quotas, commercial minimum size limit, commercial Season 2 trip limit, and the April spawning closure for South Atlantic greater amberjack.

Total ACLs

As implemented through the final rule for the Comprehensive ACL Amendment, the current total ACL and annual OY for greater amberjack are equal to the current ABC of 1,968,001 lb (892,670 kg) round weight. The current ABC includes recreational estimates from the MRFSS. In Amendment 49, the Council revised the ABC based on SEDAR 59 and the recommendation of their SSC.

The fishing year for greater amberjack is March 1 through the end of February, requiring that ACL values are described as a combination of years. The proposed rule would revise the total ACL equal to the recommended ABC of 3,233,000 lb (1,466,464), round weight, for 2023–2024; 2,818,000 lb (1,278,223 kg), round weight, for 2024–2025; 2,699,000 lb (1,224,246), round weight, for 2025–2026; and 2,669,000 lb (1,210,638), round weight, for 2026–2027 and subsequent fishing years.

Sector Allocations and ACLs

Amendment 49 would revise the commercial and recreational allocations of the total ACL for greater amberjack. The current sector ACLs for greater amberjack are based on the current commercial and recreational allocations of the total ACL at 40.66 percent and 59.34 percent, respectively. The current allocations were established by applying the formula of sector ACL = ((mean landings 2006–2008) * 0.5)) + ((mean landings 1986–2008) * 0.5) to the landings dataset that were used in the Comprehensive ACL Amendment.

The revised greater amberjack sector allocations in Amendment 49 would result in commercial and recreational allocations of 35.00 percent and 65.00 percent, respectively. After considering various allocation alternatives, the Council proposed allocations based on their current allocation equation, updated estimates of recreational landings from the MRIP FES method, and a consideration of economic and social impacts to the commercial and recreational sectors. The proposed sector allocations are approximate midpoints between the current allocations, and the allocations that result from applying the current allocation formula to a revised dataset that is inclusive of MRIP–FES, which results in commercial and recreational allocations of the total ACL at 29.84 percent and 70.16 percent, respectively. While the Council increased the recreational allocation percentage to account for the increase in recreational catch estimates under the new MRIP FES estimation method, the Council chose to increase the recreational allocation to 65.00 percent, instead of 70.16 percent to account for potential adverse economic and social impacts to the commercial sector. Several recently completed stock assessments for other snapper-grouper species have indicated poor stock status and necessitated reduced harvest of these stocks, making greater amberjack potentially more important to the commercial sector. The proposed greater amberjack sector allocation percentages also approximate the average annual total landings percentages for each sector from 2010–2019.

The Council determined that the sector allocations in Amendment 49 would result in the most appropriate balance between the needs of both sectors to maximize harvest opportunities. The Council considers this revised allocation to be fair and equitable to fishery participants in both the commercial and recreational sectors. The Council determined that this allocation is also reasonably calculated to promote conservation and is a wise use of the resource, since it achieves OY and is based upon an ABC recommendation from their SSC that incorporates the best scientific information available. The Council acknowledged that the recreational sector would benefit with an increase to their allocation, and that the recreational sector management measures and accountability measures (AMs) are in place to prevent overages of the recreational ACL.

The commercial quota for greater amberjack is equivalent to the commercial ACL. The final rule for Regulatory Amendment 27 to the FMP established two commercial fishing seasons and divided the commercial quota between the seasons to lengthen the greater amberjack commercial season and allow for a more equitable distribution and price stability of the greater amberjack resource throughout the South Atlantic (85 FR 4588, January 27, 2020). Regulatory Amendment 27 allocated 60 percent of the commercial quota to Season 1 from March through August, and 40 percent of the quota to Season 2 from September through February. Any remaining commercial quota from Season 1 is added to the commercial quota in Season 2. Any remaining quota from Season 2 is not carried forward into the next fishing year. This proposed rule would not alter the current fishing seasons or seasonal allocations of the commercial ACL.

Currently, the commercial ACL is 769,388 lb (348,989 kg), gutted weight. The commercial Season 1 quota is 461,633 lb (209,393 kg), gutted weight. The commercial Season 2 quota is 307,755 lb (139,595 kg), gutted weight.

This proposed rule would revise the commercial ACLs to be 1,088,029 lb (493,522 kg), gutted weight, for 2023–2024; 948,365 lb (430,171 kg), gutted weight, for 2024–2025; 908,317 lb

(412,006 kg), gutted weight, for 2025–2026; and 898,221 lb (407,426 kg), gutted weight, for 2026–2027 and subsequent fishing years.

The commercial Season 1 quotas would be 652,817 lb (296,113 kg), gutted weight, for 2023–2024; 569,019 lb (258,103 kg), gutted weight), for 2024–2025; 544,990 lb (247,203 kg), gutted weight, for 2025–2026; and 538,933 lb (244,456 kg), gutted weight, for 2026–2027 and subsequent fishing years.

The commercial Season 2 quotas would be 435,212 lb (197,409 kg), gutted weight, for 2023–2024; 379,346 lb (172,068 kg), gutted weight, for 2024–2025; 363,327 lb (164,802 kg), gutted weight, for 2025–2026; and 359,288 lb (162,970 kg), gutted weight, for 2026–2027 and subsequent fishing years.

The current recreational ACL is 1,167,837 lb (529,722 kg), round weight. The recreational ACLs in the proposed rule would be 2,101,450 lb (953,202 kg), round weight, for 2023–2024; 1,831,700 lb (830,845 kg), round weight, for 2024–2025; 1,754,350 lb (795,760 kg), round weight, for 2025–2026; and 1,734,850 lb (786,915 kg), round weight, for 2026–2027 and subsequent fishing years.

Commercial Minimum Size Limit

The final rule for Amendment 4 to the FMP (56 FR 56016, October 31, 1991) implemented the current minimum size limit for the commercial sector of 36 inches (91.4 cm) fork length (FL).

This proposed rule would reduce the commercial minimum size limit to 34 inches (86.4 cm), FL. Consideration of a reduced commercial minimum size limit was recommended during public scoping (April 2021) and from the Council's Snapper-Grouper Advisory Panel (AP) at their April 2021 meeting. For similar reasons as those provided through public and AP comments, the Council determined that reducing the minimum size limit would reduce regulatory discards, reduce the risk of shark depredation, and more align with the greater commercial desirability for smaller fish. Additionally, the Council decided that a reduction to 34 inches (86.4 cm), FL, is not likely to jeopardize the current positive stock status, given other management constraints on the commercial sector such as in-season AMs, trip limits, and split season quotas.

Seasonal Commercial Trip Limits

The final rule for Regulatory Amendment 27 revised the commercial trip limit for greater amberjack to the current limits of 1,200 lb (544 kg) during Season 1, and 1,000 lb (454 kg) during Season 2 (in round or gutted weight).

This proposed rule would increase the Season 2 trip limit for greater amberjack to 1,200 lb (544 kg). After hearing a recommendation for this change from the Snapper-Grouper AP, the Council selected this option to have more regulatory consistency by having the same commercial trip limit throughout the year. Additionally, the Council acknowledged that the analyses considered in Amendment 49 indicate that under the 1,200 lb (544 kg) trip limit, the commercial sector is not expected to experience a closure in Season 2. The Council decided that having the same trip limit throughout the fishing year would best meet the purpose of revising the commercial trip limit to increase efficiency of commercial fishing for greater amberjack, while minimizing adverse social and economic effects.

April Spawning Closure

The peak spawning month for greater amberjack is during April and spawning aggregations are vulnerable to fishing effort during that time of the year. Due to the concerns of high catch rates of greater amberjack in spawning aggregations, the final rule for Amendment 4 to the FMP (56 FR 56016, October 31, 1991) implemented a spawning season closure for the commercial harvest of greater amberjack during April in which commercial fishermen were restricted to a 3 fish per person per day limit (the same as the recreational bag limit at the time). To further enhance the protection to spawning greater amberjack, the final rule for Amendment 9 to the FMP revised those commercial possession limits and sale/purchase restrictions (64 FR 3624, February 24, 1999). Currently, during April each year, for both the commercial and recreational sectors, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ and the harvest and possession limit is one per person per day or one per person per trip, whichever is more restrictive.

This proposed rule would revise the April spawning closure restrictions for both the commercial and recreational sectors from April 1 through April 30, and not allow any person to fish for, harvest, or possess a greater amberjack from the South Atlantic EEZ and the harvest and possession limits would be zero. The sale or purchase of greater amberjack would continue to be prohibited in April. The Council determined that additional protections were needed for greater amberjack during this portion of their peak spawning period (April-May), and that both sectors should fully participate in this effort by not allowing either sector to harvest greater amberjack.

Management Measures in Amendment 49 Not Codified by This Proposed Rule

In addition to the measures within this proposed rule, Amendment 49 would revise the OFL for greater amberjack and set the total ACL and annual OY equal to the ABC. The amendment would also revise the sector allocations as described above. Additionally, the use of the recreational ACT would also be removed for species managed under the FMP.

OFL, ABC, and Annual OY

As implemented through the Comprehensive ACL Amendment, the current OFL for greater amberjack is 2,005,000 lb (909,453 kg), round weight. The current total ACL and annual OY are equal to the ABC of 1,968,001 lb (892,670 kg), round weight. All of these current values include recreational landings for greater amberjack tracked using MRFSS estimation methods, and the Council's choice of these values was based on the recommendations of their SSC from the SEDAR 15 stock assessment (2008).

In 2021, the Council's SSC recommended to the Council new OFL and ABC levels based on SEDAR 59 (2020). As discussed above, SEDAR 59 and the associated OFL and ABC recommendations for greater amberjack incorporated the revised estimates for recreational catch and effort from the MRIP FES. The Council accepted the SSC's recommendations, and the Council's choice of new OFL and ABC values within Amendment 49 also represent the best scientific information available as determined by the Council's SSC and NMFS.

The Council chose to specify OY for greater amberjack on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

Recreational ACTs

Recreational ACTs for the species in the FMP, were established through the Comprehensive ACL Amendment to account for uncertainty in recreational catch estimates. They are calculated using the formula: ACT = ACL * [(1 − PSE) OR 0.5, whichever is greater], where ACL is the recreational ACL and PSE is the average of percent standard errors for recreational harvest estimates from the 5 most recent years of data. Recreational ACTs are not codified in the regulations, and are not currently used for management purposes.

However, because the recreational ACT is derived from the recreational ACL, the recreational ACT values have continued to be updated in the FMP when ACLs are changed.

This proposed rule would remove recreational ACTs for species managed under the FMP, from both individual species and complexes. Removing recreational ACTs from the FMP would make administrative efforts by the Council more efficient, since the Council has not actively used the ACTs, and does not anticipate using them for management in the FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 49, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule.

For greater amberjack, this proposed rule, if implemented, would (1) increase the total ACL, (2) increase the sector ACLs, (3) reduce the commercial minimum size limit, (4) increase the Season 2 commercial trip limit, and (5) revise the April spawning season closure. This proposed rule would also remove reference to ACTs within the FMP at 50 CFR 622.193. The proposed changes to the ACL, the sector ACLs, and the spawning closure would apply to all federally-permitted commercial vessels, federally-permitted charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest greater amberjack in Federal waters of the South Atlantic. The proposed changes to the commercial minimum size limit and commercial trip limits would only apply to commercial vessels. This proposed rule would not directly apply to federally-permitted dealers. Any change in the supply of greater amberjack available for purchase by dealers as a result of this proposed rule, and associated economic effects, would be an indirect effect of the proposed rule and would therefore fall outside the scope of the RFA.

Although several components of this proposed rule would apply to for-hire vessels, they would not be expected to have any direct effects on these entities. For-hire vessels sell fishing services to recreational anglers. The proposed changes to the greater amberjack management measures would not directly alter the services sold by these vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this proposed rule would be a consequence of a change in anglers' behavior, secondary to any direct effect on anglers and, therefore, an indirect effect of this proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA. Furthermore, for-hire captains and crew are allowed to retain greater amberjack under the recreational bag limit; however, they cannot sell these fish. As such, for-hire captains and crew are only affected as recreational anglers. The RFA does not consider recreational anglers to be small entities, so they are also outside the scope of this analysis (5 U.S.C. 603). Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)–(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on commercial vessels will be discussed.

As of August 26, 2021, there were 579 valid or renewable South Atlantic snapper-grouper unlimited permits and 112 valid or renewable 225-lb (102.1 kg) trip-limited permits. On average from 2015 through 2019, there were 242 federally-permitted commercial vessels with reported landings of greater amberjack in the South Atlantic. Their average annual vessel-level gross revenue from all species for 2015 through 2019 was $68,449 (2020 dollars) and greater amberjack accounted for approximately 7 percent of this revenue. For commercial vessels that harvest greater amberjack in the South Atlantic, NMFS estimates that economic profits are $2,738 (2020 dollars) or approximately 4 percent of annual gross revenue, on average. The maximum annual revenue from all species reported by a single one of the vessels that harvested greater amberjack from 2015 through 2019 was approximately $632,000 (2020 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all of its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would revise the total ACL for greater amberjack, based on the Council accepting their SSC's recommendations in response to the SEDAR 59 stock assessment. This catch limit would reflect a shift in recreational reporting units from the MRFSS, which was used in the previous stock assessment (SEDAR 15), to the MRIP FES. The proposed total ACL would be set equal to the ABC or 3,233,000 lb (1,466,464 kg), round weight, in the 2023–2024 fishing year, 2,818,000 lb (1,278,223 kg), round weight, in the 2024–2025 fishing year, 2,699,000 lb (1,224,246 kg), round weight, in the 2025–2026 fishing year, and 2,669,000 lb (1,210,638 kg), round weight, in the 2026–2027 and subsequent fishing years. Based on the current sector allocation percentages of 40.66 percent commercial and 59.34 percent recreational, the proposed total ACLs would represent an increase in the allocated commercial ACL for greater amberjack of 514,374 lb (233,316 kg), round weight, in the 2023–2024 fishing year, 345,635 lb (156,777 kg), round weight, in the 2024–2025 fishing year, 297,250 lb (134,830 kg), round weight, in the 2025–2026 fishing year, and 285,052 lb (129,297 kg), round weight, in the 2026–2027 and subsequent fishing years. However, as discussed below, this proposed rule would also modify the percentage of the total ACL that is allocated to the commercial sector and therefore economic effects to small entities are quantified as part of that discussion.

This proposed rule would decrease the commercial sector allocation from 40.66 percent of the total greater amberjack ACL to 35 percent. This, in conjunction with the proposed changes to the ACL, would result in a commercial ACL for greater amberjack of 1,088,029 lb (493,522 kg), gutted weight, in the 2023–2024 fishing year, 948,365 lb (430,171 kg), gutted weight, in the 2024–2025 fishing year, 908,317 lb (412,006 kg), gutted weight, in the 2025–2026 fishing year, and 898,221 lb (407,426 kg), gutted weight, in the 2026–2027 and subsequent fishing years. The commercial ACL in each fishing year would continue to be allocated 60 percent to Season 1 (March-August) and 40 percent to Season 2 (September-February) with any unharvested quota from Season 1 being carried over to Season 2. Relative to the status quo commercial ACL of 769,388 lb (348,989 kg), gutted weight, the proposed commercial ACLs would result in an increase in the commercial catch limit of 318,641 lb (144,533 kg), gutted weight, in the 2023–2024 fishing year, 178,977 lb (81,183 kg), gutted weight, in the 2024–2025 fishing year, 138,929 lb (63,017 kg), gutted weight, in the 2025–2026 fishing year, and 128,833 lb (58,438 kg), gutted weight, in the 2026–2027 and subsequent fishing years. If these increases in the ACL are fully harvested each year, they would result in an estimated increase in aggregate ex-vessel revenue of $570,367 (2020 dollars) in the 2023–2024 fishing year, $320,370 in the 2024–2025 fishing year, $248,683 in the 2025–2026 fishing year, and $230,611 in the 2026–2027 and subsequent fishing years. These benefits are changing over time and the time value of money concept suggests money earned sooner is more valuable than money earned later because of its earning potential. Therefore, when calculating an average annual effect, it is important to discount the future stream of benefits back to present time to account for an assumed rate of return on capital. The average annual net present value (NPV) of the potential increases in ex-vessel revenue from this proposed rule over a 5-year timeframe, using discount rates of 3 percent and 7 percent, would be approximately $306,000 (2020 dollars) and $290,000, respectively. Divided by the average annual number of commercial vessels that harvested greater amberjack during 2015 through 2019, the average annual NPV of changes in ex-vessel revenue would be $1,266 or $1,199 per vessel per year (approximately 1.8 percent of average annual per vessel gross revenue). The estimated average annual increase in economic profits per vessel would be approximately $50 (2020 dollars). NMFS notes, however, that based on recent 5-year average commercial greater amberjack landings (2015–2016 through 2019–2020 fishing years), which are less than the existing ACL, these benefits might not materialize unless commercial effort targeting greater amberjack increases. Also, individual vessels may experience varying levels of economic effects, depending on their fishing practices, operating characteristics, and profit maximization strategies.

This proposed rule would also decrease the commercial minimum size limit from 36 inches (91.4 cm), FL, to 34 inches (86.4 cm), FL. In general, a lower minimum size limit would be expected to increase overall greater amberjack harvest in the short-term and increase economic benefits received from such harvest. Due to a lack of sufficient data related to the size of discarded fish, these economic benefits cannot be quantified. NMFS does, however, expect that the proposed minimum size limit would facilitate greater utilization of the proposed commercial ACLs, thereby helping to realize the economic benefits described earlier.

In addition, this proposed rule would increase the September 1 through the end of February (Season 2) commercial trip limit for greater amberjack from 1,000 lb (454 kg) to 1,200 lb (544 kg)(in round or gutted weight). The March 1 through August 31 (Season 1) commercial trip limit, which currently is 1,200 lb (544 kg), would not change. The proposed increase of 200 lb (91 kg) to the Season 2 commercial trip limit would be expected to increase aggregate annual landings by 45,980 lb (20,856 kg), gutted weight, worth an estimated $82,304 (2020 dollars) in aggregate ex-vessel revenue (approximately $340 per vessel) and $3,292 in economic profits (approximately $14 per vessel). These expected increases in landings, ex-vessel revenue, and economic profits would not be additive to the overall potential economic effects described for the changes to the commercial ACL above, but rather they represent short-term expectations based on current conditions and recent landings history.

Finally, this proposed rule would revise the April spawning season closure for greater amberjack such that during April of each year, no person may sell, purchase, harvest, or possess a greater amberjack from the South Atlantic EEZ and the harvest and possession limits are zero. This closure would apply to both the commercial and recreational sectors. Because the current April spawning season closure already prohibits the sale or purchase of greater amberjack harvested from the South Atlantic EEZ, this proposed change would only affect recreational anglers (including any commercial vessel operators or crew that harvest greater amberjack under the possession limit during the existing spawning season closure). Again, recreational anglers are outside the scope of the RFA.

In summary, the information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Greater amberjack, Recreational, South Atlantic.

Dated: June 29, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.183, add paragraph (b)(10) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(10) *Greater amberjack spawning season closure.* From April 1 through April 30, each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any greater amberjack. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing apply in the South Atlantic, *i.e.,* in state or Federal waters. Such greater amberjack are also subject to the prohibition on sale or purchase, as specified in § 622.192(g).

§ 622.184 [Removed and Reserved]

■ 3. Remove and reserve § 622.184.

■ 4. In § 622.185, revise paragraph (c)(5) to read as follows:

§ 622.185 Size limits.

* * * * *

(c) * * *

(5) *Greater amberjack*—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.187(b)(1) and 34 inches (86.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

■ 5. In § 622.190, revise paragraph (a)(3) to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(3) *Greater amberjack*—(i) For the period of March 1 through August 31 each year.

(A) For the 2023–2024 fishing year, 652,817 lb (296,113 kg).

(B) For the 2024–2025 fishing year, 569,019 lb (258,103 kg).

(C) For the 2025–2026 fishing year, 544,990 lb (247,203 kg).

(D) For the 2026–2027 and subsequent fishing years, 538,933 lb (244,456 kg).

(ii) For the period of September 1 through the end of February each year.

(A) For the 2023–2024 fishing year, 435,212 lb (197,409 kg).

(B) For the 2024–2025 fishing year, 379,346 lb (172,068 kg).

(C) For the 2025–2026 fishing year, 363,327 lb (164,802 kg).

(D) For the 2026–2027 and subsequent fishing years, 359,288 lb (162,970 kg).

* * * * *

■ 6. In § 622.191, revise paragraph (a)(5) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(5) Until the applicable commercial quota specified in § 622.190(a)(3) is reached—1,200 lb (544 kg). See § 622.190(c)(1) for the limitations regarding greater amberjack after the applicable commercial quota is reached.

* * * * *

■ 7. In § 622.193, revise the section heading and paragraph (k) to read as follows:

§ 622.193 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(k) *Greater amberjack*—

(1) *Commercial sector.*

(i) If commercial landings for greater amberjack, as estimated by the SRD, reach or are projected to reach the applicable commercial ACL (commercial quota) specified in § 622.190(a)(3), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that portion of the fishing year applicable to the respective quota. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(ii) If commercial landings for greater amberjack, as estimated by the SRD, exceed the commercial ACL, and the combined commercial and recreational ACL as specified in paragraph (k)(3) of this section is exceeded during the same fishing year, and the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL in the following fishing year by the amount of the commercial ACL overage in the prior fishing year. The total commercial ACL is 1,088,029 lb (493,522 kg), gutted weight, for the 2023–2024 fishing year; 948,365 lb (430,171 kg), gutted weight, for the 2024–2025 fishing year; 908,317 lb (412,006 kg), gutted weight, for the 2025–2026 fishing year; and 898,221 lb (407,426 kg), gutted weight, for the 2026–2027 and subsequent fishing years.

(2) *Recreational sector.*

(i) If recreational landings for greater amberjack, as estimated by the SRD, reach or are projected to reach the recreational ACL, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits for greater amberjack in or from the South Atlantic EEZ are zero. The recreational ACL is 2,101,450 lb (953,202 kg), round weight, for the 2023–2024 fishing year; 1,831,700 lb (830,845 kg), round weight, for the 2024–2025 fishing year; 1,754,350 lb (795,760 kg), round weight, for the 2025–2026 fishing year; and 1,734,850 lb (786,915 kg), round weight, for the 2026–2027 and subsequent fishing years.

(ii) If recreational landings for greater amberjack, as estimated by the SRD, exceed the recreational ACL, then during the following fishing year recreational landings will be monitored for a persistence in increased landings, and if necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season and recreational ACL by the amount of the recreational ACL overage, if the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, and if the combined commercial and recreational ACL specified in paragraph (k)(3) of this section, is exceeded during the same fishing year. The AA will use the best scientific information available to determine if reducing the length of the recreational season and recreational ACL is necessary. When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season and ACL, the bag and possession limits for greater amberjack in or from the South Atlantic EEZ are zero.

(3) *Combined commercial and recreational ACLs.* The combined commercial and recreational ACL for greater amberjack is 3,233,000 lb (1,466,464 kg), round weight, for the 2023–2024 fishing year; 2,818,000 lb (1,278,223 kg), round weight, for the 2024–2025 fishing year; 2,699,000 lb (1,224,246 kg), round weight, for the 2025–2026 fishing year; and 2,669,000 lb (1,210,638 kg), round weight, for the 2026–2027 and subsequent fishing years.

* * * * *

[FR Doc. 2023–14267 Filed 7–11–23; 8:45 am]

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Notices

Federal Register
Vol. 88, No. 132
Wednesday, July 12, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 11, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: State Meat and Poultry Inspection Programs.

OMB Control Number: 0583–0170.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, and properly labeled and packaged.

Need and Use of the Information: FSIS collects information from federally-assisted State Meat and Poultry Inspection (MPI) programs to ensure that their programs operate in a manner that is at least equal to FSIS's Federal inspection program in the protection of public interest; comply with requirements of Federal Civil Rights laws and regulations; meet necessary laboratory quality assurance standards and testing frequencies; and have the capability to perform microbiology and food chemistry methods that are ''at least equal to'' methods performed in FSIS laboratories.

Under a cooperative agreement with FSIS, states may operate their own MPI programs provided they meet and enforce requirements ''at least equal to'' those imposed under the FMIA and PPIA. Twenty-seven (29) states have MPI programs that operate under a cooperative agreement with FSIS and are subject to the comprehensive state review process. There are nine review components that make up the comprehensive state review process.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 29.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 7,051.

Food Safety and Inspection Service

Title: Laboratory Assessment Requests.

OMB Control Number: 0583–0183.

Summary of Collection: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged. As a public health regulatory agency, FSIS investigates reports of foodborne illness, contamination, and adulteration potentially associated with FSIS-regulated products. During these investigations, non-FSIS laboratories may test FSIS regulated product and share the results with FSIS. FSIS OPHS Science Staff (SciS) will review the results and associated documentation shared by the non-FSIS laboratory to determine whether FSIS will accept the results.

Need and Use of the Information: As part of the process to determine if the non-FSIS laboratory result is acceptable, the SciS lead investigator collects information from the non-FSIS laboratory and verifies that the non-FSIS laboratory can provide the appropriate certifications and documentation of accreditation, such as ISO17025, or another third-party accreditation entity covering the methods performed. The SciS lead investigator also verifies that the laboratory has submitted all the necessary information, including evidence of chain of custody, the appropriate laboratory reports with sample identification, results, and authorization by the responsible official for affirming results. The laboratory may use FSIS Form 8000–17, *Evidence Receipt and Chain of Custody,* to submit information to FSIS.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 23.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–14785 Filed 7–11–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

[Docket ID: USDA–2023–0009]

Federal Strategy To Advance Measurement and Monitoring Greenhouse Gas Measurement and Monitoring for the Agriculture and Forest Sectors

AGENCY: Office of Chief Economist, Department of Agriculture (USDA).

ACTION: Request for information.

SUMMARY: The draft interagency report entitled, *Federal Strategy to Advance Greenhouse Gas Measurement and Monitoring for the Agriculture and Forest Sectors (Strategy),* has been published on the USDA website and is available at: *https://www.usda.gov/sites/default/files/documents/Draft-Federal-Ag-and-Forest-MMRV-Strategy.pdf* and is also available on *http://www.regulations.gov.* This is a Request for Information (RFI) issued on behalf of the Administration's Greenhouse Gas Monitoring and Measurement Interagency Working Group (GHG IWG), USDA's Office of the Chief Economist (OCE) requests public comment broadly from individuals, U.S. industry, universities, non-profit organizations, Federal Funded Research and Development Centers (FFRDCs), and other U.S. Federal, State, local, Tribal government agencies. This RFI does not constitute a commitment, implied or otherwise, that USDA or other agencies of the U.S. Government will take action in this matter. Comments received will inform the GHG IWG, and agencies planning and implementation of an agriculture and forestry monitoring, measurement, reporting, and verification framework and near-term activities, including discussions on potential partnerships.

DATES: We will consider comments received on or before 11:59 p.m. (ET) on August 11, 2023.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by going to *http://www.regulations.gov* and searching for Docket ID: USDA–2023–0009. Follow the online instructions for submitting comments.

Instructions for submitting comments are provided in the Questions section below.

FOR FURTHER INFORMATION CONTACT: Any questions about this notice should be sent to Mindy Selman, Office of Energy and Environmental Policy via email: *mindy.selman@usda.gov,* or telephone: 571–329–8711.

SUPPLEMENTARY INFORMATION:

Background. In January 2022, the Office of Science and Technology Policy, White House Climate Policy Office, and Office of Management and Budget established the Greenhouse Gas Monitoring & Measurement Interagency Working Group (GHG IWG) to enhance coordination on existing capabilities and opportunities for enhancing measurement and quantification of GHG emissions and removals. In addition to the White House offices mentioned above, the GHG IWG includes the following United States (U.S.) Federal agencies: USDA, Department of Commerce (including the National Institute of Standards and Technology (NIST) and the National Oceanic and Atmospheric Administration (NOAA)), Department of Defense (DOD), Department of Energy (DOE), Department of Interior (DOI), Department of State (State), Environmental Protection Agency (EPA), NASA, and the National Science Foundation (NSF).

The draft *Federal Strategy to Advance Greenhouse Gas Measurement and Monitoring for the Agriculture and Forest Sectors (Strategy)* developed by the GHG IWG outlines a framework for an integrated U.S Government (USG) approach to improving and advancing measurement, monitoring, reporting and verification (MMRV) of GHG fluxes from agriculture and forestry. The *Strategy* includes a strategic framework identifying elements of a comprehensive MMRV strategy. Within each framework element, the Strategy identifies strategic priorities for advancing MMRV within the agriculture and forest sectors. The *Strategy* is aligned with ongoing work across the USG to quantify the carbon sequestration and carbon dioxide, methane, and nitrous oxide emissions outcomes associated with activities funded through the Inflation Reduction Act (IRA). USDA received public comment on implementation of the IRA (87 FR 70770) including several questions regarding systems and strategies for quantification and will continue to ensure this ongoing work is aligned with the *Strategy.*

The GHG IWG is seeking public comments on the draft *Strategy* in recognition of the significant expertise on this topic that exists outside of government and growing interest by companies, non-governmental organizations, and local and State agencies in collaborating and/or contributing expertise, or who are customers of research, tools, data products and analyses that may result from implementation of the *Strategy.* A copy of the draft *Strategy* is posted as a separate PDF file on *http://www.regulations.gov* and is also available on the USDA website at *https://www.usda.gov/sites/default/files/documents/Draft-Federal-Ag-and-Forest-MMRV-Strategy.pdf.*

Questions

Responses to this RFI will be shared across USDA and with the GHG IWG. Respondents should focus their responses on areas where they have expertise and need not address all of the questions.

This RFI requests information on the following themes:

General Comments or Questions on the Strategy

1. What key research and data gaps or modeling and monitoring needs are most critical to address in order to advance measurement, monitoring, reporting and verification of greenhouse gases in the agriculture and forestry sector?

2. Are the proposed activities and projects in section VI of the *Strategy* those which would most effectively advance the administration goals outlined in the Introduction? If not, what would be?

3. Are there data or data products (*e.g.,* conservation activity data, land management data, environmental data, etc.) available or under development that can improve the accuracy and timeliness of GHG estimates? This includes leveraging current or upcoming geospatial/remote sensing data products in quantifying GHG emissions for the agriculture and forest sectors.

4. For respondents in the agriculture and forest sectors that rely on Federal GHG inventory information and methods, how could the Federal Government's efforts be improved to meet your needs?

5. What opportunities exist for Federal agencies to partner with external entities on the strategic priorities (*e.g.,* forest carbon monitoring, data and computation systems, methane monitoring) outlined in the draft *Strategy* in ways that they have not previously done? This can include leveraging existing convening or organizing bodies.

6. What verification protocols (national, subnational, or field scales) should the Federal Government be aware of to accelerate progress in GHG measurement and monitoring for forestry or agricultural GHG monitoring?

Animal Agriculture

1. What additional data not mentioned in the RFI would assist with assessing and quantifying GHG emissions from livestock emissions;

what emissions estimation gap would use of these data address, and how would these data best be obtained?

2. The Federal Government plans to improve process representations as well as calibration and validation of livestock models and methods. What models or improvements would significantly improve emissions estimates from livestock?

3. As the Federal Government looks to establish research networks to synthesize findings on GHG emissions from the livestock sector, what existing networks exist and could be leveraged as part of this effort?

Croplands

1. What technologies or methods not currently used by the Federal Government could reduce the costs and improve reliability of *in situ* and remote sensing relevant to soil carbon measurements for use in the proposed soil carbon monitoring network?

2. What data should be reported from the soil carbon monitoring network? How will the data be useful to you?

3. Are there existing soil testing sampling methods USDA should be looking to synchronize with? What improvements or adjustments to existing technologies or methods used by the Federal Government could help improve data collection and integration into program delivery?

Forestry

1. What technologies and methods have demonstrated success in improving annual GHG estimation of forest carbon, including forest product life cycle assessments and associated long-term carbon implications, and could, with modest additional effort, be transitioned to more sustained use or scaled up?

2. What technologies and methods have demonstrated success in improving GHG estimation for urban forestry? For respondents in the urban forestry sector that rely on Federal GHG inventory information and methods, how could the Federal Government's efforts be improved to meet your needs?

Data and Data Sharing

1. What approaches should the Federal Government consider to expand access to GHG-related data and methods for GHG quantification/estimation? This includes aggregating proprietary or survey data for higher-level analysis and sharing.

2. What key gaps in data on GHG emissions from management and production methods should USDA prioritize when quantifying emissions from manure management, rice cultivation, or fertilizer application?

Responses should be limited to 4 pages maximum.

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Seth Meyer,

Chief Economist, Office of the Chief Economist, United States Department of Agriculture.

[FR Doc. 2023–14158 Filed 7–11–23; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0042]

Chronic Wasting Disease Herd Certification Program Standards; Virtual Public Meetings

AGENCY: Animal and Plant Health Inspection Service, Department of Agriculture (USDA).

ACTION: Notice of public meetings.

SUMMARY: We are notifying the public that the Animal and Plant Health Inspection Service will hold five virtual listening sessions to receive public input on topics related to updates and improvements to the Chronic Wasting Disease Herd Certification Program Standards.

DATES: The virtual listening sessions will be held via webinar on July 27, 2023, at 12 p.m. Eastern Daylight Time (EDT); August 10, 2023, at 3 p.m. EDT; August 17, 2023, at 2 p.m. EDT; August 24, 2023, at 1 p.m. EDT; and September 14, 2023, at 3 p.m. EDT.

ADDRESSES: These will be virtual listening sessions. Participants will be required to register in advance to participate in the listening sessions. For more information about registration, providing comments, and accessibility for the meetings, see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Hillary A. McManama, Veterinary Medical Officer, Cervid Health Staff, Strategy and Policy, Veterinary Services, APHIS; c/o Ms. Melanie Rouse, 4700 River Road, Unit 43, Riverdale, MD 20737; email: *CWD@usda.gov;* phone: (608) 381–2529.

SUPPLEMENTARY INFORMATION:

Background

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy of cervids (members of Cervidae, the deer family). Species currently known to be susceptible to CWD include elk, mule deer, moose, white-tailed deer, sika deer, muntjac, reindeer, and black-tailed deer.

In 2014, the Animal and Plant Health Inspection Service (APHIS) implemented the National CWD Herd Certification Program (HCP), a voluntary Federal-State-industry cooperative program administered by APHIS and implemented by participating States. States and herd owners choosing to participate must comply with the provisions of 9 CFR parts 55 and 81 (referred to below as the regulations),

which include requirements for animal identification, interstate movement, fencing, recordkeeping, herd inspections and inventories, animal mortality testing, and response to any findings of CWD-exposed, -suspect, or -positive herds. APHIS monitors the approved State HCPs to ensure consistency with Federal standards by means of annual State reporting and onsite and/or virtual program reviews as needed. With each year of successful surveillance, participating herds will advance in status. After 5 years of compliance with the program requirements with no evidence of CWD, APHIS will certify the herd as being low risk for CWD. Only captive cervids (deer, elk, and moose) from enrolled herds certified as low risk for CWD may move interstate. APHIS has issued a CWD Program Standards document [1] to provide detailed guidance on how to meet the requirements of the regulations referred to above.

Section 603 of the Fiscal Year 2023 Omnibus Appropriations Bill enacted the Chronic Wasting Disease Research and Management Act (H.R. 5608, the CWD Research and Management Act). Under the terms of the CWD Research and Management Act, APHIS must ''solicit public feedback on potential updates and improvements'' to the Chronic Wasting Disease Herd Certification Program Standards.

Pursuant to the CWD Research and Management Act, APHIS is publishing this notice soliciting public feedback on potential updates and improvements to the CWD Program Standards. Specifically, we are scheduling a series of virtual listening sessions to gather information that will help us in evaluating and potentially amending the program standards consistent with the CWD Research and Management Act. The listening sessions will be conducted virtually, by webinar.

Registration: The listening sessions will be held on July 27, 2023, at 12 p.m. Eastern Daylight Time (EDT); August 10, 2023, at 3 p.m. EDT; August 17, 2023, at 2 p.m. EDT; August 24, 2023, at 1 p.m. EDT; and September 14, 2023, at 3 p.m. EDT.

Topics for discussion on July 27th, at 12 p.m. EDT will be:

- The overall direction of the program.
- Increasing herd certification program participation.
- Biosecurity.
- Prevention of contact between farmed and wild cervids.
- Prevention of CWD not including genetics.

Topics for discussion on August 10th, at 3 p.m. EDT will be:

- Inspection and inventory, including:
  - animal identification (ID);
  - electronic ID; and
  - annual and physical inspections.

Topics for discussion on August 17th, at 2 p.m. EDT will be:

- Surveillance.
- Use of ante-mortem tests.
- Postmortem sampling.
- Penalties for HCP non-compliance.

Topic for discussion on August 24th, at 1 p.m. EDT will be:

- Disease response, including use of predictive genetics to manage CWD positive, suspect and exposed herds.

Topics for discussion on September 14th, at 3 p.m. EDT will be:

- Indemnity approach, including role of indemnity in predictive genetics herd management; and
- Use of predictive genetics to prevent CWD within the HCP.

Topics needing additional discussion may be added to a listening session and will be announced at least 2 weeks prior to the session on the Cervid Health Program website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/cervid/cervids-cwd/cervids-voluntary-hcp.*

Participants will need to register in advance to participate in the listening sessions. The deadline to register to speak at the first listening session is July 20, 2023. The deadline to register for the remaining sessions will be one week prior to each session. Comments will be limited to a maximum of 3 to 5 minutes depending on the number of requests to speak. Registration instructions and updated session information can be accessed on the Cervid Health Program website.

Public comment: You may provide written comments at the meetings by using the meeting chat function or file written comments before, during, or after the meetings by emailing or mailing to the Agency contact listed under **FOR FURTHER INFORMATION CONTACT**. Written comments by attendees or other interested stakeholders will be welcomed for the public record up to close of business Monday, November 13, 2023. Please refer to Docket No. APHIS–2023–0042 when submitting your comments. We also encourage interested persons to subscribe to APHIS' Stakeholder Registry [2] to receive updated information by email about the upcoming listening sessions.

Accessibility: If you require special accommodations, such as a sign language interpreter, please contact *CWD@usda.gov.*

Done in Washington, DC, this 5th day of July 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–14689 Filed 7–11–23; 8:45 am]

BILLING CODE 3410–34–P

[1] *https://www.aphis.usda.gov/animal_health/animal_diseases/cwd/downloads/cwd-program-standards.pdf.*

[2] To subscribe to the APHIS Stakeholder Registry, go to *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new.*

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Reasons for Under-Redemption of the WIC Cash-Value Benefit

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a NEW information collection. This study informs the U.S. Department of Agriculture's Food and Nutrition Service (FNS) about the reasons behind under-redemption of the cash-value benefit (CVB) issued to participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

DATES: Written comments must be received on or before September 11, 2023.

ADDRESSES: Comments may be sent to Summer Weber, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Summer Weber at 815–319–5697 or via email at *summer.weber@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov and follow the online instructions* for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Summer Weber at

815–319–5697 or *Summer.Weber@usda.gov.*

SUPPLEMENTARY INFORMATION: The American Rescue Plan Act of 2021 (ARP), which was signed into law in March 2021, included provisions allowing the USDA to temporarily increase the Cash Value Voucher/Benefit (CVV/B) for certain food packages through September 30, 2021. This CVB increase was further extended by Congress and is in place for fiscal year (FY) 2023. This increased CVB amount may reduce barriers to full utilization of the benefit. FNS is particularly interested in how State agency policies and practices as well as the temporary benefit increase affects CVB redemption rates.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Reasons for Under-Redemption of the WIC Cash-Value Benefit.

Form Number: N/A.

OMB Number: Not yet assigned.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides nutritious supplemental foods, healthcare referrals, breastfeeding support, and nutrition education to low-income pregnant, breastfeeding, and postpartum women, infants and children up to age 5 who are at nutritional risk. A final rule, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages, was published in the **Federal Register** on March 4, 2014 (79 FR 12274) that revised the WIC food packages to add a monthly cash-value benefit (CVB) for the purchase of fruits and vegetables. This rule also detailed specific provisions for the value of the CVB, the types of fruits and vegetables authorized, and other State options for providing this benefit. Recent studies have estimated that redemption rates for CVBs range from 73 percent to 77 percent;[1] [2] however, the reasons for under-redemption of this benefit have not been fully explored. FNS has funded this study to determine the barriers to CVB redemption and the effects of State agency policies, practices, and other factors on CVB redemption rates.

There are a variety of WIC State agency policies and practices that may contribute to CVB under-redemption, including but not limited to: vendor authorization and selection policies, the forms of fruits and vegetables allowed, vendor minimum stocking requirements, and participant tools and training available. Other State and household factors may also affect redemption rates, such as geographic access to WIC vendors or household preferences for certain types of fruits and vegetables. In addition, the American Rescue Plan Act of 2021 (ARP), which was signed into law on March 11, 2021 (Pub. L. 117–2), included provisions allowing the USDA to temporarily increase the CVV/B for certain food packages through September 30, 2021. This provision increased the current monthly amounts from $9 for children and $11 for women to up to $35 monthly.[3] On September 30, 2021, Congress passed Public Law 117–43 (Extending Government Funding and Delivering Emergency Assistance Act) to extend the CVB increase until December 31, 2021. This extension aligned WIC benefit levels with the National Academies of Sciences, Engineering, and Medicine (NASEM) recommendations of $24/month for children, $43/month for pregnant and postpartum participants, and $47/month for breastfeeding participants. Congress subsequently passed Public Law 117–70 and Public Law 117–103 which further extended the CVB benefit at the NASEM-recommended amounts through September 30, 2022.[4] [5] For FY 2023, the CVB was increased to $25 for child participants, $44 for pregnant and postpartum participants, and $49 for fully and partially breastfeeding participants. These increased CVB amounts may reduce barriers to full utilization of the benefit. The temporary CVB increase offers a unique opportunity to test whether CVB redemption rates changed after implementation and whether certain State policy and participant-level factors impacted these rate changes.

In order to identify the factors associated with CVB redemption and examine the effects of State agency policies and practices on CVB redemption rates, FNS is conducting a study in 12 States, with more in-depth data collection occurring in 8 of these States. The study will gather data from WIC State agency staff, administrative records, and WIC participants. Administrative record collection will include electronic benefit transfer (EBT) data previously collected from 12 State agencies for the WIC Food Cost Containment Practices study (OMB Number 0584–0627 WIC Food Package Costs and Cost Containment Study, Discontinued 09/30/2020) as well as EBT and certification data from 8 States for a 12-month period during which States implemented the CVB increase in 2021–2022. EBT data will be used to calculate rates in the study State agencies and, in conjunction with the policy data, will be used to assess the ways in which redemption rates vary with differences in policies and practices. Participant and State agency staff interviews in 8 of the 12 States will be used to understand the factors that are most salient to participants in making decisions about purchasing fruits and vegetables with their CVB and barriers to redemption.

Affected Public: (1) State, local, and tribal governments; (2) nonprofits; and (3) individuals/households. Identified respondent groups include the following:

1. State, local, and tribal governments: State agency staff and database administrators in eight States, local agency staff at twelve local agencies, and clinic staff at twelve clinics

2. Nonprofits: staff at four local agencies and four WIC clinics [6]

[1] Phillips, D., Bell, L., Morgan, R., & Pooler, J. (2014). *Transition to EBT in WIC: Review of impact and examination of participant redemption patterns: Final report.* Retrieved from *https://altarum.org/sites/default/files/uploaded-publication-files/Altarum_Transition%20to%20WIC%20EBT_Final%20Report_071614.pdf.*

[2] National Academies of Sciences, Engineering, and Medicine. (2017). *Review of WIC food packages: Improving balance and choice: Final report.* Washington, DC: The National Academies Press. DOI: *https://doi.org/10.17226/23655.*

[3] USDA FNS (2021). WIC Policy Memorandum #2021–3: State Agency Option to Temporarily Increase the Cash-Value Voucher/Benefit for Fruit and Vegetable Purchases. Retrieved from: *https://www.fns.usda.gov/wic/policy-memorandum-2021-3.*

[4] USDA FNS (2021). WIC Policy Memorandum #2022–2: Extending the Temporary Increase in the Cash-Value Voucher/Benefit. Retrieved from: *https://www.fns.usda.gov/wic/policy-memo-2022-2-extending-temporary-increase-cash-value-voucher-benefit.*

[5] USDA FNS (2022). WIC Policy Memorandum #2022–8: Monthly Cash-Value Voucher/Benefit for FY 2023 Fruit and Vegetable Purchases. Retrieved from: *https://www.fns.usda.gov/wic/monthly-cash-value-voucherbenefit-2023-fruit-vegetable.*

[6] Local agencies and clinics may be either government or nonprofit organizations. It is

3. Individuals: WIC participants in eight study States

Estimated Number of Respondents: The total estimated number of respondents is 625 (40 State and local government staff, 8 nonprofit staff, and 577 individuals). Of the 625 respondents to be contacted, 505 are expected to be responsive, and 120 are expected to be nonresponsive. The breakout follows:

1. 40 State and local government staff: Of 16 State agency staff to be contacted across 8 States, 16 are expected to be responsive; of 12 local agency staff contacted across 12 local agencies, 12 are expected to be responsive; of 12 clinic staff contacted across 12 clinics, 12 are expected to be responsive.

2. 8 nonprofit staff: Of 4 local agency staff contacted across 4 local agencies, 4 are expected to be responsive; of 4 clinic staff to be contacted across 4 clinics, 4 are expected to be responsive.

3. 577 individuals: 9 individuals are expected to participate in a pretest. Of 577 individuals to be contacted for the main study, 457 are expected to be responsive, with 120 non-responsive.

Estimated Number of Responses per Respondent: 4.01 across the entire collection. This is based on the estimated 2,505 total annual responses (2,225 responsive and 280 nonresponsive) to be made by the 625 respondents. See table 1 for the estimated number of responses per respondent for each type of respondent. The breakout follows:

1. WIC State agency staff: Eight WIC State agency staff will be asked to complete one semi-structured telephone interview each. Prior to interviews, State agency staff will receive advance communications about the study (a letter and frequently asked questions (FAQ) sheet); the same State agency staff will receive a recruitment email and take part in a recruitment call.

2. Database administrator: Database administrators from each of the eight State agencies will be asked to respond to the EBT and certification data requests.

3. WIC local agency staff (including State, local, and tribal governments and non-profits): 16 WIC local agency staff (12 from State, local, or tribal government and 4 from non-profits) will be asked to assist with coordination of WIC participant recruitment for the study. These 16 WIC local agency staff will receive advance communications about the study (a letter and FAQ sheet); the same WIC local agency staff will receive a recruitment email and take part in a recruitment call.

4. WIC clinic staff (including state, local, and tribal governments and non-profits): 16 WIC clinic staff (12 from State, local, or tribal government and 4 from non-profits) will be asked to assist with coordination of WIC participant recruitment for the study. These 16 WIC clinic staff will receive advance communications about the study (a letter and FAQ sheet); the same WIC clinic staff will receive a recruitment email and take part in a recruitment call.

5. Individuals (WIC participants): The estimated total number of responses per all of the individuals (WIC participants) in the study is 4.0. In total, nine individuals will participate in a pretest. 568 individuals will receive a study brochure; of these, 448 are expected to participate in an eligibility screener for a telephone interview. Of the 328 who are eligible to participate, 288 are expected to participate in a telephone interview and complete the consent form. Forty individuals are expected to decline participation and not complete the consent form. All 288 individuals who complete consent forms are expected to participate in the interviews and the demographic survey. A total of 104 individuals are expected to receive reminder calls about participating in a telephone interview. FNS estimates that 120 of the WIC participants will be non-responsive.

Estimated Total Annual Responses: 2,505 (2,225 annual responses for responsive participants and 280 annual responses for nonresponsive participants).

Estimated Time per Response: The estimated average response time is 0.13 hours for all respondents (0.14 hours for responsive participants and 0.05 hours for nonresponsive participants). The estimated time of response varies from 30 seconds (0.0083 hours) to 2.5 hours depending on respondent group and activity, as shown in table 1.

Estimated Total Annual Burden on Respondents: 327.83 hours (313.80 hours for responsive participants, and 14.03 hours for nonresponsive participants). See table 1 for estimated total annual burden for each type of respondent.

assumed that no contacted local agencies or clinics will refuse to participate.

TABLE 1—TOTAL PUBLIC BURDEN HOURS AND RESPONDENT COSTS

Respondent category	Type of respondent	Instruments and activities	Sample size	Responsive					Nonresponsive					Grand total annual burden estimate (Hours)
				Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Number of non-respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	
State, Local, and Tribal Government														
State, Local, and Tribal Government.	WIC State agency staff.	Advance communications (letter).	8	8	1	8	0.10	0.80	0	0	0	0.00	0.00	0.80
	WIC State agency staff.	Advance communications (FAQ sheet).	8	8	1	8	0.10	0.80	0	0	0	0.00	0.00	0.80
	WIC State agency staff.	Recruitment call	8	8	1	8	0.75	6.00	0	0	0	0.00	0.00	6.00
	WIC State agency staff.	Reminder email	8	8	1	8	0.05	0.40	0	0	0	0.00	0.00	0.40
	WIC State agency staff.	Telephone interviews with up to two staff per State.	8	8	1	8	1.00	8.00	0	0	0	0.00	0.00	8.00
	Database administrator.	EBT data	8	8	1	8	1.50	12.00	0	0	0	0.00	0.00	12.00
	Database administrator.	Certification data	8	8	1	8	2.50	20.00	0	0	0	0.00	0.00	20.00
	WIC State agency staff subtotal		16	16	4	56	0.86	48.00	0	0	0	0.00	0.00	48.00
	WIC local agency staff.	Advance communications (letter).	12	12	1	12	0.10	1.20	0	0	0	0.00	0.00	1.20
	WIC local agency staff.	Advance communications (FAQ sheet).	12	12	1	12	0.10	1.20	0	0	0	0.00	0.00	1.20
	WIC local agency staff.	Recruitment call	12	12	1	12	0.75	9.00	0	0	0	0.00	0.00	9.00
	WIC local agency staff.	Reminder email	12	12	1	12	0.05	0.60	0	0	0	0.00	0.00	0.60
	WIC local agency staff subtotal		12	12	4	48	0.25	12.01	0	0	0	0.00	0.00	12.01
	Clinic staff	Advance communications (letter).	12	12	1	12	0.10	1.20	0	0	0	0.00	0.00	1.20
	Clinic staff	Advance communications (FAQ sheet).	12	12	1	12	0.10	1.20	0	0	0	0.00	0.00	1.20
	Clinic staff	Recruitment call	12	12	1	12	0.75	9.00	0	0	0	0.00	0.00	9.00
	Clinic staff	Reminder email	12	12	1	12	0.05	0.60	0	0	0	0.00	0.00	0.60
	Clinic staff subtotal		12	12	4	48	0.25	12.01	0	0	0	0.00	0.00	12
	State and local government subtotal		40	40	4	152	0.47	72.02	0	0	0	0.00	0.00	72
Nonprofit														
Nonprofit	WIC local agency staff.	Advance communications (letter).	4	4	1	4	0.10	0.40	0	0	0	0.00	0.00	0.40
	WIC local agency staff.	Advance communications (FAQ sheet).	4	4	1	4	0.10	0.40	0	0	0	0.00	0.00	0.40
	WIC local agency staff.	Recruitment call	4	4	1	4	0.75	3.00	0	0	0	0.00	0.00	3.00
	WIC local agency staff.	Reminder email	4	4	1	4	0.05	0.20	0	0	0	0.00	0.00	0.20

	WIC local agency staff subtotal		4	4	4	16	0.25	4.00	0	0	0	0.00	0.00	4.00
	Clinic staff	Advance communications (letter).	4	4	1	4	0.10	0.40	0	0	0	0.00	0.00	0.40
	Clinic staff	Advance communications (FAQ sheet).	4	4	1	4	0.10	0.40	0	0	0	0.00	0.00	0.40
	Clinic staff	Recruitment call	4	4	1	4	0.75	3.00	0	0	0	0.00	0.00	3.00
	Clinic staff	Reminder email	4	4	1	4	0.05	0.20	0	0	0	0.00	0.00	0.20
	Clinic staff subtotal		4	4	4	16	0.25	4.00	0	0	0	0.00	0.00	4.00
	Nonprofit subtotal		8	8	4	32	0.25	8.00	0	0	0	0.00	0.00	8.00
Individuals														
Individuals	WIC participants	Pretest	9	9	1	9	0.75	6.75	0	0	0	0.00	0.00	6.75
	WIC participants	Study brochure	568	448	1	448	0.05	22.44	120	1	120	0.05	6.01	28.46
	WIC participants	Eligibility screener form.	448	328	1	328	0.05	16.43	120	1	120	0.05	6.01	22.44
	WIC participants	Reminder call	104	104	1	104	0.0083	0.86	0	0	0	0.00	0.00	0.86
	WIC participants	Consent form	328	288	1	288	0.03	9.62	40	1	40	0.05	2.00	11.62
	WIC participants	Interview protocol	288	288	1	288	0.50	144.00	0	0	0	0.00	0.00	144.00
	WIC participants	Demographic survey	288	288	1	288	0.07	19.24	0	0	0	0.00	0.00	19.24
	WIC participants	Thank-you note	288	288	1	288	0.05	14.43	0	0	0	0.00	0.00	14.43
	Individual subtotal		577	457	4.47	2,041	0.11	233.78	120	2.33	280	0.05	14.03	247.81
	Total		625	505	4.41	2,225	0.14	313.80	120	2.33	280	0.05	14.03	327.83

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–14655 Filed 7–11–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS—23–BUSINESS–0017]

Notice of Request for Approval of a New Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service, agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency to request approval for a new information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by September 11, 2023.

ADDRESSES: Comments may be submitted by the following method:

• *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 690–2682. Email *lynn.gilbert@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that Rural Development is submitting to OMB for a new collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information 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.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RBS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RBS–23–BUSINESS–0017 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: 7 CFR 1951—Servicing and Collection Common Forms.

OMB Number: 0570–New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The information collection under OMB Number 0570–New will enable the Agencies to effectively provide servicing to a recipient's post disbursement loan and/or debt collection efforts to support Agencies and parties involved.

The Rural Housing Service (RHS), Rural Business and Cooperative Service (RBCS) and Rural Utilities service (RUS) agencies within the Rural Development mission area, hereinafter referred to as Agency, is the credit Agency for agriculture and rural development for the United States Department of Agriculture. The Agency offers loans, grants and loan guarantees to help create jobs and support economic development and essential services such as housing; health care; first responder services and equipment; and water, electric and communications infrastructure.

Rural Development has determined that the financial reporting requirements are necessary to provide the Agency with current information in order to monitor the program, to make various reporting requirements to Congress, and for program innovation and expansion under the Government's Performance Review.

Estimate of Burden: RD is requesting approval for one respondent and a one-hour place holder in order for OMB to issue a control number for these forms. The burden for each of the forms will be accounted for within the individual Rural Development program collection packages using the form(s).

Respondents: Recipients of Rural Development Federal financial assistance, loan, and loan guarantee programs.

ESTIMATED NUMBER OF RESPONSES PER RESPONDENT PER FORM IN PACKAGE

Form No.	Responses per respondent
1951–4, 10, 15, 33, 65	1

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–14782 Filed 7–11–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket #: RUS–23–WATER–0009]

Notice of Funding Opportunity for Calendar Year 2022 Disaster Water Grants Program for Fiscal Year 2023; Water and Environmental Programs; Correction

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice, correction.

SUMMARY: The Rural Utilities Service (RUS or Agency), a Rural Development (RD) mission area of the United States Department of Agriculture (USDA), published a Notice of Funding Opportunity (NOFO) in the **Federal Register** on June 22, 2023, to announce the acceptance of applications under the Calendar Year (CY) 2022 Disaster Water Grants Program for Fiscal Year (FY) 2023. The NOFO also announced the availability of at least $247,250,000 in grant funding through the Disaster Relief Supplemental Appropriations

Act, 2023. Grant funds will be made available to qualified, rural applicants to pay for necessary expenses related to water infrastructure systems damaged by events that occurred during CY 2022 and were recognized through Presidentially Declared Disasters. This correction notice is amending the list of states that were identified as containing areas that have been impacted by qualifying events during CY 2022.

DATES: Applications will be accepted on a continual basis, beginning on June 22, 2023, until funds are exhausted. To comply with the Congressional Review Act, there is a 60-day delay in the effective date of this action, and the Agency will not take action on applications until the later of 60 days after notification to Congress or August 21, 2023.

FOR FURTHER INFORMATION CONTACT: Angela Tilghman, Water and Environmental Programs, RUS, USDA at *Water-RD@usda.gov,* (302) 857–3598.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2023–13232 of June 22, 2023 (88 FR 40775), on page 40775, in column 3, under Section A.1, the third sentence that starts with ''Subject to any updates,'' is corrected to read as follows:

Subject to any updates to the Presidentially Declared Disasters, the following states have been identified as containing areas that have been impacted by qualifying events during CY 2022: Alaska, American Samoa, Arizona, California, Florida, Idaho, Illinois, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Vermont, Virginia, Washington, and West Virginia.

Jason Lumia,

Acting Administrator, Rural Utilities Services, USDA Rural Development.

[FR Doc. 2023–14679 Filed 7–11–23; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public 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 Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 1:00 p.m. MT on Friday, August 4, 2023. The purpose of the meeting is to continue discussing potential projects of study.

DATES: Friday, August 4, 2023, from 1:00 p.m.–2:30 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1613103906.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 310 3906.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration 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. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Ana Fortes at *afortes@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 meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Utah 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 *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion: Potential Project of Study
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: July 7, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–14783 Filed 7–11–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Delaware Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting date.

The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Delaware Advisory Committee. The following meeting is cancelled: Wednesday, August 2, 2023, at 1:00 p.m. (ET). The notice is in the **Federal Register** of Monday, April 17, 2023, in FR Doc. 2023–08036, in the third column of page 23393, and the first and second columns of 23394.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, 202–530–8468, *idavis@usccr.gov.*

Dated: July 7, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–14784 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Cancellation of Clinical Waste Management Mission to Indonesia and Malaysia, September 11–15, 2023

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice; cancellation.

SUMMARY: On March 18, 2022, the United States Department of Commerce

notified the public of Announcement of Winter 2022 Approved International Trade Administration Trade Missions, including a Clinical Waste Management Mission to Indonesia and Malaysia, September 11–15, 2023. The International Trade Administration has cancelled this Trade Mission.

FOR FURTHER INFORMATION CONTACT: Tricia McLain, Senior International Trade Specialist, U.S. Commercial Service, Newark, NJ 973–264–9646, *Tricia.McLain@trade.gov.*

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023–14797 Filed 7–11–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–041]

Truck and Bus Tires From the People's Republic of China: Final Results and Partial Recission of Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to certain exporters/producers of truck and bus tires from the People's Republic of China (China) during the period of review (POR) January 1, 2021, through December 31, 2021. Commerce is also rescinding the review with respect to one company that had no reviewable entries during the POR.

DATES: Applicable July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Ted Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2022, Commerce published the preliminary results of this administrative review in the **Federal Register**.[1] From April 17 through 18, 2023, we conducted an onsite verification of the financing of the U.S. importers and customers of the mandatory respondent, Qingdao Ge Rui Da Rubber Co., Ltd. (GRT), for the export buyer's credit program. On April 27, 2023, we released the verification report to interested parties.[2]

For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order[4]

The products covered by the scope of the *Order* are truck and bus tires from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the evidence on the record, we revised the calculation of the net countervailable subsidy rates for GRT. For a discussion of the issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a complete description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available, pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Partial Rescission of Review

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[6] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[7] Therefore, for an administrative review of company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[8]

We continue to find that one company subject to this review, Chongqing Hankook Tire Co., Ltd. (Chongqing Hankook), did not have reviewable entries of subject merchandise for which liquidation is suspended. Because there is no evidence on the record to indicate that Chongqing Hankook had entries, exports, or sales of subject merchandise during the POR, we are rescinding this review with respect to Chongqing Hankook consistent with 19 CFR 351.213(d)(3).

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected

[1] *See Truck and Bus Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review in Part, and Intent to Rescind in Part; 2021,* 88 FR 13423 (March 3, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Verification of the Export Buyer's Credit Questionnaire Responses of Qingdao Ge Rui Da Rubber Co., Ltd.,'' dated April 27, 2023.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Truck and Bus Tires from the People's Republic of China; 2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Truck and Bus Tires from the People's Republic of China: Amended Final Determination and Countervailing Duty Order,* 84 FR 4434 (February 15, 2019) (*Order*).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[7] *See* 19 CFR 351.212(b)(2).

[8] *See* 19 CFR 351.213(d)(3).

companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate the all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

There are four companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with GRT, the mandatory respondent. For these non-selected companies, because the rate calculated for the only participating mandatory respondent in this review, GRT, was above *de minimis* and not based entirely on facts available, we are applying GRT's subsidy rate to the four non-selected companies.

This is the same methodology Commerce applied in the *Preliminary Results* for determining a rate for companies not selected for individual examination. However, due to changes in the calculation for GRT, we revised the non-selected rate accordingly. Consequently, for the four non-selected companies for which a review was requested and not rescinded, we are applying an *ad valorem* subsidy rate of 14.98 percent.

Final Results of Review

We determine find the net countervailable subsidy rates for the mandatory and non-selected respondents under review for the period January 1, 2021, through December 31, 2021, to be as follows:

Producer or exporter	Subsidy rate (percent *ad valorem*)
Qingdao Ge Rui Da Rubber Co., Ltd.[9]	14.98
Review-Specific Average Rate Applicable to the Following Companies	
Bridgestone (Shenyang) Tire Co., Ltd	14.98
Jiangsu Hankook Tire Co., Ltd	14.98
Joyall (Weihai) Tire Co., Ltd	14.98
Triangle Tyre Co., Ltd	14.98

Disclosure

Commerce intends to disclose calculations and analysis performed for the final results of review within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, we will instruct CBP to 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, effective upon publication of these final results, shall remain in effect until further notice.

Assessment Requirements

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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).

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return 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 sanctionable violation.

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: July 6, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–14754 Filed 7–11–23; 8:45 am]

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[9] Commerce finds the following companies to be cross-owned with Qingdao Ge Rui Da Rubber Co., Ltd.: Cooper Tire (China) Investment Co. Ltd.; Cooper (Kunshan) Tire Co., Ltd.; Qingdao Yiyuan Investment Co., Ltd.; Goodyear Dalian Tire Company Limited; and Goodyear Tire Management Company (Shanghai) Ltd. In the *Preliminary Results,* we inadvertently included Cooper Tire Asia-Pacific (Shanghai) Trading Co., Ltd. (CTAP) among the cross-owned companies. However, as discussed in the accompanying Preliminary Decision Memorandum (PDM), we found that CTAP did not satisfy our attribution criteria during the POR. *See Preliminary Results* PDM at 22. Therefore, we are not including CTAP in the list of companies found be cross-owned in this review.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with May anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with May anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to AD administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the quantity and value (Q&V) questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Respondent Selection—Aluminum Extrusions From the People's Republic of China

In the event Commerce limits the number of respondents for individual examination in the administrative review of the AD order on aluminum extrusions from the People's Republic of China (China), Commerce intends to select respondents based on volume data contained in responses to Q&V questionnaires. Further, Commerce intends to limit the number of Q&V questionnaires issued in the review based on CBP data for U.S. imports of aluminum extrusions from China. The extremely wide variety of individual types of aluminum extrusion products included in the scope of the order on aluminum extrusions would preclude meaningful results in attempting to determine the largest China exporters of subject merchandise by volume. Therefore, Commerce will limit the number of Q&V questionnaires issued based on the import values in CBP data which will serve as a proxy for imported quantities. Parties subject to the review to which Commerce does not send a Q&V questionnaire may file a response to the Q&V questionnaire by the applicable deadline if they desire to be included in the pool of companies from which Commerce will select mandatory respondents. The Q&V questionnaire will be available on Commerce's website at *https://trade.gov/enforcement/news.asp* on the date of publication of this notice in the **Federal Register**. The responses to the Q&V questionnaire must be received by Commerce within 14 days of publication of this notice. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, Commerce does not intend to grant any extensions for the submission of responses to the Q&V questionnaire. Parties will be given the opportunity to comment on the CBP data used by Commerce to limit the number of Q&V questionnaires issued. We intend to

release the CBP data under administrative protective order (APO) to all parties having an APO within seven days of publication of this notice in the **Federal Register**. Commerce invites comments regarding CBP data and respondent selection within five days of placement of the CBP data on the record.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate rate certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a separate rate certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a separate rate application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a separate rate application to demonstrate eligibility for a separate rate in this proceeding. The separate rate application will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the separate rate application, refer to the instructions contained in the application. Separate rate applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a separate rate application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely separate rate application or certification if they want to be considered for individual examination. Furthermore, exporters and producers who submit a separate rate application or certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than May 31, 2024.

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a separate rate application. Information regarding new trade names may be submitted via a separate rate certification.

	Period to be reviewed
AD Proceedings	
BELGIUM: Carbon and Alloy Steel Cut-to-Length Plate, A–423–812	5/1/22–4/30/23
Industeel Belgium S.A.	
NLMK Clabecq S.A.	
NLMK Plate Sales S.A.	
NLMK Sales Europe S.A.	
NLMK Manage Steel Center S.A.	
NLMK La Louviere S.A.	
NLMK Dansteel A.S.	
NLMK Verona SpA.	
C.A. Picard GmbH.	
Doerrenberg Edelstahl Gmb.	
Edgen Murray.	
EEW Steel Trading LLC.	
Fike Europe B.A.	
Macsteel International.	
NobelClad Europe GmbH & Co. KG.	
RP Technik GmbH Profilsysteme.	
Salzgitter Mannesmann International GmbH.	
Stahlo Stahl Service GmbH & Co. KG.	
Stemcor USA.	
Thyssenkrupp Steel Europe.	
TWF Treuhandgesellschaft Werbefilm mbH.	
Tranter Service Centers.	
Válcovny Trub Chomutov A.S.	
voestalpine Grobblech GmbH.	
BELGIUM: Stainless Steel Plate in Coils, A–423–808	5/1/22–4/30/23
Aperam Stainless Belgium NV (ASB).	
ArcelorMittal Genk.	
Helaxa BVBA.	
Industeel Belgium.	
CAMBODIA: Mattresses, A–555–001	5/1/22–4/30/23
Best Mattresses International Company Limited.	
Rose Lion Furniture International Company Limited.	
CANADA: Large Diameter Welded Pipe, A–122–863	5/1/22–4/30/23
Acier Profile SBB Inc.	
Aciers Lague Steels Inc.	
Amdor Inc.	
BPC Services Group.	
Bri-Steel Manufacturing.	
Canada Culvert.	
Canadian National Steel Corporation (CNSC); Evraz Inc. NA Canada (EICA); Evraz Inc. NA.	
Canam (St Gedeon).	
Cappco Tubular Products Canada Inc.	
CFI Metal Inc.	
Dominion Pipe & Piling.	
Enduro Canada Pipeline Services.	
Fi Oilfield Services Canada.	
Forterra.	
Gchem Ltd.	
Graham Construction.	
Groupe Fordia Inc.	
Grupo Fordia Inc.	
Hodgson Custom Rolling.	
Hyprescon Inc.	
Interpipe Inc.	
K K Recycling Services.	
Kobelt Manufacturing Co.	
Labrie Environment.	
Les Aciers Sofatec.	
Lorenz Conveying P.	
Lorenz Conveying Products.	
Matrix Manufacturing.	
MBI Produits De Forge.	
Nor Arc.	
Peak Drilling Ltd.	
Pipe & Piling Sply Ltd.	
Pipe & Piling Supplies.	
Pipe Protecction.	
Prudental.	
Prudential.	
Shaw Pipe Protection.	
Tenaris Algoma Tubes Facility.	

	Period to be reviewed
Tenaris Prudential.	
Welded Tube of Can Ltd.	
FRANCE: Carbon and Alloy Steel Cut-To-Length Plate, A–427–828	5/1/22–4/30/23
Dillinger France S.A.	
Entrepose Industries.	
Formica S.A.	
Industeel France S.A.S.	
Laminoirs des Landes.	
GERMANY: Carbon and Alloy Steel Cut-To-Length Plate, A–428–844	5/1/22–4/30/23
AG der Dillinger Hüttenwerke.	
GREECE: Large Diameter Welded Pipe, A–484–803	5/1/22–4/30/23
Corinth Pipeworks Pipe Industry S.A.	
INDIA: Certain Welded Carbon Steel Standard Pipes and Tubes, A–533–502	5/1/22–4/30/23
Apl Apollo Tubes Limited.	
Asian Contec Ltd.	
Bhandari Foils & Tubes Ltd.	
Bhushan Steel Ltd.	
Blue Moon Logistics Pvt. Ltd.	
CH Robinson Worldwide.	
Ess-Kay Engineers.	
Manushi Enterprise.	
Nishi Boring Corporation.	
Garg Tube Export LLP; Garg Tube Limited.	
GCL Private Limited.	
Goodluck India Ltd.	
GVN Fuels Ltd.	
Fiber Tech Composite Pvt. Ltd.	
Hydromatik.	
Jindal Quality Tubular Ltd.	
KLT Automatic & Tubular Products Ltd.	
Lloyds Line Pipes Ltd.; Lloyds Metals & Engineers Limited.	
MARINEtrans India Private Ltd.	
Patton International Ltd.	
Raajratna Ventures Ltd.	
Ratnamani Metals Tubes Ltd.	
SAR Transport Systems Pvt. Ltd.	
Surya Global Steel Tubes Ltd.	
Surya Roshni Ltd.	
Vallourec Heat Exchanger Tubes Ltd.	
Welspun India Ltd.	
Zenith Birla (India) Ltd.	
Zenith Birla Steels Private Ltd.	
Zenith Dyeintermediates Ltd.	
INDIA: Organic Soybean Meal, A–533–901	11/2/21–4/30/23
Abhay Oil Industries.	
Agrawal Oil & Biocheam.	
Bergwerff Organic India Pvt., Ltd.; Bergwerff Organic Private Limited/Suminter.	
India Organic Private Limited.	
Bio Treasure Overseas.	
Delight Lifelike Products Private Ltd.	
Delight Sustainable Products LLP.	
Eco Gold Nutri And Organics LLP.	
Ecopure Specialities Ltd.	
Jay Shree Agro Products.	
Kaj Traders.	
Kanishka Organics LLP.	
Keshav Proteins and Organic LLP.	
Kiesriya Agro Exim Pvt., Ltd.	
Mani Loni.	
Navjyot International Pvt., Ltd.	
Prasad Cotton Industries Pvt., Ltd.	
Radha Krishna Oil Product.	
Raj Foods International.	
Raj Natural Food Pvt., Ltd.	
Rajat Agro Commodities Pvt., Ltd.	
Reindeer Organics LLP.	
Sai Smaran Foods Ltd.	
Satguru Agro Resources Private Ltd.	
Satguru Organics Pvt., Ltd.	
Seasons International Pvt., Ltd.	
Shanti Overseas.	
Shanti Worldwide.	
Shemach Impex.	

	Period to be reviewed
Shivam Enterprises.	
Shri Narayani Mfg. Co.	
Shri Sumati Industries Pvt. Ltd.	
Suminter India Organics Pvt., Ltd.	
Tejawat Organic Foods.	
Unique Organics Ltd.	
Vimala Food Products.	
Vinod Kumar Ranjeet Singh Bafna.	
We Organic Nature Pvt. Ltd.	
INDIA: Silicomanganese, A–533–823	5/1/22–4/30/23
Maithan Alloys Limited.	
Rajadhiraj Tirupani Vinayak Natraj Pvt. Ltd.	
INDONESIA: Mattresses, A–560–836	5/1/22–4/30/23
Bali Natural Latex.	
CV. Aumireta Anggun.	
CV. Lautan Rezeki.	
Duta Abadi Primantara, Pt.	
Ecos Jaya JL Pasir Awi.	
Mimpi.	
P.T. Barat Daya Gemilang.	
PT Celebes Putra Prima.	
PT Champion Mattress Indonesia Manufacturing.	
PT Demak Putra Mandiri.	
PT Ecos Jaya Indonesia.	
PT Graha Anom Jaya.	
PT Graha Seribusatujaya.	
PT Grantec Jaya Indonesia.	
PT Kline Total Logistics Indonesia.	
PT Rubberfoam Indonesia.	
PT Solo Murni Epte.	
PT Zinus Global Indonesia.	
PT. Ateja Multi Industri.	
PT. Ateja Tritunggal.	
PT. Aurora World Cianjur.	
PT. Cahaya Buana Furindotama.	
PT. CJ Logistics Indonesia.	
PT. Dinamika Indonusa Prima.	
PT. Dunlopillo Indonesia.	
PT. Dynasti Indomegah.	
PT. Grantec Jaya Indonesia.	
PT. Massindo International.	
PT. Ocean Centra Furnindo.	
PT. Quantum Tosan Internasional.	
PT. Romance Bedding & Furniture.	
PT. Royal Abadi Sejahtera.	
PT. Transporindo Buana Kargotama.	
Sonder Canada Inc.	
Super Poly Industry PT.	
Zinus, Inc.	
ITALY: Carbon and Alloy Steel Cut-To-Length Plate, A–475–834	5/1/22–4/30/23
Officine Tecnosider srl.	
NLMK Verona SpA.	
JAPAN: Carbon and Alloy Steel Cut-To-Length Plate, A–588–875	5/1/22–4/30/23
Chubu Steel Plate Co. Ltd.	
Daido Steel Co., Ltd.	
Hanwa Co. Ltd.	
JFE Shoji Trade Corp.	
JFE Steel Corporation.	
Kanematsu Corporation.	
Kobe Steel Ltd.	
Marubeni-Itochu Steel Inc.	
Metal One Corp.	
Mitsubishi Steel Manufacturing Co., Ltd.	
Mitsui & Co., Ltd.	
Nakayama Steel Works Ltd.	
Nippon Steel Corporation.	
Okaya & Co., Ltd.	
Sumisho Metalex Corp.	
Tokyo Steel Manufacturing Co., Ltd.	
Topy Industries Ltd.	
JAPAN: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products, A–588–869	5/1/22–4/30/23
Nikken Lath Kogyo Co., Ltd.	
Taiyo Manufacturing Co., Ltd.	

	Period to be reviewed
Toyo Kohan Co., Ltd.	
OMAN: Polyethylene Terephthalate Resin, A–523–810	5/1/22–4/30/23
OCTAL Inc.	
OCTAL SAOC FZC.	
REPUBLIC OF KOREA: Carbon and Alloy Steel Cut-To-Length Plate, A–580–887	5/1/22–4/30/23
POSCO; POSCO International Corporation; Taechang Steel Co., Ltd.; Winsteel Co., Ltd.; POSCO SPS.	
REPUBLIC OF KOREA: Carbon and Alloy Steel Wire Rod, A–580–891	5/1/22–4/30/23
POSCO; POSCO International Corporation.	
REPUBLIC OF KOREA: Large Diameter Welded Pipe, A–580–897	5/1/22–4/30/23
AJU Besteel Co., Ltd.	
Chang Won Bending Co., Ltd.	
Daiduck Piping Co., Ltd.	
Dong Yang Steel Pipe Co., Ltd.	
Dongbu Incheon Steel Co., Ltd.	
EEW KHPC Co., Ltd.	
EEW Korea Co., Ltd.	
Geumok Tech. Co., Ltd.	
Hansol Metal Co. Ltd.	
HiSteel Co., Ltd.	
Husteel Co., Ltd.	
Hyundai RB Co., Ltd.	
Hyundai Steel Company.	
Il Jin Nts Co. Ltd.	
Kiduck Industries Co., Ltd.	
Kum Kang Kind. Co., Ltd.	
Kumsoo Connecting Co., Ltd.	
Nexteel Co., Ltd.	
SeAH Steel Corporation.	
Seonghwa Industrial Co., Ltd.	
SIN-E B&P Co., Ltd.	
Steel Flower Co., Ltd.	
WELTECH Co., Ltd.	
SERBIA: Mattresses, A–801–002	5/1/22–4/30/23
Healthcare Europe DOO Ruma.	
TAIWAN: Stainless Steel Plate in Coils, A–583–830	5/1/22–4/30/23
Aurora Metal International Co., Ltd.	
Best Bridge International Ltd.	
Build Up Hardware Co., Ltd.	
Chain Chon Industrial Co., Ltd.	
Chang Mien Industries Co., Ltd.	
Chia Far Industries Factory Co., Ltd.	
Chien Shing Stainless Co., Ltd.	
China Steel Corporation.	
China Tah Lee Special Steel Co., Ltd.	
Da Song Enterprise Co., Ltd.	
Da Tsai Stainless Steel Co., Ltd.	
East Track Enterprise Co., Ltd.	
Gifull Enterprise Co., Ltd.	
Goang Jau Shing Enterprise Co., Ltd.	
Goldioceans International Co., Ltd.	
High Point Steel Mfg. Co., Ltd.	
Hoka Elements Co., Ltd.	
Huang-Yi Steel Coil Co., Ltd.	
JJSE Co., Ltd.	
Jye Chi Corporation.	
Kunn Chuan Enterprise Co., Ltd.	
Lien Kuo Metal Industries Co., Ltd.	
Lung An Stainless Ind. Co., Ltd.	
Omen Bright Co., Ltd.	
PFP Taiwan Co., Ltd.	
Pyramid Metal Technology Co., Ltd.	
Shing Shong Ta Metal Co., Ltd.	
Shye Yao Steel Co., Ltd.	
Sinkang Industries Co., Ltd.	
S-More Steel Materials Co., Ltd.	
Staunch Stainless Steel Co., Ltd.	
Sun Chun Stainless Co., Ltd.	
Ta Chen International.	
Ta Chen Stainless Pipe Co., Ltd.	
Ta Fong Steel Co., Ltd.	
Taiwan Nippon Steel Stainless.	
Tang Eng Iron Works.	
Tsung Yui Enterprise Co., Ltd.	

	Period to be reviewed
Tzong Ji Metals Co., Ltd.	
Wuu Jing Enterprise Co., Ltd.	
Yc Inox Co., Ltd.	
Yi Shuenn Enterprise Co., Ltd.	
Yieh Loong Enterprise Co., Ltd.; Chung Hung Steel Co., Ltd.	
Yieh Mau Corporation.	
Yieh Trading Co.	
Yieh United Steel Corporation.	
Yuan Long Stainless Steel Corp.	
Yuen Chang Stainless Steel Co., Ltd.	
Yuh Sheng Stainless Steel Co., Ltd.	
TAIWAN: Stilbenic Optical Brightening Agents, A–583–848	5/1/22–11/26/22
Teh Fong Ming International Co., Ltd.; Teh Fong Min International Co., Ltd.	
THAILAND: Mattresses, A–549–841	5/1/22–4/30/23
Saffron Living Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions, A–570–967	5/1/22–4/30/23
Ailenmr (Tianjin) Machinary.	
American International Cargo Service Inc.	
Anson.	
Anson Ltd.—Shanghai Metal Fabrication.	
Anhui Morden Living Co., Ltd.	
Beijing Kingpeng International Agriculture Corporation.	
Bisen Smart Access Co., Ltd.	
Caribbean Galaxy Aluminum, S.R.L.	
Changshu Wojun Machinery Equipment.	
Changzhou Hivalue Impex Co Ltd.	
Changzhou Infusion Plastics Industries.	
Changzhou Ryan-Al Door.	
Chenming Industry and Commerce Shouguang Co., Ltd.	
China Jwell Intelligent Plastic Extrusion Machinery Co., Ltd.	
CTW Furniture Co., Ltd.	
Dongying Andy Petroleum Machinery Co., Ltd.	
Dura Shower Enclosures Co., Ltd.	
East Asia Aluminum Co., Ltd.	
Eastlinx Xiamen Co., Ltd.	
Epson Engineering (Shenzhen) Ltd.	
Favour Light Co Ltd.	
Foshan City Nanhai Yongfeng Aluminum.	
Fuzhou J&K Imp.&Exp. Co., Ltd.	
General Equipment Technology Development Ltd.	
Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.	
Guangdong Suyue Aluminium Co., Ltd.	
Guangdong Victor Aluminum Co., Ltd.	
Guangdong Yaoyinshan Aluminum Co., Ltd.	
Guangzhou Graly Lighting Co., Ltd.	
Hangzhou Evernew Machinery & Equipment Co., Ltd.	
Hangzhou Siyi Imp.&Exp. Co., Ltd.	
Hota International Logistics Co., Ltd.	
Huazhijie Plastic Products.	
Hui Qian (Shanghai) International Trading Co., Ltd.	
Jakks Pacific (HK) Ltd.	
Jer Education Technology.	
Jiangsu Asia Pacific Aviation Technology Co., Ltd.	
Jiangsu Xinhuang Curtain Wall Co., Ltd.	
Jiangsu SV Precision Components.	
Jiangsu Singcheer Intelligent Equipment Co., Ltd.	
Jiangsu Yizheng Haitian Aluminum Industrial.	
Jinming Machinery (Guangdong) Co., Ltd.	
Lien Chiang Furniture Hardware Co.	
LongKou Mat Aluminium Co., Ltd.	
Maxable Global Company Limited.	
Ningbo Baihui Furniture Co., Ltd.	
Ningbo China-Base Import & Export Co.	
Ningbo Huige Metal Products Co., Ltd.	
Ningbo Mark One International.	
Ningbo Yinzhou Outdoor Equipment Co., Ltd.	
Pacific Precise International Ltd.	
PGI Far East Precision Products.	
Qingdao Huayu Hardware Products Co.	
Qingdao Mrp Industry Co., Ltd.	
Qingdao Sea Nova Building.	
Reifenhauser Plastic Machinery (Suzhou) Co., Ltd.	
Sanming Foreign Trade Development Co., Ltd.	

	Period to be reviewed
Shaanxi Simex Enterprise Co., Ltd.	
Shandong Golden Realm Industrial Co., Ltd.	
Shandong Huajian Aluminum Group Co.	
Shandong Mount Tai Sheng Li Yuan Glass Co., Ltd.	
Shanghai An Mao E-Commerce Co Ltd.	
Shanghai Promise Metal Co., Ltd.	
Shanghai Xindun Trade Co., Ltd.	
Shenyang Yuanda Aluminum Industry Engineering Co. Ltd.	
Shenzhen Beiruitong Trade Co., Ltd.	
Shenzhen Thomas Homeware Co., Limited.	
Shenzhen Wision Industrial Co., Ltd.	
Shenzhen Xinjiayi Plastic & Metal, Co. Ltd.	
Shenzhen Zhongyuan Electronic Co., Ltd.	
ShineLong Technology Corp., Ltd.	
Sichuan Hangxin New Glazing Material Co., Ltd.	
Suzhou Bonate Int. Trading Co., Ltd.	
Suzhou Futong New Materials and High-tech Co., Ltd.	
Qingdao Sea Nova Building Profiles.	
The Tigereye International Trading Co. Ltd.	
Tianjin Hongleey Tech Co., Ltd.	
Tianjin Hyosung Packaging Product Co., Ltd.	
Top Asian Resource Co., Ltd.	
Wuxi Longdet Imp. & Exp. Co., Ltd.	
Wuxi Rapid Scaffolding Engineering.	
Xiamen Rex. Technology Co., Ltd.	
Yantai Jintai International.	
Yantai Jintai International Trade.	
Yantai Jintai International Trade Co., Ltd.	
Yonn Yuu Enterprise Co., Ltd.	
Yuyao Royal Industrial.	
Zhangzhou Jindian Craft Product Co., Ltd.	
Zhejiang Hengfeng Technology Co., Ltd.	
Zhejiang Tangzhengge Plastic Technology Co., Ltd.	
Zhuji Wenfeng Import and Export Co.	
Zhejiang Zhong Ming Ji Xiang.	
THE PEOPLE'S REPUBLIC OF CHINA: Citric Acid and Citrate Salt, A–570–937	5/1/22–4/30/23
RZBC Group Co., Ltd.	
RZBC Co., Ltd.	
RZBC Import & Export Co., Ltd.	
RZBC (Juxian) Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Non-Refillable Steel Cylinders, A–570–126	5/1/22–4/30/23
Ningbo Eagle Machinery & Technology Co., Ltd.	
Sanjiang Kai Yuan Co. Ltd.	
Wuyi Xilinde Machinery Manufacture Co., Ltd.	
Zhejiang KIN–SHINE Technology Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium, A–570–832	5/1/22–4/30/23
Tianjin Magnesium International Co., Ltd.	
Tianjin Magnesium Metal Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 99cc and up to 225CC, and Parts Thereof, A–570–124	5/1/22–4/30/23
Chongqing Zongshen General Power Machine Co., Ltd.; Chongqing Dajiang Power Equipment Co., Ltd.; Chongqing Zongshen Power Machinery Co., Ltd.	
TURKEY: Circular Welded Carbon Steel Pipes and Tubes, A–489–501	5/1/22–4/30/23
Borusan Mannesmann Boru Sanayi ve Ticaret A.S.	
TURKEY: Large Diameter Welded Pipe, A–489–833	5/1/22–4/30/23
Cagil Makina San ve Tic A.S.	
Çimtaş Boru Imalatiral Ticaret Ltd.	
Emek Boru Makina Sanayi ve Ticaret A.S.	
Erciyas Celik Boru Sanayi A.S.	
HDM Celik Boru Sanayi ve Ticaret A.S./HDM Spiral Kaynakli Celik Boru A.S.[5]	
Mazlum Mangtay Boru Son. Ins. Tar.Urn.San.ve Tic. A.S.	
Noksel Celik Boru Sanayi A.S.	
Ozbal Celik Boru San. Tic. Ve TAAH A.S.	
Spirally Welded Steel Pipe Inc.	
Toscelik Profil ve Sac End. A.S.[6]	
Toscelik Spiral Boru Uretim A.S.	
Umran Celik Boru Sanayii A.S.	
UNITED ARAB EMIRATES: Certain Steel Nails, A–520–804	5/1/22–4/30/23
Al Falaq Building Materials.	
Al Khashab Building Materials Co., LLC.	
Al Rafaa Star Building Materials Est.	
Al Sabbah Trading and Importing, Est.	
Al-Khatib Est.	

	Period to be reviewed
All Ferro Building Materials, LLC.	
Asgarali Yousuf Trading Co., LLC.	
Azymuth Consulting, LLC.	
Burj Al Tasmeem, Tr.	
Gheewala Hardware Trading Company, LLC.	
Madar UAE.	
Master Nails and Pins Manufacturing LLC/Middle East Manufacturing Steel, LLC.	
Mustafa Building Materials Co. (LLC).	
New World International, LLC.	
Okzeela Star Building Materials Trading, LLC.	
Rich Well Steel Industries LLC.	
Rishi International, FZCO.	
Samrat Wire Industry, LLC.	
Sea Lan Contracting.	
SK Metal International DMCC.	
Trade Circle Enterprises, LLC.	
CVD Proceedings	
INDIA: Organic Soybean Meal, C–533–902	9/3/21–12/31/22
Ecopure Specialties Limited.	
Shri Sumati Industries Private Limited.	
Abhay Oil Industries.	
Agrawal Oil & Biocheam.	
Bergwerff Organic India Private Limited; Suminter India Organics Private Limited.	
Bio Treasure Overseas.	
Delight Lifelike Products Private Ltd.	
Delight Sustainable Products Llp.	
Eco Gold Nutri & Organics Llp.	
Eco Gold Nutri And Organics Llp.	
Jay Shree Agro Products.	
Kaj Traders.	
Kanishka Organics Llp.	
Keshav Proteins and Organic LLP.	
Kiesriya Agro Exim Pvt., Ltd.	
Mani Loni.	
Navjyot International.	
Prasad Cotton Industries Pvt., Ltd.	
Radha Krishna Oil Product.	
Raj Foods International.	
Raj Natural Food Pvt., Ltd.	
Rajat Agro Commodities Pvt., Ltd.	
Reindeer Organics Llp.	
Sai Smaran Foods Ltd.	
Satguru Agro Resources Private Ltd.	
Satguru Organics Pvt., Ltd.	
Seasons International Pvt., Ltd.	
Shanti Overseas.	
Shanti Worldwide.	
Shemach Impex.	
Shivam Enterprises.	
Shri Narayani Mfg. Co..	
Shri Sumati Industries Pvt. Ltd.	
Tejawat Organic Foods.	
Unique Organics Ltd.	
Vimala Food Products.	
Vinod Kumar Ranjeet Singh Bafna.	
We Organic Nature Pvt. Ltd.	
REPUBLIC OF KOREA: Carbon and Alloy Steel Cut-To-Length Plate, C–580–888	1/1/22–12/31/22
Ajin Industrial Co., Ltd.	
BDP International.	
Blue Track Equipment.	
Boxco, Inc.	
Bukook Steel Co., Ltd.	
Buma CE Co., Ltd.	
China Chengdu International Techno-Economic Cooperation Co., Ltd.	
Daehan I.M. Co., Ltd.	
Daehan Tex Co., Ltd.	
Daelim Industrial Co., Ltd.	
Daesam Industrial Co., Ltd.	
Daesin Lighting Co., Ltd.	
Daewoo International Corp.	
Dong Yang Steel Pipe.	
DKC.	

	Period to be reviewed
DK Corporation.	
DK Dongshin Co., Ltd.	
Dongbu Steel Co., Ltd.	
Dongkuk Industries Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
EAE Automotive Equipment.	
EEW KHPC Co., Ltd.	
Eplus Expo Inc.	
GS Global Corp.	
Haem Co., Ltd.	
Han Young Industries.	
Hyosung Corp.	
Hyundai Steel Co.	
Jinmyung Frictech Co., Ltd.	
Khana Marine Ltd.	
Kindus Inc.	
Korean Iron and Steel Co., Ltd.	
Kyoungil Precision Co., Ltd.	
LG Electronics Inc.	
Menics.	
POSCO; Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; POSCO Chemical Co., Ltd.; POSCO M-Tech Co., Ltd.; POSCO Terminal Co., Ltd.; POSCO SPS Co., Ltd.	
POSCO International Corporation.	
Qian'an Rentai Metal Products Co., Ltd.	
Samsun C&T Corp.	
Samsung Electronics Co., Ltd.	
Shinko.	
Shipping Imperial Co., Ltd.	
Sinchang Eng Co., Ltd.	
SK Networks Co., Ltd.	
SNP Ltd.	
Steel N People Ltd.	
Summit Industry.	
Sungjin Co., Ltd.	
Wonbang Tech Co., Ltd.	
Young Sun Steel.	
REPUBLIC OF KOREA: Large Diameter Welded Pipe, C–580–898	1/1/22 –12/31/22
AJU Besteel Co., Ltd.	
Chang Won Bending Co., Ltd.	
Daiduck Piping Co., Ltd.	
Dong Yang Steel Pipe Co., Ltd.	
Dongbu Incheon Steel Co., Ltd.	
EEW KHPC Co., Ltd.	
EEW Korea Co., Ltd.	
Hansol Metal Co. Ltd.	
HiSteel Co., Ltd.	
Husteel Co., Ltd. [7].	
Hyundai RB Co., Ltd.	
Hyundai Steel Company [8].	
Il Jin Nts Co. Ltd.	
Kem Solutions Co., Ltd.	
Kiduck Industries Co., Ltd.	
Kum Kang Kind. Co., Ltd.	
Kumsoo Connecting Co., Ltd.	
Nexteel Co., Ltd.	
POSCO International Corporation.	
Samkang M&T Co., Ltd.	
SeAH Steel Corporation; ESAB SeAH Corporation; SeAH Holdings Corporation.	
Seonghwa Industrial Co., Ltd.	
SIN-E B&P Co., Ltd.	
Steel Flower Co., Ltd.	
WELTECH Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions, C–570–968	1/1/22–12/31/22
American International Cargo Service Inc.	
Anhui Morden Living Co., Ltd.	
Anhuiyuxin Metal Products Co., Ltd.	
Anson.	
Beijing Kingpeng International Agriculture Corporation.	
Bisen Smart Access Co., Ltd.	
Caribbean Galaxy Aluminum, S.R.L.	
Changshu Liyuan Imp. & Exp. Co., Ltd.	
Changshu Wojun Machinery Equipment.	
Changzhou Hivalue Impex Co Ltd.	

	Period to be reviewed
Changzhou Infusion Plastics Industries.	
Changzhou Ryan-Al Door.	
Changzhou Yongming Machinery Manufacturing Co., Ltd.	
Chenming Industry and Commerce Shouguang Co., Ltd.	
Comau (Shanghai) Engineering Co., Ltd.	
Dalian Senmiao Wooden Products Co., Ltd.	
Dmax New Material Technology Co., Ltd.	
Dura Shower Enclosures Co., Ltd.	
Eastlinx Xiamen Co., Ltd.	
Epson Engineering (Shenzhen) Ltd.	
Foshan City Nanhai Yongfeng Aluminum.	
Fuzhou Sunmodo New Energy Equipment Co., Ltd.	
General Equipment Technology Development Ltd.	
Guangdong Canbo Electrical Co., Ltd.	
Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.	
Guangdong Suyue Aluminum Co., Ltd.	
Guangdong Victor Aluminum Co., Ltd.	
Guangdong Yaoyinshan Aluminum Co., Ltd.	
Guangzhou Graly Lighting Co., Ltd.	
Hangzhou Evernew Machinery & Equipment Co., Ltd.	
Hangzhou Siyi Imp.&Exp. Co., Ltd.	
Hota International Logistics Co., Ltd.	
HTL Furniture (China) Co., Ltd.	
Huazhijie Plastic Products.	
Hui Qian (Shanghai) International Trading Co., Ltd.	
Jer Education Technology.	
Ji & Da Trading Co, Ltd.	
Jiangsu Asia Pacific Aviation Technology Co., Ltd.	
Jiangsu Singcheer Intelligent Equipment Co., Ltd.	
Jiangsu SV Precision Components.	
Jiangsu Xinhuang Curtain Wall Co., Ltd.	
Larkcop International Co Ltd.	
Lien Chiang Furniture Hardware Co.	
Maxable Global Company Limited.	
Mithras Glass Hardware Factory.	
Ningbo Baihui Furniture Co., Ltd.	
Ningbo Huige Metal Products Co., Ltd.	
Ningbo Mark One International.	
Ningbo Yinzhou Outdoor Equipment Co., Ltd.	
Novista Group Co., Ltd.	
Paleo Furniture Co., Ltd.	
Qingdao Huayu Hardware Products Co.	
Qingdao Mrp Industry Co., Ltd.	
Qingdao Sea Nova Building Profiles.	
Reifenhauser Plastics Machinery (Suzhou) Co., Ltd.	
Rubicon Impt & Expt Co., Limited.	
Shandong Golden Realm Industrial Co., Ltd.	
Shandong Mount Tai Sheng Li Yuan Glass Co., Ltd.	
Shanghai An Mao E-Commerce Co Ltd.	
Shanghai Jobbetter Plastic Machinery Co., Ltd.	
Shanghai Promise Metal Co Ltd.	
Shanghai Xindun Trade Co., Ltd.	
Shenyang Yuanda Aluminum Industry Engineering Co. Ltd.	
Shenzhen Beiruitong Trade Co., Ltd.	
Shenzhen Thomas Homeware Co., Limited.	
Shenzhen Wanduoyi Supply Chain Co., Ltd.	
Shenzhen Wision Industrial Co., Ltd.	
Shenzhen Xinjiayi Plastic & Metal, Co. Ltd.	
ShineLong Technology Corp., Ltd.	
Sichuan Hangxin New Glazing Material Co., Ltd.	
Sinogar Aluminum Company Limited.	
Suzhou Bonate Int. Trading Co., Ltd.	
Suzhou Futong New Materials and High-tech Co., Ltd.	
Suzhou Hengxiang Import & Export Co., Ltd.	
Suzhou Jwell Machinery Co., Ltd.	
Taizhou Meihua Work of Art Co., Ltd.	
The Tigereye International Trading Co. Ltd.	
Tianjin Hongleey Tech Co., Ltd.	
Tianjin Hyosung Packaging Product Co., Ltd.	
Top Asian Resource Co., Ltd.	
Wuxi Longdet Imp. & Exp. Co., Ltd.	
Wuxi Rapid Scaffolding Engineering.	
Xiamen Hosetechnique Ltd.	

	Period to be reviewed
Xiamen Rex Technology Co., Ltd.	
Yantai Jintai International.	
Yantai Jintai International Trade.	
Yantai Jintai International Trade Co., Ltd.	
Jiangsu Yizheng Haitian Aluminum Industrial.	
Yonn Yuu Enterprise Co., Ltd.	
Yuyao Royal Industrial.	
Zhangjiagang Kingplas Machinery Co., Ltd.	
Zhejiang Hengfeng Technology Co., Ltd.	
Zhejiang Zhong Ming Ji Xiang.	
Zhuji Wenfeng Import and Export Co.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, C–570–125	1/1/22–12/31/22
Chongqing Zongshen General Power Machine Co., Ltd.; Chongqing Zongshen Power Machinery Co., Ltd.; Zong Shen Industrial Group; Chongqing Zongshen Automobile Air Intake System Manufacturing Co., Ltd.; Chongqing Zongshen High Speed Boat Development Co., Ltd.; Chongqing Zong Shen Electrical Appliance Co., Ltd.; Chongqing Dajiang Power Equipment Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Non-Refillable Steel Cylinders, C–570–127	1/1/22–12/31/22
Ningbo Eagle Machinery & Technology Co., Ltd.	
Zhejiang KIN–SHINE Technology Co., Ltd.	
TURKEY: Large Diameter Welded Pipe, C–489–834	1/1/22–12/31/22
Cagil Makina San ve Tic A.S.	
Çimtaş Boru Imalatiral Ticaret Ltd.	
Emek Boru Makina Sanayi ve Ticaret A.S.	
Erciyas Celik Boru Sanayi A.S.	
HDM Celik Boru Sanayi ve Ticaret A.S./HDM Spiral Kaynakli Celik Boru A.S.[9]	
Mazlum Mangtay Boru Son. Ins. Tar.Urn.San.ve Tic. A.S.	
Noksel Celik Boru Sanayi A.S.	
Ozbal Celik Boru San. Tic. Ve TAAH A.S.	
Spirally Welded Steel Pipe Inc.	
Toscelik Profil ve Sac End. A.S.[10]	
Toscelik Spiral Boru Uretim A.S.	
Umran Celik Boru Sanayii A.S.	

Suspension Agreements

None.

[5] In English, the name HDM Spiral Kaynakli Celik Boru A.S. is HDM Spirally Welded Steel Pipe Co. Inc.

[6] In English, the name Toscelik Profil ve Sac End. A.S. is Toscelik Profile and Sheet Ind. Co.

[7] Subject merchandise both produced and exported by Husteel Co., Ltd. (Husteel) is excluded from the countervailing duty order. *See Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019). Thus, Husteel's inclusion in this administrative review is limited to entries for which Husteel was not both the producer and exporter of the subject merchandise.

[8] Subject merchandise both produced and exported by Hyundai Steel Company (Hyundai Steel) and subject merchandise produced by Hyundai Steel and exported by Hyundai Corporation are excluded from the countervailing duty order. *See Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019). Thus, Hyundai Steel's inclusion in this administrative review is limited to entries for which Hyundai Steel was not the producer and exporter of the subject merchandise and for which Hyundai Steel was not the producer and Hyundai Corporation was not the exporter of subject merchandise.

[9] In English, the name HDM Spiral Kaynakli Celik Boru A.S. is HDM Spirally Welded Steel Pipe Co. Inc.

[10] In English, the name Toscelik Profil ve Sac End. A.S. is Toscelik Profile and Sheet Ind. Co.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether ADs have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v)

evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[11] available at *https://www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[13] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[14] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 6, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–14753 Filed 7–11–23; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[13] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[14] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–056, A–552–821, C–570–057]

Certain Tool Chests and Cabinets From the People's Republic of China and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on certain tool chests and cabinets (tool chests and cabinets) from the People's Republic of China (China) and from the Socialist Republic of Vietnam (Vietnam), and the countervailing duty (CVD) order on tool chests and cabinets from China would likely lead to the continuation or recurrence of dumping, and countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2018, Commerce published in the **Federal Register** the CVD order on tool chests and cabinets from China.[1] On June 4, 2018, Commerce published the AD orders on tool chests and cabinets from China and Vietnam.[2]

On December 1, 2022, the ITC instituted,[3] and Commerce initiated,[4] the first sunset review of the *AD Orders* and the *CVD Order* (collectively, *Orders*), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.[5]

On July 7, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of

[1] *See Certain Tool Chests and Cabinets from the People's Republic of China: Countervailing Duty Order,* 83 FR 3299 (January 24, 2018) (*CVD Order*).

[2] *See Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 83 FR 25645 (June 4, 2018) (*AD Orders*).

[3] *See Tool Chests and Cabinets from China and Vietnam; Institution of Five-Year Reviews,* 87 FR 73786 (December 1, 2022).

[4] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022) *(Initiation Notice).*

[5] *See Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 88 FR 15667 (March 14, 2023) (*Tool Chests and Cabinets from China and Vietnam AD*), and accompanying Issues and Decision Memorandum (IDM); and *Certain Tool Chests and Cabinets from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 88 FR 19065 (March 30, 2023) (*Tool Chests and Cabinets from China CVD*), and accompanying IDM.

material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the Orders

The scope of the *Orders* covers certain metal tool chests and tool cabinets, with drawers, from China (AD/CVD) and Vietnam (AD). For a complete description of the scope of the *Orders, see* Appendix I and II to this notice.[7]

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to 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, 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 the continuation of the *Orders* is July 7, 2023.[8] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the date of the last determination by the Commission.

Administrative Protective Order (APO)

This notice also serves as a final 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), which continues to govern business proprietary information in this segment of the proceeding. 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).

[6] *See Tool Chests and Cabinets from China and Vietnam,* 88 FR 43399 (July 7, 2023) (*ITC Final Determination*).

[7] *See also Tool Chests and Cabinets from China and Vietnam AD Orders,* 83 FR at 25646–47; *and Tool Chests and Cabinets from China CVD Order,* 83 FR at 3300–01.

[8] *See ITC Final Determination.*

Dated: July 7, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the AD Orders

The scope of these orders covers certain metal tool chests and tool cabinets, with drawers, (tool chests and cabinets), from the People's Republic of China (China) and the Socialist Republic of Vietnam (Vietnam). The scope covers all metal tool chests and cabinets, including top chests, intermediate chests, tool cabinets and side cabinets, storage units, mobile work benches, and work stations and that have the following physical characteristics:

(1) a body made of carbon, alloy, or stainless steel and/or other metals;

(2) two or more drawers for storage in each individual unit;

(3) a width (side to side) exceeding 15 inches for side cabinets and exceeding 21 inches for all other individual units but not exceeding 60 inches;

(4) a body depth (front to back) exceeding 10 inches but not exceeding 24 inches; and

(5) prepackaged for retail sale.

For purposes of this scope, the width parameter applies to each individual unit, *i.e.,* each individual top chest, intermediate top chest, tool cabinet, side cabinet, storage unit, mobile work bench, and work station.

Prepackaged for retail sale means the units may, for example, be packaged in a cardboard box, other type of container or packaging, and may bear a Universal Product Code, along with photographs, pictures, images, features, artwork, and/or product specifications. Subject tool chests and cabinets are covered whether imported in assembled or unassembled form. Subject merchandise includes tool chests and cabinets produced in China or Vietnam but assembled, prepackaged for retail sale, or subject to other minor processing in a third country prior to importation into the United States. Similarly, it would include tool chests and cabinets produced in China or Vietnam that are assembled, prepackaged for retail sale, or subject to other minor processing after importation into the United States.

Subject tool chests and cabinets may also have doors and shelves in addition to drawers, may have handles (typically mounted on the sides), and may have a work surface on the top. Subject tool chests and cabinets may be uncoated (*e.g.,* stainless steel), painted, powder coated, galvanized, or otherwise coated for corrosion protection or aesthetic appearance.

Subject tool chests and cabinets may be packaged as individual units or in sets. When packaged in sets, they typically include a cabinet with one or more chests that stack on top of the cabinet. Tool cabinets act as a base tool storage unit and typically have rollers, casters, or wheels to permit them to be moved more easily when loaded with tools. Work stations and mobile work benches are tool cabinets with a work surface on the top that may be made of rubber, plastic, metal, wood, or other materials.

Top chests are designed to be used with a tool cabinet to form a tool storage unit. The top chests may be mounted on top of the base tool cabinet or onto an intermediate chest. They are often packaged as a set with tool cabinets or intermediate chests, but may also be packaged separately. They may be packaged with mounting hardware (*e.g.,* bolts) and instructions for assembling them onto the base tool cabinet or onto an intermediate tool chest which rests on the base tool cabinet. Smaller top chests typically have handles on the sides, while the larger top chests typically lack handles. Intermediate tool chests are designed to fit on top of the floor standing tool cabinet and to be used underneath the top tool chest. Although they may be packaged or used separately from the tool cabinet, intermediate chests are designed to be used in conjunction with tool cabinets. The intermediate chests typically do not have handles. The intermediate and top chests may have the capability of being bolted together.

Side cabinets are designed to be bolted or otherwise attached to the side of the base storage cabinet to expand the storage capacity of the base tool cabinet.

Subject tool chests and cabinets also may be packaged with a tool set included. Packaging a subject tool chest and cabinet with a tool set does not remove an otherwise covered subject tool chest and cabinet from the scope. When this occurs, the tools are not part of the subject merchandise.

All tool chests and cabinets that meet the above definition are included in the scope unless otherwise specifically excluded.

Excluded from the scope of these *Orders* are tool boxes, chests, and cabinets with bodies made of plastic, carbon fiber, wood, or other non-metallic substances.

Also excluded from the scope of these *Orders* are industrial grade steel tool chests and cabinets. The excluded industrial grade steel tool chests and cabinets are those:

(1) Having a body that is over 60 inches in width; or

(2) having each of the following physical characteristics:

(a) a body made of steel that is 0.047 inches or more in thickness;

(b) a body depth (front to back) exceeding 21 inches; and

(c) a unit weight that exceeds the maximum unit weight shown below for each width range:

Inches	Maximum pounds
Weight to Width Ratio Tool Chests	
21> <25	90
25> ≤28	115
28> ≤30	120
30> ≤32	130
32> ≤34	140
34> ≤36	150
36> ≤38	160
38> ≤40	170
40> ≤42	180
42> ≤44	190
44> ≤46	200
46> ≤48	210
48> ≤50	220
50> ≤52	230
52> ≤54	240

Inches	Maximum pounds
54> ≤56	250
56> ≤58	260
58> ≤60	270
Weight to Width Ratio Tool Cabinets	
21> ≤25	155
25> ≤28	170
28> ≤30	185
30> ≤32	200
32> ≤34	215
34> ≤36	230
36> ≤38	245
38> ≤40	260
40> ≤42	280
42> ≤44	290
44> ≤46	300
46> ≤48	310
48> ≤50	320
50> ≤52	330
52> ≤54	340
54> ≤56	350
56> ≤58	360
58> ≤60	370

Also excluded from the scope of these *Orders* are service carts. The excluded service carts have all of the following characteristics:

(1) Casters, wheels, or other similar devices which allow the service cart to be rolled from place to place;

(2) an open top for storage, a flat top, or a flat lid on top of the unit that opens;

(3) a space or gap between the casters, wheels, or other similar devices, and the bottom of the enclosed storage space (*e.g.,* drawers) of at least 10 inches; and

(4) a total unit height, including casters, of less than 48 inches.

Also excluded from the scope of these *Orders* are non-mobile work benches. The excluded non-mobile work benches have all of the following characteristics:

(1) A solid top working surface;

(2) no drawers, one drawer, or two drawers in a side-by-side configuration; and

(3) the unit is supported by legs and has no solid front, side, or back panels enclosing the body of the unit.

Also excluded from the scope of these *Orders* are metal filing cabinets that are configured to hold hanging file folders and are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 9403.10.0020.

Merchandise subject to these *Orders* is classified under HTSUS categories 9403.20.0021, 9403.20.0026, 9403.20.0030, 9403.20.0080, 9403.20.0090, and 7326.90.8688, but may also be classified under HTSUS category 7326.90.3500. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of these *Orders* is dispositive.

Appendix II

Scope of the CVD Order

The scope of the *Order* covers certain metal tool chests and tool cabinets, with drawers from China. The scope covers all metal tool chests and cabinets, including top chests, intermediate chests, tool cabinets and side cabinets, storage units, mobile work benches, and work stations and that have the following physical characteristics:

(1) a body made of carbon, alloy, or stainless steel and/or other metals;

(2) two or more drawers for storage in each individual unit;

(3) a width (side to side) exceeding 15 inches for side cabinets and exceeding 21 inches for all other individual units but not exceeding 60 inches;

(4) a body depth (front to back) exceeding 10 inches but not exceeding 24 inches; and

(5) prepackaged for retail sale.

For purposes of this scope, the width parameter applies to each individual unit, *i.e.,* each individual top chest, intermediate top chest, tool cabinet, side cabinet, storage unit, mobile work bench, and work station.

Prepackaged for retail sale means the units may, for example, be packaged in a cardboard box, other type of container or packaging, and may bear a Universal Product Code, along with photographs, pictures, images, features, artwork, and/or product specifications. Subject tool chests and cabinets are covered whether imported in assembled or unassembled form. Subject merchandise includes tool chests and cabinets produced in China but assembled, prepackaged for retail sale, or subject to other minor processing in a third country prior to importation into the United States. Similarly, it would include tool chests and cabinets produced in China that are assembled, prepackaged for retail sale, or subject to other minor processing after importation into the United States.

Subject tool chests and cabinets may also have doors and shelves in addition to drawers, may have handles (typically mounted on the sides), and may have a work surface on the top. Subject tool chests and cabinets may be uncoated (*e.g.,* stainless steel), painted, powder coated, galvanized, or otherwise coated for corrosion protection or aesthetic appearance.

Subject tool chests and cabinets may be packaged as individual units or in sets. When packaged in sets, they typically include a cabinet with one or more chests that stack on top of the cabinet. Tool cabinets act as a base tool storage unit and typically have rollers, casters, or wheels to permit them to be moved more easily when loaded with tools. Work stations and mobile work benches are tool cabinets with a work surface on the top that may be made of rubber, plastic, metal, wood, or other materials.

Top chests are designed to be used with a tool cabinet to form a tool storage unit. The top chests may be mounted on top of the base tool cabinet or onto an intermediate chest. They are often packaged as a set with tool cabinets or intermediate chests, but may also be packaged separately. They may be packaged with mounting hardware (*e.g.,* bolts) and instructions for assembling them onto the base tool cabinet or onto an intermediate tool chest which rests on the base tool cabinet. Smaller top chests typically have handles on the sides, while the larger top chests typically lack handles. Intermediate tool chests are designed to fit on top of the floor standing tool cabinet and to be used underneath the top tool chest. Although they may be packaged or used separately from the tool cabinet, intermediate chests are designed to be used in conjunction with tool cabinets. The intermediate chests typically do not have handles. The intermediate and top chests may have the capability of being bolted together.

Side cabinets are designed to be bolted or otherwise attached to the side of the base storage cabinet to expand the storage capacity of the base tool cabinet.

Subject tool chests and cabinets also may be packaged with a tool set included. Packaging a subject tool chest and cabinet with a tool set does not remove an otherwise covered subject tool chest and cabinet from the scope. When this occurs, the tools are not part of the subject merchandise.

All tool chests and cabinets that meet the above definition are included in the scope unless otherwise specifically excluded.

Excluded from the scope of the *Order* are tool boxes, chests, and cabinets with bodies made of plastic, carbon fiber, wood, or other non-metallic substances.

Also excluded from the scope of the *Order* are industrial grade steel tool chests and cabinets. The excluded industrial grade steel tool chests and cabinets are those:

(1) having a body that is over 60 inches in width; or

(2) having each of the following physical characteristics:

(a) a body made of steel that is 0.047 inches or more in thickness;

(b) a body depth (front to back) exceeding 21 inches; and

(c) a unit weight that exceeds the maximum unit weight shown below for each width range:

Inches	Maximum pounds
Weight to Width Ratio Tool Chests	
Greater than 21 and less than or equal to 25	90
Greater than 25 and less than or equal to 28	115
Greater than 28 and less than or equal to 30	120
Greater than 30 and less than or equal to 32	130
Greater than 32 and less than or equal to 34	140

Inches	Maximum pounds
Greater than 34 and less than or equal to 36	150
Greater than 36 and less than or equal to 38	160
Greater than 38 and less than or equal to 40	170
Greater than 40 and less than or equal to 42	180
Greater than 42 and less than or equal to 44	190
Greater than 44 and less than or equal to 46	200
Greater than 46 and less than or equal to 48	210
Greater than 48 and less than or equal to 50	220
Greater than 50 and less than or equal to 52	230
Greater than 52 and less than or equal to 54	240
Greater than 54 and less than or equal to 56	250
Greater than 56 and less than or equal to 58	260
Greater than 58 and less than or equal to 60	270
Weight to Width Ratio Tool Cabinets	
Greater than 21 and less than or equal to 25	155
Greater than 25 and less than or equal to 28	170
Greater than 28 and less than or equal to 30	185
Greater than 30 and less than or equal to 32	200
Greater than 32 and less than or equal to 34	215
Greater than 34 and less than or equal to 36	230
Greater than 36 and less than or equal to 38	245
Greater than 38 and less than or equal to 40	260
Greater than 40 and less than or equal to 42	280
Greater than 42 and less than or equal to 44	290
Greater than 44 and less than or equal to 46	300
Greater than 46 and less than or equal to 48	310
Greater than 48 and less than or equal to 50	320
Greater than 50 and less than or equal to 52	330
Greater than 52 and less than or equal to 54	340
Greater than 54 and less than or equal to 56	350
Greater than 56 and less than or equal to 58	360
Greater than 58 and less than or equal to 60	370

Also excluded from the scope of the *Order* are service carts. The excluded service carts have all of the following characteristics:

(1) casters, wheels, or other similar devices which allow the service cart to be rolled from place to place;

(2) an open top for storage, a flat top, or a flat lid on top of the unit that opens;

(3) a space or gap between the casters, wheels, or other similar devices, and the bottom of the enclosed storage space (*e.g.,* drawers) of at least 10 inches; and

(4) a total unit height, including casters, of less than 48 inches.

Also excluded from the scope of the *Order* are non-mobile work benches. The excluded non-mobile work benches have all of the following characteristics:

(1) a solid top working surface;

(2) no drawers, one drawer, or two drawers in a side-by-side configuration; and

(3) the unit is supported by legs and has no solid front, side, or back panels enclosing the body of the unit.

Also excluded from the scope of the *Order* are metal filing cabinets that are configured to hold hanging file folders and are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 9403.10.0020.

Merchandise subject to the *Order* is classified under HTSUS categories 9403.20.0021, 9403.20.0026, 9403.20.0030 and 7326.90.8688, but may also be classified under HTSUS category 7326.90.3500. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the *Order* is dispositive.

[FR Doc. 2023–14756 Filed 7–11–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–104, C–570–105]

Alloy and Certain Carbon Steel Threaded Rod From the People's Republic of China; Carbon and Alloy Steel Threaded Rod From the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Vulcan Threaded Products Inc. (Vulcan), the U.S. Department of Commerce (Commerce) is initiating country-wide circumvention inquiries to determine whether steel threaded rod, made from alloy steel, that is produced in the United States from unthreaded pins imported from the People's Republic of China (China) is circumventing the antidumping duty (AD) order on alloy and certain carbon steel threaded rod from China and the countervailing duty (CVD) order on carbon and alloy steel threaded rod from China.

DATES: Applicable July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2923.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2023, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(c), Vulcan filed a request for circumvention inquiries [1] alleging that steel threaded rod completed in the United States using unthreaded pins imported from China was circumventing the AD and CVD orders on steel

[1] *See* Vulcan's Letter, ''Request for Circumvention Inquiry,'' dated May 22, 2023 (Circumvention Request).

threaded rod from China.[2] On June 14, 2023, we issued a supplemental questionnaire to Vulcan,[3] and we extended the time period for determining whether to initiate circumvention inquiries by 15 days, until July 6, 2023.[4]

On June 15, 2023, Commerce received a submission from Birmingham Fastener Inc. and Dan-Loc Group LLC, importers and U.S. producers of steel threaded rod, opposing initiation of circumvention inquiries.[5] On June 22, 2023, Vulcan responded to Commerce's questionnaire.[6]

Scope of the Orders

The merchandise covered by these orders is alloy and carbon steel threaded rod from China. A full description of the scope of the orders is provided in the Initiation Checklists.[7]

Merchandise Subject to the Circumvention Inquiries

These circumvention inquiries cover steel threaded rod, made from alloy steel, completed in the United States using unthreaded pins imported from China.

Initiation of Circumvention Inquiries

Section 351.226(d) of Commerce's regulations states that, if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce ''will accept the request and initiate a circumvention inquiry.'' Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege ''that the elements necessary for a circumvention determination under section 781 of the Act exist'' and be ''accompanied by information reasonably available to the interested party supporting these allegations.'' Vulcan alleges circumvention pursuant to section 781(a) of the Act (merchandise completed or assembled in the United States).

Section 781(a)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in the United States from parts or components produced in the country subject to the order. In conducting a circumvention inquiry under section 781(a)(1) of the Act, Commerce relies on the following criteria: (A) merchandise sold in the United States is of the same class or kind as any merchandise that is the subject of an AD or CVD order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise.

No single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in the United States is minor or insignificant within the meaning of 781(a) of the Act.[8] Accordingly, it is Commerce's practice to evaluate each of the five criteria specified therein, and to reach an affirmative or negative circumvention determination based on the totality of the circumstances of the particular circumvention inquiry.[9]

Furthermore, section 781(a)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in the United States within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the entity that assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country to which the order applies; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation that resulted in the issuance of such order. As discussed below, Vulcan provided allegations and supporting evidence with respect to the above-refenced criteria as they relate to products within the *2020 AD Order* and the *2020 CVD Order.*

Analysis

Based on our analysis [10] of Vulcan's request for circumvention inquiries, we determine that Vulcan satisfied the criteria set forth by 19 CFR 351.226(c) with respect to the certain products within the *2020 AD Order* (*i.e.,* A–570–104, covering alloy and certain carbon steel threaded rod from China) and the *2020 CVD Order* (*i.e.,* C–570–105, covering carbon and alloy steel threaded rod from China). Vulcan did not provide evidence in support of its allegation as it relates to carbon-quality steel products; therefore, Vulcan's request did not meet the requirements set forth by 19 CFR 351.226(c) with respect to the *2009 AD Order* (*i.e.,* A–570–932, which covers carbon quality steel threaded rod from China),[11] or the carbon steel threaded rod contained in the *2020 AD Order* and the *2020 CVD Order.* Accordingly, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted Vulcan's request with respect to the alloy products covered by the *2020 AD Order* and the *2020 CVD Order* and are initiating circumvention inquiries for these orders with respect to alloy steel threaded rod. For a full discussion of the basis for our decision to initiate these circumvention inquiries, *see* Initiation Checklists.

Furthermore, pursuant to 19 CFR 351.226(c)(2)(iii) and (v), Vulcan asserted that the company-specific information underlying its allegation was likely representative of the broader universe of circumvention. Accordingly, Vulcan stated that it is appropriate to conduct these inquiries on a country-wide basis; the company identified prior instances where Commerce considered

[2] Vulcan's Circumvention Request related to three separate orders: (1) *Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009) (*2009 AD Order*); (2) *Alloy and Certain Carbon Steel Threaded Rod From the People's Republic of China: Antidumping Duty Order,* 85 FR 19929 (April 9, 2020) (*2020 AD Order*); and (3) *Carbon and Alloy Steel Threaded Rod From India and the People's Republic of China: Countervailing Duty Orders,* 85 FR 19927 (April 9, 2020) (*2020 CVD Order*).

[3] *See* Commerce's Letter, ''Request for Circumvention Inquiries—Supplemental Questionnaire,'' dated June 14, 2023.

[4] *See* Memorandum, ''Extension of Time to Determine Whether to Initiate Circumvention Inquiries,'' dated June 14, 2023.

[5] *See* Birmingham/Dan-Loc's Letter, ''Opposition to Request for Circumvention Inquiry,'' dated June 14, 2023.

[6] *See* Vulcan's Letter, ''Response to Supplemental Questionnaire,'' dated June 22, 2023 (Vulcan June 22, 2023 SQR).

[7] *See* Initiation Checklists, ''Circumvention Initiation Checklist,'' dated concurrently with, and hereby adopted by, this notice (AD Checklist—2020 Order), at Attachment I; and ''Circumvention Initiation Checklist,'' dated concurrently with, and hereby adopted by, this notice (CVD Checklist—2020 Order), at Attachment I.

[8] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994), at 893.

[9] *See, e.g., Hydrofluorocarbon Blends from the People's Republic of China: Final Negative Scope Ruling on Gujarat Fluorochemicals Ltd.'s R–410A Blend; Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing CCC Components,* 85 FR 61930 (October 1, 2020), and accompanying Issues and Decision Memorandum at 20 (specifying the applicable standard in the context of an inquiry under section 781(b) of the Act).

[10] *See generally* AD Checklist—2020 Order; and CVD Checklist—2020 Order; *see also* Commerce's Letter, ''Rejection of Circumvention Request,'' dated July 6, 2023.

[11] *See* Vulcan June 22, 2023 SQR at 2 (''Vulcan is not aware of any publicly available information indicating that circumvention is currently occurring with respect to the antidumping duty order on carbon steel threaded rod from China (A–570–932).'').

allegations to be generally applicable (rather than company-specific), and also alleged that there was the potential for unaddressed evasion absent country-wide inquiries.[12] Based on these considerations, Commerce is initiating these circumvention inquiries on a country-wide basis.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of the initiation of circumvention inquiries and will direct CBP to continue the suspension of liquidation of entries of products subject to these circumvention inquiries that were already subject to the suspension of liquidation under the orders and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the applicable scope. Should Commerce issue affirmative preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(a) of the Act, Commerce determines that Vulcan's request for circumvention inquiries relating to the *2020 AD Order* and the *2020 CVD Order* satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of these circumvention inquiries to determine whether alloy steel threaded rod produced in the United States from unthreaded pins imported from China is circumventing these orders.

Additionally, we are hereby providing interested parties with an opportunity to comment on any additional entities—*i.e.,* importers, exporters, producers—that are involved in the supply, sale, or production related to alloy steel threaded rod completed in the United States using unthreaded pins imported from China. Comments on the identity of such entities are due within seven days of publication of this notice in the **Federal Register**.

We have included a description of the products that are subject to these inquiries and an explanation of Commerce's decision to initiate in the accompanying Initiation Checklists.[13] In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary circumvention determinations no later than 150 days from the date of publication of the notice of initiation of these circumvention inquiries in the **Federal Register**.

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: July 6, 2023,

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–14804 Filed 7–11–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD145]

Endangered and Threatened Species; Take of Abalone

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

ACTION: Notice; Issuance of a scientific research and enhancement permit.

SUMMARY: Notice is hereby given that NMFS has renewed a scientific research and enhancement permit (Permit 14344–3R) issued to the University of California, Davis, under the Endangered Species Act (ESA). The research and enhancement activities are intended to support the recovery of white abalone listed under the Endangered Species Act (ESA) and inform management, conservation, and recovery efforts.

ADDRESSES: The permits and related documents are available for review upon written request via email to *nmfs.wcr-apps@noaa.gov.* Please include the permit number (14344–3R) in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Susan Wang, Long Beach, California, Phone: 562–980–4199, email: *Susan.Wang@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice was published in the **Federal Register** on January 18, 2023, that a permit renewal request had been submitted by the University of California, Davis. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search for the permit number and **Federal Register** notice information provided in the table below.

TABLE 1—ISSUED PERMITS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
14344–3R	0648–XC679	University of California, Davis—1850 Research Park Drive, Suite 300, Davis, CA 95618 (Responsible Party: Alyssa Frederick).	88 FR 2889, January 18, 2023.	June 27, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS determined that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on finding that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

[12] *See* Circumvention Request at 27.

[13] *See generally* AD Checklist—2020 Order; and CVD Checklist—2020 Order.

Dated: July 7, 2023.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–14806 Filed 7–11–23; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0005: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is announcing an opportunity for public comment on the collection of certain information by the Commission. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This **Federal Register** notice solicits comments on the PRA implications of renewing the collection of data by the Commission, including comments addressing the burden to the entities in collecting the relevant information.

DATES: Comments must be submitted on or before September 11, 2023.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0005'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Amanda Olear, Director, (202) 418–5283, *aolear@cftc.gov;* Pamela Geraghty, Deputy Director, (202) 418–5634, *pgeraghty@cftc.gov;* Peter Sanchez, Acting Associate Director, (202) 418–5237, *psanchez@cftc.gov;* or Elizabeth Groover, Special Counsel, (202) 418–5985, *egroover@cftc.gov,* Market Participants Division, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the collection of information listed below. 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 number.

Title: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants (OMB control number 3038–0005). This is a request for extension of a currently approved information collection.

Abstract: The various collections of information required by part 4 [1] of the Commission's regulations were previously approved by OMB in accordance with the PRA and assigned OMB control number 3038–0005. The Commission offers the following summary of the renewal to the notice and the resulting estimated impact on existing burden hour estimates associated with this information collection.

The Commodity Exchange Act (CEA) empowers the Commission with the authority to require commodity pool operators (CPOs) and commodity trading advisors (CTAs) to maintain books and records and to file reports as required by the Commission.[2] The Commission also has the power to promulgate such regulations as it deems necessary to implement the purposes of the CEA.[3] It is pursuant to this authority that the Commission has promulgated the various compliance requirements for CPOs and CTAs in 17 CFR part 4. The reporting, filing, and recordkeeping requirements within part 4 of the Commission's regulations were adopted to assist and inform customers, to establish customer protection initiatives for investors, to facilitate monitoring intermediary compliance with part 4 regulations by the Commission and its delegee, the National Futures Association (NFA), and to enable the Commission to better monitor the market risks posed by its registrants. The information collections are necessary to enable the Commission and NFA to accomplish the purposes of both the CEA and the compliance regime set forth in part 4 of the Commission's regulations.

With regard to the information collection discussed above, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed revision to the collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the further use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[4]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on

[1] 17 CFR 4.1–4.41.

[2] 7 U.S.C. 6n(3).

[3] 7 U.S.C. 8a(5).

[4] 17 CFR 145.9.

the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follow:

Respondents/affected entities: (1) All persons filing reports required by Part 4 for, and (2) all principals of such persons.

Estimated number of respondents: 49,083.

Estimated number of exempt pools/reports per respondent: 8.8.

Estimated total annual burden on respondents: 432,325 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 7, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–14773 Filed 7–11–23; 8:45 am]

BILLING CODE P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB–2023–0038]

DEPARTMENT OF HEATH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Docket No. CMS–2023–0106]

DEPARTMENT OF THE TREASURY

[Docket No. TREAS–DO–2023–0008]

Request for Information Regarding Medical Payment Products

AGENCY: Consumer Financial Protection Bureau (CFPB), Centers for Medicare & Medicaid Services, Department of Health and Human Services (HHS), and Department of the Treasury (Treasury).

ACTION: Request for information.

SUMMARY: The CFPB, an independent agency, HHS, and the Treasury (collectively, the agencies), are soliciting comments from the public and interested parties on medical credit cards, loans, and other financial products used to pay for health care. The agencies seek to understand the prevalence, nature, and impact of these products, including disparities across different demographic groups. The agencies also seek to understand the effects these products may have on patients and on the health care system. In particular, the agencies seek comment on whether these products may allow health care providers to operate outside of a broad range of patient and consumer protections. The agencies also seek comment on whether these products may contribute to health care cost inflation, displace hospitals' provision of financial assistance, lead patients to pay inaccurate or inflated medical bills, increase the amount patients must pay due to financing costs, or otherwise harm patients' mental, physical, and financial well-being, including through downstream credit reporting and debt collection practices. In line with the agencies' work to lower health care costs and reduce the burden of medical debt, the agencies also seek comment on policy options to protect consumers from harm.

DATES: To be assured consideration, comments must be received at one of the addresses provided below by September 11, 2023.

ADDRESSES: Interested parties are encouraged to submit written comments to any and all agencies listed below. Comments submitted to the Federal eRulemaking Portal will be shared with all agencies for consideration. Comments should be directed to:

CFPB: You may submit responsive information and other comments, identified by Docket No. CFPB–2023–0038, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: MedicalDebtRFI_2023@cfpb.gov.* Include Docket No. CFPB–2023–0038 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Request for Information Regarding Medical Payment Products, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

HHS: You may submit responsive information and other comments, identified by Docket No. CMS–2023–0106, by any of the following methods:

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Docket No. CMS–2023–0106, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Docket No. CMS–2023–0106, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Treasury: You may submit responsive information and other comments, identified by Docket No. TREAS–DO–2023–0008, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: The agencies encourage the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). In general, all comments received will be posted without change to *https://www.regulations.gov.* All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

CFPB: Octavian Carare, Supervisory Economist, Consumer Financial Protection Bureau, at *Octavian.Carare@cfpb.gov* or (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

HHS: Czarina Biton, Centers for Medicare & Medicaid Services, at *Czarina.Biton@cms.hhs.gov* or 301–276–1770.

Treasury: Thomas West, Deputy Assistant Secretary, U.S. Department of the Treasury at *Thomas.West2@treasury.gov* or 202–622–2000.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

a. Overview

Many people have difficulty paying for medical care. Although insurance coverage has expanded over the last two decades and the uninsured rate has recently reached historic lows, the cost of medical care, and particularly the out-of-pocket cost for patients and families, has grown faster than inflation.[1] For many patients, the financial challenges associated with paying for medical care are compounded by the complexities of health care coverage determinations as well as by medical billing and payment systems that can result in inaccuracies and errors that only increase the financial and psychological burden on patients.

Although patients have many options to pay for care, health care providers may encourage patients and their families to use commercial medical payment products, including medical credit cards and installment loans, to finance care.[2] Health care providers may promote medical payment products because the use of these products allows providers to avoid the administrative burden of slow and complex insurance reimbursement, outsource servicing and collections costs, get paid faster, and receive payment from people who otherwise would not pay the full price for care.[3] However, for patients, using these products can complicate insurance coverage, interfere with the availability of financial assistance, make it difficult to dispute inaccurate or inflated medical bills, and increase the total cost of care through interest and fees. It is also possible that some people who pay for care using medical payment products are charged higher prices for their care than they otherwise would have been asked to pay, such as gross charges (also known as chargemaster prices).[4]

Patients may use risky and expensive commercial medical payment products rather than low- or no-cost alternatives because they do not know alternatives exist, they do not understand the risks and costs of medical payment products, or they feel pressured or coerced into signing up for these products.[5] In some cases, medical payment products may allow patients to access care they would otherwise have to forgo. However, these payment products can also lead to patients paying more out of pocket if patients use medical payment products to pay bills that should have been covered by insurance or financial assistance, to pay inaccurate bills which they then have difficulty disputing post-payment, or to pay bills in full whose balances they would otherwise have been able to negotiate pre-payment.

Health care providers and financial companies may also use these payment products to attempt to avoid restrictions on credit reporting and debt collection practices that otherwise apply to medical debt, including restrictions imposed by national credit reporting companies and restrictions imposed by Federal law.[6] Specifically, the three national credit reporting companies voluntarily do not report medical debt collections items with original balances under $500 or which are less than one year old, but they have not restricted the reporting of debt collections items reported with classification codes indicating that they are ''credit card'' or ''installment loan'' collections. Additionally, section 501(r) of the Internal Revenue Code (IRC) prohibits tax-exempt hospital organizations from engaging in extraordinary collection actions, including reporting the patient's debt to credit reporting companies or sending the patient's debt to a third-party debt collector, before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the hospital's financial assistance policy.[7] However, the agencies believe that tax-exempt hospitals and the financial companies that partner with them may not be making reasonable efforts to determine whether an individual is eligible for financial assistance before offering the individual a medical payment product or taking extraordinary collection actions to attempt to collect an overdue medical payment product balance.

In this Request for Information (RFI), CFPB, HHS, and Treasury seek comment on the prevalence, nature, and impact of medical payment products on consumers and on the health care system. The agencies also seek comment on policy options to address practices by health care providers, health insurance issuers, employer-sponsored health plans, and financial companies that result in consumers paying excess costs.

This RFI builds upon recent work by CFPB, HHS, Treasury, and other Federal agencies to assist consumers with managing health care costs and medical bills, and to protect patients and consumers from paying inaccurate or inflated medical bills.[8] That work includes CFPB research into the extent and impact of medical debt and the accuracy of those debts,[9] as well as CFPB guidance to prevent unlawful medical debt collection and reporting.[10] It also includes actions by HHS and other agencies to implement surprise

[1] Peterson-KFF, Shameek Rakshit, Emma Wager, Paul Hughes-Cromwick, Cynthia Cox, and Krutika Amin, ''How does medical inflation compare to inflation in the rest of the economy?'' (March 2023), *available at https://www.healthsystemtracker.org/brief/how-does-medical-inflation-compare-to-inflation-in-the-rest-of-the-economy/.*

[2] CFPB, ''Medical Credit Cards and Financing Plans'' (May 2023), *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[3] *Id.* at 8.

[4] ''Gross charge'' and ''chargemaster'' here refer to the definitions provided in 45 CFR 180.20, namely, ''Chargemaster means the list of all individual items and services maintained by a hospital for which the hospital has established a charge,'' and ''Gross charge means the charge for an individual item or service that is reflected on a hospital's chargemaster, absent any discounts.''

[5] *Id.* at 10.

[6] CFPB, ''Debt collectors re-evaluate medical debt furnishing in light of data integrity issues,'' *available at https://www.consumerfinance.gov/about-us/blog/debt-collectors-re-evaluate-medical-debt-furnishing-in-light-of-data-integrity-issues/.*

[7] Internal Revenue Service, ''Billing and Collections—Section 501(r)(6),'' *available at https://www.irs.gov/charities-non-profits/billing-and-collections-section-501r6.*

[8] The White House, ''FACT SHEET: New Data Show 8.2 Million Fewer Americans Struggling with Medical Debt Under the Biden-Harris Administration'' (Feb. 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/14/fact-sheet-new-data-show-8-2-million-fewer-americans-struggling-with-medical-debt-under-the-biden-harris-administration/,* and The White House, ''FACT SHEET: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection'' (Apr. 2022), *available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-announces-new-actions-to-lessen-the-burden-of-medical-debt-and-increase-consumer-protection/.*

[9] CFPB, ''Medical debt burden in the United States,'' *available at https://www.consumerfinance.gov/data-research/research-reports/medical-debt-burden-in-the-united-states/;* CFPB, ''Debt collectors re-evaluate medical debt furnishing in light of data integrity issues,'' *available at https://www.consumerfinance.gov/about-us/blog/debt-collectors-re-evaluate-medical-debt-furnishing-in-light-of-data-integrity-issues/;* and CFPB, ''Medical Billing and Collections Among Older Americans,'' *available at https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report/.*

[10] CFPB ''Bulletin 2022–01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act,'' *available at https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-01-medical-debt-collection-consumer-reporting-requirements-in-connection-with-no-surprises-act/.*

billing protections,[11] enforce price transparency measures,[12] lower health care costs,[13] and increase access to affordable, quality health care.[14] Additionally, it includes policy development by Treasury on surprise billing protections and on requirements that specifically apply to tax-exempt hospitals, including those relating to billing and collection, financial assistance policies, and community benefits.

Patients' use of medical payment products occurs within the larger context of medical billing and collections as well as health insurance practices, and affects access to health care, implicating the jurisdictions of CFPB, HHS, and Treasury. Given these overlapping equities, the agencies are committed to working together to understand and address the harms medical payment products may cause, as part of their work more generally on health care costs, medical billing, and medical collections.

b. The Medical Payment Product Market

Commercial medical payment products include medical credit cards and installment loans used to help patients cover the cost of medical treatments. Charges to these products are limited to medical procedures, items, or services at participating medical service providers, including primary and specialty care, labs and diagnostics, inpatient and outpatient services, dental, vision, and pharmacy care.[15]

Medical payment products are administered by financial services companies, who manage the billing and collections process for these products and earn revenue through interest and fees. Medical credit card companies include CareCredit, a subsidiary of Synchrony Financial; Wells Fargo; and Comenity, a subsidiary of Bread Financial. The medical installment loan market includes a large number of companies, among which some of the most prominent are AccessOne, Prosper, PayZen, Walnut, and Scratchpay.[16] Many medical installment loan companies, including the five previously mentioned, are backed by private equity firms.[17]

Medical payment products were once used primarily to pay for care not traditionally covered by health insurance plans, such as dental and vision care, fertility services, and cosmetic surgery. However, medical payment products are now also used to pay for a broader set of services, including emergency room visits and primary and specialty care. Available data, although limited, show significant growth in the medical payment product industry over the last several years. For example, CareCredit grew from 4.4 million cardholders and 177,000 participating providers in 2013 to 11.7 million cardholders and over 250,000 participating health care providers in 2023.[18] Available data also suggest that medical payment products often have significantly higher interest rates than general purpose credit products; a recent CFPB report found that the typical annual percentage rate (APR) for medical credit cards was 27 percent, compared to a mean APR of 16 percent for general purpose credit cards.[19]

Patients who use medical payment products may additionally find themselves facing high fees, deferred interest charges, and other adverse financial impacts.[20] Additionally, as with other credit cards and installment loans, applying for and opening a medical payment product account may have negative implications for consumers' credit scores and access to credit through factors like hard credit checks, increased credit line utilization, decreased average account age, or eventual account closure.

c. Patient Experience and Downstream Consequences

The agencies seek additional information regarding the patient experience with medical payment products, including potential issues with the marketing, application, and enrollment processes as well as the impacts these products have on patients' financial, physical, and mental health.

In general, coupling the sale of financial products to consumers with the provision of medical care may create consumer harm. In some cases, patients who trust their health care providers and their staff to give expert health care advice may place similar trust in the financing products offered by those providers and their staff. This may influence patients to sign up for products that are not in their best financial interest, especially when seeking or receiving medical care, a time when patients may be particularly vulnerable.[21] Some patients have told the CFPB that they felt pressured to make quick financial decisions in a health care provider's office while under physical and emotional stress. Additionally, health care provider staff may not have the information, or the expertise needed to answer patients' questions about the terms and conditions of the financial products they offer. Staff may fail to inform patients of alternative payment options, including financial assistance.[22] Staff

[11] *See* HHS, ''HHS Kicks Off New Year with New Protections from Surprise Medical Bills,'' *available at https://www.hhs.gov/about/news/2022/01/03/hhs-kicks-off-new-year-with-new-protections-from-surprise-medical-bills.html.*

[12] *See* CMS, ''Hospital Price Transparency Enforcement Updates,'' *available at https://www.cms.gov/newsroom/fact-sheets/hospital-price-transparency-enforcement-updates.*

[13] *See* CMS, ''Hospital Price Transparency Enforcement Updates,'' *available at https://www.cms.gov/newsroom/fact-sheets/hospital-price-transparency-enforcement-updates.*

[14] *See* The White House, ''Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage,'' *available at https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/05/executive-order-on-continuing-to-strengthen-americans-access-to-affordable-quality-health-coverage/.*

[15] Medical payment products may also include Buy Now Pay Later (BNPL) products, an emerging product category sometimes referred to as ''Care Now Pay Later.'' *See, e.g.,* Stuart Condie, '' 'Buy Now, Pay Later' Looks to Healthcare for Shot in the Arm,'' *Wall Street Journal* (July 22, 2022), *available at https://www.wsj.com/articles/buy-now-pay-later-looks-to-healthcare-for-shot-in-the-arm-11658491200.* Certain other payment methods that are marketed for use to cover medical costs do not restrict charges to medical items and services; the agencies are interested in hearing more about these products and their similarities to or differences from medical-only payment products.

[16] The number of medical installment loan providers is much greater than the number of medical credit card lenders, and these products vary in many ways. Appendix A in ''Medical Credit Cards and Financing Plans'' includes a sample of installment loans and publicly available information on their terms and conditions. CFPB, ''Medical Credit Cards and Financing Plans,'' at 18, *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[17] *See, e.g.,* KFF, ''How Banks and Private Equity Cash In When Patients Can't Pay Their Medical Bills'' (Nov. 2022), *available at https://kffhealthnews.org/news/article/how-banks-and-private-equity-cash-in-when-patients-cant-pay-their-medical-bills/.*

[18] This number, as publicized by CareCredit, includes also veterinary service providers and cardholders that use their card to finance veterinary care. CFPB, ''Medical Credit Cards and Financing Plans'' at 7, *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[19] CFPB, ''Medical Credit Cards and Financing Plans,'' *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[20] CFPB, ''Medical Credit Cards and Financing Plans,'' *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[21] Jim Hawkins, ''Doctors as Bankers: Evidence from Fertility Markets'' *Tulane Law Review* (July 2010), *available at https://www.tulanelawreview.org/pub/volume84/issue4/doctors-as-bankers.*

[22] CFPB, ''Complaint Bulletin,'' *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf;* and CFPB, ''Medical Credit Cards and Financing Plans'' at 8, *available at https://files.consumerfinance.gov/f/documents/*

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might also fail to provide information about the potential insurance coverage implications of using a medical payment product, or may encourage use of medical payment products instead of assisting the patient with filing an insurance claim. The CFPB has also received reports of some patients—particularly patients with limited English proficiency—allegedly being signed up for medical payment products without their knowledge or consent.

Given these risks, the agencies seek additional information on medical payment product marketing, application, and enrollment processes, including how and when patients are offered these products, what information patients are given about these products, and how patients make decisions about utilizing these products. The agencies are interested in how promotion of these products may interfere with patients' health insurance coverage, undermine the provision of financial assistance, and reduce the availability and utilization of traditional provider-offered payment plans. The agencies are also interested in providers' and financial companies' disclosure practices and the information that is shared with patients about these products. Additionally, the agencies are interested in patients' experiences with medical payment products, including their overall satisfaction or dissatisfaction with these products as well as information on how these products were marketed to them, whether they understood the terms and conditions of the products, whether they felt pressured into signing up, or whether they were signed up for a medical payment product without their knowledge or consent.

Secondly, the agencies seek to understand the impacts of these products on patients' financial health, including through high interest rates and fees, credit scoring or other scoring products, credit reporting practices, and debt collection practices. Many medical payment products charge interest and fees, including deferred interest, which may significantly increase the amount patients owe for their care.[23] Patients with lower credit scores may be offered less favorable interest rates and terms, including shorter billing cycles (less than 30 days) that may increase the odds that these patients will incur late fees. Patients with lower credit scores may also be offered shorter deferred interest periods, increasing the likelihood that these patients will incur interest. Additionally, some financial services companies offer health care scoring products designed for health care providers, such as financial clearance scores and propensity-to-pay scores, which can be used to restrict access to care and promote payment products rather than financial assistance for those eligible.[24] In some cases, patients with low financial clearance scores may be denied care unless they can pay up front, increasing the pressure on these patients to sign up for medical payment products. In other cases, patients whose predicted income and household size would qualify them for financial assistance, but who have a higher predicted propensity to pay, are channeled to medical payment products instead of being offered financial assistance.

Since medical credit cards have unique features such as shorter deferred interest periods and shorter billing cycles compared to other lines of credit, those with medical payment products may be at heightened risk of being sent to collections and reported to credit reporting companies. When past-due medical payment product balances are reported to credit reporting companies, this can lower patients' credit scores, even though medical debts generally are less predictive of creditworthiness than other debts.[25] Lower credit scores can make it harder for consumers to get a loan, rent or buy a home, or find a job.[26] Medical credit card or loan collections may be reported to consumer reporting agencies even when other medical bills could not appear on consumer reports, such as because of the restrictions on extraordinary collections actions placed by Congress [27] or the national credit reporting companies' voluntary decision not to report medical collections that are paid, under $500, or less than a year old.[28] Moreover, the incidence of referral to collections may be increased if patients paying for care with medical payment products are charged higher prices, if the costs of patients' medical services are inflated by interest and fees, or if paying via a medical payment product leads to the failure to file a timely and accurate insurance claim. Patients may also be sued for alleged medical payment product debts, which can lead to financial consequences like wage garnishment, bank attachments, seizure of personal property, and liens against patients' homes. Many people file bankruptcy in order to resolve large outstanding medical bills;[29] it is possible that medical payment products contribute disproportionately to bankruptcy filings by people facing significant health challenges. Given these potential financial health impacts, the agencies are interested in information on the interest charges, default rates, credit reporting practices, and collections practices associated with medical payment products.

Thirdly, the agencies seek to understand the impacts of these products on patients' physical and mental health. Studies show that people often delay or avoid medical care out of concern about high costs or medical debt or because they believe they will be turned away due to their unpaid medical bills.[30] Fifteen percent of adults

cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.

[23] Many medical payment products offer complex deferred interest promotions, which consumers often do not understand fully, and which can significantly increase the cost of their care if they do not pay in full during the promotional period. About 1 in 5 consumers who use a deferred interest product to pay for care will ultimately pay interest. Borrowers with subprime credit scores are more likely to pay interest, perhaps in part because they are generally given less time to pay in full before being charged interest. CFPB, ''Medical Credit Cards and Financing Plans'' at 13, *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[24] *See, e.g.,* Experian, ''Patient Financial Clearance,'' *https://www.experian.com/healthcare/products/payment-tools/patient-collections-and-financial-clearance;* TransUnion, ''TransUnion Healthcare and VisitPay: A Patient Financial Engagement Solution,'' *https://www.transunion.com/resources/transunion/doc/healthcare/transunion-healthcare-and-visitpay-a-patient-financial-engagement-solution-aite-brief.pdf.*

[25] Kenneth P. Brevoort & Michelle Kambara, ''Data point: Medical debt and credit scores'' (May 2014), *available at https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf.*

[26] Alyssa Brown & Eric Wilson, ''Data Point: Consumer Credit and the Removal of Medical Collections from Credit Reports'' (Apr. 2023), *available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-removal-medical-collections-from-credit-reports_2023-04.pdf.*

[27] Internal Revenue Service, ''Billing and Collections—Section 501(r)(6),'' *available at https://www.irs.gov/charities-non-profits/billing-and-collections-section-501r6.*

[28] The three national credit reporting companies forbid credit reporting of medical debt collections items with original balances under $500 or which are less than one year old, but these restrictions do not apply to debt collections items reported with classification codes indicating that they are ''credit card'' or ''installment loan'' collections. *See* CFPB, ''Have medical debt? Anything already paid or under $500 should no longer be on your credit report,'' *available at https://www.consumerfinance.gov/about-us/blog/medical-debt-anything-already-paid-or-under-500-should-no-longer-be-on-your-credit-report/.*

[29] David Himmelstein *et al.,* ''Medical Bankruptcy: Still Common Despite the Affordable Care Act,'' *American Journal of Public Health* (Mar. 2019), *https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2018.304901.*

[30] *See, e.g.,* Alyce Adams *et al.,* ''The Impact of Financial Assistance Programs on Health Care Utilization: Evidence from Kaiser Permanente,'' *American Economic Review: Insights,* (Sept. 2022), *available at https://www.aeaweb.org/articles?id=10.1257/aeri.20210515;* Audrey Kearney *et al.,* ''Americans' Challenges with Health Care Costs,'' KFF (July 14, 2021), *https://www.kff.org/*

with medical debt say they have been denied health care because of their unpaid medical bills.[31] To the extent that medical payment products contribute to higher health care costs and medical debts, these products may increase health care denial, delay, and avoidance, contributing to worse health outcomes and higher eventual health care costs due to forgone preventive and early intervention services. Higher costs and increased debt can also increase stress on consumers, contributing to negative physical and mental health outcomes.[32] Given the risks to patients' health, the agencies seek comment on medical payment products' contribution to care avoidance and their impact on consumers' physical and mental health. The agencies are also interested in understanding if and when health care providers may deny or alter patients' care if they refuse to sign up for or fall behind on payments for a medical payment product.

The agencies welcome comment on the above and on medical payment products' broader impacts on consumers' financial wellness, health care access, and physical and mental health.

d. Risk of Exacerbating Billing and Financial Assistance Issues

Medical credit cards and loans may exacerbate existing issues in health care billing and collections by making it more difficult to resolve billing inaccuracies and allowing certain patients to be upcharged for services. For example, uninsured and self-pay patients,[33] as well as patients receiving care from out-of-network providers,[34] are often charged higher prices than those negotiated by health insurance issuers and group health plans for the same care furnished by an in-network provider[35] (provided these patients are not determined eligible for financial assistance by a tax-exempt hospital).[36] The availability of medical payment products may enable health care providers to charge higher prices to uninsured, self-pay, or out-of-network patients who would otherwise be unable to pay such prices and might instead seek more affordable care. In some cases, health care providers might offer medical payment products to uninsured patients instead of helping these patients determine their eligibility for health insurance coverage through Medicaid, Medicare, or subsidized Marketplace plans. Out-of-network health care providers might also offer medical payment products to patients instead of referring those patients to an in-network provider.

Promotion of medical payment products may also undermine hospitals' provision of financial assistance. Section 501(r) of the Internal Revenue Code, which resulted from section 9007(a) of the Affordable Care Act, requires tax-exempt hospitals to establish a financial assistance policy for low-income patients, and many non-tax-exempt hospitals also voluntarily offer financial assistance to patients who meet criteria established by these hospitals. However, studies show that, in practice, many patients who are likely eligible for financial assistance under their hospitals' policies do not receive free or discounted care.[37] In some instances, patients eligible for financial assistance are instead being steered to medical payment products, which are more profitable for providers.[38] One way in which these products may be advantageous to health care providers, particularly tax-exempt hospitals, is by using these products in support of their non-profit status. For example, one medical installment loan company advertises to hospitals that its interest-charging loan product is a ''community benefit that makes care affordable'' and ''supports your organization's compliance with IRS regulation 501(r).'' [39]

Finally, utilizing medical payment products may undermine patients' medical billing rights, including their No Surprises Act rights to dispute surprise bills and their Affordable Care Act rights to insurance appeals and reviews. Consumers report that errors in medical bills are common; among those with medical debt, more than four in ten say they received an inaccurate bill, and nearly seven in ten say they were asked to pay a bill that should have been covered by insurance.[40] However, some consumers report being told that they had no right to dispute inaccurate bills placed on a medical payment product, even if they discovered after enrolling in the payment product that they were billed in error or that their bill should have been covered by insurance—or even if they never received the service at all.

e. Potential Distortion of Health Care Provider Incentives

Several factors may incentivize health care providers to promote medical payment products even when these products are not in patients' best

health-costs/issue-brief/americans-challenges-with-health-care-costs/.

[31] Lunna Lopes *et al.,* ''Health Care Debt in the U.S.: The Broad Consequences Of Medical And Dental Bills,'' KFF (June 16, 2022), *available at https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/.*

[32] CFPB, ''Medical debt burden in the United States,'' at 32–35, *available at https://www.consumerfinance.gov/data-research/research-reports/medical-debt-burden-in-the-united-states/.*

[33] ''Self-pay patients'' here refers to the definition provided in 45 CFR 149.610(a)(2)(xiii)(B), which defines a self-pay individual as ''an individual who has benefits for such item or service under a group health plan, or individual or group health insurance coverage offered by a health insurance issuer, or a health benefits plan under chapter 89 of title 5, United States Code but who does not seek to have a claim for such item or service submitted to such plan or coverage.''

[34] A provider network is a list of the doctors, other health care providers, and hospitals that a plan contracts with to provide medical care to its members. These providers are called ''network providers'' or ''in-network providers.'' A provider that isn't contracted with the plan is called an ''out-of-network provider.'' CMS, ''What You Should Know About Provider Networks,'' *available at https://marketplace.cms.gov/outreach-and-education/what-you-should-know-provider-networks.pdf.*

[35] *See* Gerard Anderson, ''From 'Soak the Rich' To 'Soak the Poor': Recent Trends In Hospital Pricing'' (June 2007), Health Affairs, *available at https://www.healthaffairs.org/doi/full/10.1377/hlthaff.26.3.780. See also* Ge Bai, & Gerard F. Anderson, ''US Hospitals Are Still Using Chargemaster Markups to Maximize Revenues'' (Sept. 2016), Health Affairs, *available at https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2016.0093.*

[36] In the case of individuals who receive care at a tax-exempt hospital who are determined eligible for financial assistance under the hospital's financial assistance policy, section 501(r)(5) prohibits tax-exempt hospitals from using gross charges and requires them to limit amounts charged for emergency or other medically necessary care to not more than the amounts generally billed to individuals who have insurance covering such care. Internal Revenue Service, ''Limitation on Charges—Section 501(r)(5),'' *available at https://www.irs.gov/charities-non-profits/limitation-on-charges-section-501r5.*

[37] *See, e.g.,* Octavian Carare, *et al.,* ''Exploring the connection between financial assistance for medical care and medical collections'' (Aug. 2022), CFPB, *https://www.consumerfinance.gov/about-us/blog/exploring-connection-between-financial-assistance-for-medical-care-and-medical-collections/.*

[38] *See, e.g.,* Washington State Office of the Attorney General, ''AG Ferguson files lawsuit against Swedish, other Providence-affiliated hospitals, for failing to make charity care accessible to thousands of Washingtonians,'' *available at https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-against-swedish-other-providence-affiliated-hospitals;* State of California Department of Justice, ''Attorney General Bonta Issues Consumer Alert Following Reports of Hospitals Failing to Inform Patients of Options for Free or Reduced-Price Medical Care,'' *available at https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-consumer-alert-following-reports-hospitals-failing;* and The Office of Minnesota Attorney General Keith Ellison, ''Attorney General Ellison secures relief from unfair bill collection for Hutchison Hospital patients,'' *available at https://www.ag.state.mn.us/Office/Communications/2020/10/29_HutchinsonHealth.asp.*

[39] ClearBalance HealthCare, ''Experience to Solve Patient Pay,'' *https://www.bokfinancial.com/-/media/Files/PDF/Commercial/Healthcare/CBHC_Overview.ashx.*

[40] KFF, ''Healthcare Debt in the US: The Broad Consequences of Medical and Dental Bills,'' *available at https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/.*

financial interest. First, changes to private health care coverage may incentivize providers to promote medical payment products. For example, providers may turn to medical payment products in response to growing deductibles, copayments, and coinsurance charged by private group health plans and health insurance issuers, which many patients cannot afford to pay in cash up front.[41] Slow insurance reimbursement and frequent insurance denials, downcoding,[42] or appeals may also make medical payment products an attractive alternative to insurance payment. Additionally, out-of-network providers may promote medical payment products to patients because group health plans and health insurance issuers may not directly reimburse out-of-network providers; having patients pay out-of-network providers up front using a medical payment product effectively transfers the risk of non-reimbursement or slow reimbursement from the out-of-network provider to the patient.

Secondly, health care providers may be incentivized to promote medical credit cards and loans because these products result in faster payment, lower administrative costs, and more revenue overall for the health care provider compared to alternatives like financial assistance or provider-administered payment plans. In their promotional materials, financial companies offering medical payment products emphasize their products' potential to deliver payments within a few days, minimize financial risk, and reduce the administrative burden associated with collecting debts or negotiating with group health plans or health insurance issuers. Traditionally, when a patient cannot pay their bill upfront, the health care provider would take on the costs of administering a payment plan, mailing statements, processing accounts receivable, handling disputes, and engaging debt collectors. When a patient instead pays for medical services out-of-pocket or via credit card or installment loan, the health care provider avoids many of these costs and generally receives payment immediately or within days. If the patient does not use their health insurance coverage, the health care provider may also be able to charge them higher rates, such as gross charges or a cash rate rather than a charge negotiated between the provider and third-party payers.[43] Additionally, easy access to credit may encourage patients to consume more health care from providers who offer medical credit products, resulting in more overall revenue for these providers. Indeed, some financial companies explicitly advertise that their products will help providers ''upsell'' patients on more expensive and potentially unnecessary care.[44]

Certain financial companies offer additional incentives to health care providers to promote medical payment products. In some cases, this may include a share of the revenue from these products. For example, one medical installment loan company advertises that providers who offer the product will ''share in interest revenue collected.'' [45] Other medical payment product companies offer lower processing or management fees to providers who enroll more consumers—giving those providers an incentive to enroll as many patients as possible.[46] Where financial companies incentivize the referral or recommendation of business reimbursable under Federal health care programs, it is possible that these practices may implicate Federal laws or regulations including the Federal anti-kickback statute, 42 U.S.C. 1320a–7b(b) and its implementing regulations, which provides for criminal penalties for whoever knowingly and willfully offers, pays, solicits, or receives anything of value to induce or reward the referral, recommendation, or arranging for the referral or recommendation of business reimbursable under Federal health care programs.

Some medical payment product companies advertise that their products allow health care providers, debt collectors, and credit reporting companies to attempt to avoid restrictions on extraordinary collection actions and on credit reporting of alleged bills. Under IRC 501(r) and the regulations thereunder, tax-exempt hospital organizations must make reasonable efforts to determine whether an individual is eligible for assistance under the hospital organization's financial assistance plan before engaging in extraordinary collection actions against that individual, such as credit reporting, third-party collections, and debt sale (except under certain special conditions).[47] However, the agencies believe financial companies may be engaging in credit reporting, debt sales, and other extraordinary collection actions on debts arising from an individual's care at a tax-exempt hospital without first making reasonable efforts to determine that individual's financial assistance eligibility.

Additionally, the three national credit reporting companies voluntarily refrain from reporting medical collections items that are less than $500 or under one year old to the credit reporting companies. However, these restrictions do not extend to debts reported with classification codes indicating that they are ''credit card'' or ''installment loan'' collections, even if the credit card or installment loan was used to pay medical bills.

f. Potential for Consumer Harm

The growing prevalence of medical payment products creates significant potential for consumer harm. Patients are often offered and enroll in medical payment products at a health care provider's location, meaning that health care providers and their staff are frequently the people who are directly marketing these products to their patients. People trust health care providers and their staff to provide sound and effective treatment options. When their health care providers and their staff also provide information or

[41] Fifty percent of U.S. adults say they would be unable to pay a $500 medical bill without going into debt; the average deductible for single person health coverage was $2,004 in 2021, up from $1,273 in 2013. KFF, ''Average Annual Deductible per Enrolled Employee in Employer-Based Health Insurance for Single and Family Coverage,'' *available at https://www.kff.org/other/state-indicator/average-annual-deductible-per-enrolled-employee-in-employer-based-health-insurance-for-single-and-family-coverage/;* and KFF, ''Health Care Debt In The U.S.: The Broad Consequences Of Medical And Dental Bills,'' *available at https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/.* Regarding the marketing of medical payment products to providers to address these rising health care costs, *see* Allison J. Zimmon, ''Rx for Costly Credit: Deferred Interest Medical Credit Cards Do More Harm than Good,'' 35 B.C.J. L & Soc. Just. 319 (2015).

[42] Downcoding here refers to the practice of a plan or issuer reviewing a claim submitted by a health care provider or facility and altering the service code or modifier to another service code or modifier that the plan or issuer determines to be more appropriate, resulting in a lower reimbursement.

[43] Here, ''gross charges,'' ''cash rates,'' and ''charges negotiated between the provider and third-party payers'' refers to the definitions of those terms provided in section 2718(e) of the Public Health Service Act (Hospital Price Transparency).

[44] For example, ''Cherry can be used for consumers that want a product/service but don't want to pay the full amount upfront today. This gives you, the business owner, the power to upsell and increase your sales.'' CFPB, ''Medical Credit Cards and Financing Plans,'' at 9 n.29, *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[45] Choice Payment Services, ''ChoicePays+,'' *available at https://choicepays.com/choicepays/.*

[46] CFPB, ''Medical Credit Cards and Financing Plans,'' at 10, *available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.*

[47] Internal Revenue Service, ''Billing and Collections—Section 501(r)(6),'' *available at https://www.irs.gov/charities-non-profits/billing-and-collections-section-501r6.*

advice on payment options, patients might assume the health care provider or staff member is being transparent about the full set of options and not being driven by their own financial incentives.[48] Patients might also extend their trust in their health care providers to a referred financial services company. Additionally, financial decisions by patients in health care settings are compromised by the stress inherent in managing an illness or injury.

Incomplete, incorrect, or misleading information about the cost of their treatment, financing options offered, and the availability of low- or no-cost financing alternatives can also compromise financial decisions made at the point of care. As a result, patients may feel pressured or coerced into signing up for medical payment products that cause downstream financial or health problems, including through debt collection or credit reporting of medical bills that might have inaccurate information. Patients might also avoid or delay care if they are unaware of the availability of financial assistance and other affordable financing options or are concerned about their ability to pay their health care bills.

II. Request for Information

In this RFI, the CFPB, HHS, and Treasury seek data and comments on the scope, prevalence, terms, and impacts of medical payment products, including medical credit cards and loans. The agencies are also interested in the downstream consequences of these products and in potential actions to address any harms caused by these products.

To better understand the medical payment product market, the agencies seek data and comments on the interest and fee costs of these products (including both interest rates and total accrued interest), the application and approval process for these products, and trends of medical payment product use. The agencies also seek information as to the total outstanding consumer debt on medical credit cards, medical installment loans, and other medical payment products. Data regarding the characteristics and demographics of medical payment products users is also welcome, such as whether users are insured or uninsured, whether certain populations or income groups are more likely to use these products, and whether use is concentrated in certain geographies or for patients seeking particular kinds of care. The agencies also seek to better understand the level of concentration in the medical payment product market, the ownership of medical payment product companies (including ownership by health care providers, health insurance issuers, or private equity firms), and the implications of these factors for competition and consumer choice. To that end, the agencies seek specific information on the types of financial entities that offer medical credit cards and loans.

The agencies seek to understand to what extent medical credit cards and loans may hamper financial assistance and access to benefits, and any options for regulators to reduce such barriers. The agencies also seek to understand the extent to which health care providers, including tax-exempt hospitals, screen patients for public or private insurance eligibility, financial assistance eligibility, or other benefits before offering them medical credit cards or loans. The agencies additionally seek comment on how frequently patients discover billing errors after signing up for a medical payment product, the main sources of billing errors, and how paying medical bills via a medical payment product affects patients' ability to dispute those bills. The agencies seek comment on how to ensure that patients retain their rights to challenge inaccurate bills regardless of payment method.

The agencies also seek comment on incentives offered by financial companies to health care providers for their promotion of medical payment products, including revenue-sharing and other incentives. The agencies are also interested in any training or other support that medical payment product companies offer to providers. The agencies are interested in whether such incentives or support might implicate the Federal anti-kickback statute or other laws or regulations. The agencies also seek information regarding how plans and issuers' billing and reimbursement practices affect health care providers' decisions to offer and promote medical payment products.

The agencies seek additional information on the prices or versions of standard charges offered to patients who use these products, and whether these charges are adequately disclosed in accordance with hospital price transparency requirements and No Surprises Act good faith estimate requirements. The agencies seek information on whether medical payment product companies are operating outside of protections against credit reporting of medical collections items and against extraordinary collection actions by tax-exempt hospitals. Finally, the agencies seek to better understand how notice and consent requirements for post-stabilization and non-emergency health care items or services under the No Surprises Act intersect with providers' promotion of medical credit cards and loans to out-of-network patients.

In general, the agencies welcome any information that allows us to better understand the impact of medical payment products on patients' physical, mental, and financial health. The agencies also welcome suggestions of actions Federal agencies could take to address harms caused by medical payment products and related issues connected to medical billing and collections or medical debt more generally. The agencies welcome comment on these areas, including comments in response to any of the following specific questions:

a. General Questions

Market-Level Inquiries

1. What are the benefits, costs, and risks of medical payment products for consumers, health care providers, and companies offering these products?

2. What are the terms of medical payment products, including interest rates and fees?

3. How much debt do consumers carry on medical credit cards and loans in total, and what is the average individual debt level?

4. How concentrated is the medical payment product market, and what role do private equity firms play in this market?

5. Are there specific populations (*e.g.,* race, socioeconomic status, gender identity, sexual orientation, age, language, etc.) or geographic regions that experience disproportionately higher utilization of medical payment products?

6. What are the health equity impacts of medical payment products and related billing and collection policies and practices?

i. Do medical payment products affect members of specific underserved communities differently, including members of Tribal communities and geographically isolated communities?

ii. Do certain products or policies present opportunities to better serve members of underserved communities?

7. Patients can pay for care in many different ways, such as by medical credit card or loan, general purpose credit card, insurance, or through a zero-interest payment plan. What are

[48] Office of Inspector General (OIG) Advisory Opinion 02–12 at 11 (''[H]ealth care providers are in a position of trust and may exert undue influence when recommending health care related items or services, particularly to their own patients.'').

the costs and benefits for health care providers of offering each of these methods? Are there situations where one method of payment is more advantageous than another?

8. What incentives do financial services companies offer health care providers, including revenue-sharing or other financial or non-financial incentives?

9. How do medical payment products and health insurance coverage interact? Do group health plan or health insurance issuer practices contribute to uptake of medical payment products by patients and providers?

i. How many days do providers typically have to wait to be paid by plans or issuers versus by medical payment product companies or general purpose credit card companies? What factors, such as administrative requirements or clinical reviews, contribute to any differential resolution timelines?

ii. Does a patient's use of a medical payment product exempt them from certain consumer protections, provider requirements, or group health plan or health insurance issuer requirements? Are different types of health coverage treated differently?

10. Does health care provider organizational structure, including ownership by private equity, affect providers' decisions to offer and promote these products?

11. What are some best practices for health care providers who offer medical payment products in avoiding adverse financial and health impacts for patients?

i. Are there specific tactics or practices that are well tailored and adapted for use by health care professionals in and serving underserved communities, including Tribal communities and geographically isolated communities?

ii. What actions should the agencies take to develop and encourage uptake of these established best practices?

iii. Are there examples of actions or best practices at the State or local level to which the Federal government should look?

12. To what extent are patients using medical payment products to pay bills that are incorrect, or that could be covered or defrayed by lower-cost alternatives?

i. What billing errors may patients commonly encounter?

ii. How does using a medical payment product affect patients' rights to dispute incorrect bills?

iii. Are certain groups of patients, such as members of specific underserved communities, more likely to experience medical billing errors or issues resolving disputes over bills paid using medical payment products?

13. What actions should agencies consider taking to better understand the effects of medical payment products on consumers and the health care industry, educate consumers and providers about the risks of these products, and collect complaints?

i. What are some sources of data on medical payment products? What additional data are needed to understand the impact of medical payment products on patients and the health care industry?

ii. What data collection, data analysis, and research actions should agencies take?

iii. Are there different or other actions that agencies should consider for underserved communities, including Tribal communities and geographically isolated communities?

iv. What types of consumer complaints have States and localities received?

14. Where medical payment products are causing harm, what are some specific levers for regulatory oversight and enforcement by Federal agencies that regulate financial products or health care providers?

i. Are there specific areas for Federal enforcement actions?

ii. Are there examples of regulation or enforcement at the State or local level to which the Federal government should look?

iii. What complementary legislative actions are worth exploring? Where may additional statutory authority be needed?

Individual Inquiries

1. Have medical payment products ever been marketed to you, including by your health care provider? If so, please describe your experience and how the products were marketed to you. Were other options, such as financial assistance, marketed or explained at the same time?

2. If you have used a medical credit card or loan to pay for your care, what was your experience with the product?

a. What benefits or harms did you experience?

b. Was your health affected by your use of a medical credit card or loan?

c. How much did interest and fee charges add to the cost of your care?

d. How did using a medical credit card or loan affect your credit score and your ability to access credit?

e. Would you use a medical credit card or loan to cover medical expenses again? Why or why not?

3. Have you ever tried to dispute a medical bill you paid using a medical credit card or loan? If so, please describe your experience.

4. Have you ever had an overdue bill on a medical credit card or loan sent to collections? How quickly was the bill sent to collections? Did your experience with collections affect your credit score, your access to medical care, or your health?

5. Have you ever felt pressured to pay for care using a medical payment product or general purpose credit card when you believed that was not in your best interest? If so, please describe your experience.

6. Have you ever used or been pressured to use a medical credit card or loan to pay a bill that you believe should have been covered by your health insurance? If so, please describe your experience.

7. Have you ever used or been pressured to use a medical credit card or loan to pay a bill that you believe should have been covered by your health care provider's financial assistance policy? If so, please describe your experience.

8. Has your knowledge about the availability of medical credit cards or loans led you to believe that health insurance might not be necessary, or not acquire health insurance?

b. CFPB-Specific Questions

The CFPB implements and enforces Federal consumer financial law, including the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Equal Credit Opportunity Act, and the Consumer Financial Protection Act's prohibition on unfair, deceptive, or abusive acts or practices in connection with the offering or provision of consumer financial products or services. As such, the CFPB seeks to better understand consumer financial issues raised by medical payment products, including the credit practices of medical payment product companies as well as the debt collection and credit reporting practices utilized by both health care providers and medical payment product companies. The CFPB welcomes comment on these areas, including comments in response to any of the following specific questions:

1. What actions should the CFPB consider taking to address problematic practices related to medical credit cards or loans, including debt collection and credit reporting practices?

2. How do firms offering medical financial products typically market to providers?

3. How do creditors and their affiliates underwrite loans to patients? What specific factors (*e.g.,* age, type of

medical procedure, credit score, etc.) are considered in underwriting?

4. Do consumers understand the risks of paying medical bills via a medical credit card, installment loan, or other commercial payment product, including lowered ability to negotiate their bill with their provider?

5. To what extent are alleged debts placed on medical credit cards and loans sent to debt collectors? How do medical payment product companies' debt collection practices differ from those of health care providers, and are any issuer or provider debt collection practices posing risks to consumers?

6. How can the CFPB use its authorities to ensure people with medical bills in collections, including medical payment product debt, are screened for eligibility for financial assistance and other benefits?

7. How are health care providers and financial companies using credit or ''propensity to pay'' scores to determine patients' eligibility for financial assistance or medical payment products? What are the implications for compliance with the Fair Credit Reporting Act or other CFPB authorities?

8. When hospitals write off a patient's debt as uncollectible or ''bad debt'' and cease attempts to collect, do they notify patients that collection attempts will cease? Would patients benefit from such notifications, and would such notifications reduce hospital revenue?

c. HHS-Specific Questions

The Department of Health and Human Services shares jurisdiction with the Departments of Treasury and Labor over key health care consumer protections related to health coverage, including those enacted by the Affordable Care Act and the No Surprises Act. HHS is also responsible for regulation and oversight of Medicare, Medicaid and the Children's Health Insurance Program, and the Affordable Care Act Marketplaces, and shares responsibility for enforcement of Federal health care fraud and abuse laws, including the Federal anti-kickback statute. HHS works to enhance the health and well-being of all Americans by providing for effective health and human services and by understanding and addressing the barriers patients experience in accessing health care. HHS also includes the Indian Health Service (IHS), which administers and oversees health and human services programs for American Indians and Alaska Natives.

HHS seeks to better understand how medical payment products affect access to care and intersect with health care coverage, including Medicare, Medicaid, and the Children's Health Insurance Program, group and individual health insurance coverage (including Marketplace plans and employer-sponsored coverage), and non-comprehensive coverage products. HHS also seeks specific comments from all Indian Health Care Providers, including Indian Tribal Governments, Tribal Organizations, and Urban Indian Organizations about medical credit card and loans and the role they play in the Indian health care provider billing environment. HHS additionally seeks to understand how medical payment products interact with Affordable Care Act and No Surprises Act protections and the prohibitions set forth in the Federal anti-kickback statute.[49] Relevant Affordable Care Act protections include the right to seek an internal appeal and an external review of an insurance claim denial. Relevant No Surprises Act protections include surprise billing protections and good faith estimate rights for uninsured and self-pay patients (including the right to use a Federal dispute process to challenge a bill that is $400 or more higher than a patient's good faith estimate). Finally, HHS seeks to understand whether any financial institution or health care provider practices in connection with medical payment products may violate health care fraud and abuse laws, including the Federal anti-kickback statute.

HHS welcomes comment on the intersection of medical payment products with Federal health programs, Federal laws against health care fraud and abuse, and Affordable Care Act and No Surprises Act protections, including comments in response to any of the following specific questions:

1. What actions should HHS consider taking to address problematic practices related to medical credit cards or loans, particularly as they relate to patients eligible for or enrolled in Medicare, Medicaid, or the Children's Health Insurance Program, or patients enrolled in Affordable Care Act Marketplace plans?

2. What types of health insurance (Medicare, Medicaid, private insurance, etc.) are particularly associated with the likelihood that an individual is offered or makes use of medical credit cards and loans, and how does the type of health coverage affect relevant provider billing practices?

3. Are there particular health care provider types that are most associated with being offered or offering medical payment products, and are these providers receiving directed payments or other incentives through State Medicaid programs?

4. Has the No Surprises Act and its surprise billing protections affected the prevalence and use of medical credit cards and loans, and if so, how?

i. Has the notice and consent process been used to promote medical cards and loans to patients seeking health care items or services from out-of-network providers/facilities, and if so, how? For example, in instances where the No Surprises Act permits providers and facilities to seek notice and obtain consent from an insured patient to waive their balance billing and cost-sharing protections under the No Surprises Act, are providers and facilities impermissibly attaching or incorporating medical card or loan documents or information to the notice and consent forms, or giving them to the patient at the same time as the notice and consent forms?

ii. What steps are health care providers and facilities putting into place to ensure that bills paid through medical payment products do not violate surprise billing requirements and that patients who use medical payment products retain their No Surprises Act rights?

5. How does or might the use of medical credit cards and loans affect the amount and timing of cost sharing a patient covered through Medicare, Medicaid, and/or the Affordable Care Act Marketplace owes for a covered service?

i. Are there any observable differences in cost sharing among patients belonging to underserved communities, such as Tribal communities or geographically isolated communities?

6. Hospital Price Transparency: What prices or versions of standard charges (*e.g.,* cash prices) are offered to patients who sign up for a medical credit card or installment loan? What steps are taken by health care providers to ensure these charges are adequately disclosed in accordance with hospital price transparency requirements? Do these charges reflect and specifically identify facility fees?

7. How might HHS improve patient understanding of options for covering the cost of medical treatments? At what points in the care process could patients be provided with information about

[49] 42 U.S.C. 1320a–7b(b), the Federal anti-kickback statute, provides for criminal penalties for whoever knowingly and willfully offers, pays, solicits, or receives anything of value to induce or reward the referral, recommendation, or arranging for the referral or recommendation of business reimbursable under any of the Federal health care programs, including Medicare and Medicaid. To assess the application of the Federal anti-kickback statute requires an examination of all of the facts and circumstances of an arrangement.

their financial obligations and payment options?

Anti-Kickback Statute

HHS is interested in whether incentives offered to health care providers by financial companies may implicate the Federal anti-kickback statute. Specifically, HHS is interested in the following questions:

8. What financial relationships exist between medical payment product companies and health care providers? For example, do companies provide financial incentives to providers who enroll patients in medical payment products? Do providers pay financial companies to collect patients' overdue balances? Or, do providers have arrangements with financial companies to indemnify the company in whole or in part if the patient defaults, such as an arrangement that when patients default on their debt to the financial company, the debt reverts to the provider?

9. Do health care providers or financial institutions market or recommend medical credit cards or loans to Federal health care program beneficiaries (*e.g.,* Medicare, Medicaid, Affordable Care Act Marketplace, or Children's Health Insurance Program enrollees)? Is the use of these products limited to certain types of health care items or services, such as items and services that are not reimbursable by Medicare or another third-party payor?

10. Do medical payment product companies recommend certain health care providers to their users? Do companies limit where or how patients use medical credit cards?

11. Is the health care provider (or the medical payment product company) offsetting some of the patient's medical debt or providing any other incentives to the patient (*e.g.,* travel rewards for charges to the card)?

d. Treasury-Specific Questions

The Treasury Department oversees policy decisions relating to the Internal Revenue Code, including those provisions relating to tax-exempt hospitals found in section 501(r). Section 501(r)(4) and 26 CFR 1.501(r)–4 require tax-exempt hospital organizations to establish and widely publicize a written financial assistance policy that applies to all medically necessary care provided by the hospital organization. Section 501(r)(6) and 26 CFR 1.501(r)–6 require hospital organizations to make reasonable efforts to determine whether an individual is eligible for assistance under the hospital organization's financial assistance policy (FAP) before engaging in extraordinary collection actions against that individual. Extraordinary collection actions include credit reporting an unpaid medical bill, deferring or denying care to a patient due to their unpaid medical bills, taking legal or judicial action to recoup an alleged medical debt, or selling an alleged medical debt.

However, selling an alleged medical debt is not considered an extraordinary collection action if, prior to the sale, the hospital facility enters into a legally binding written agreement with the debt buyer that meets four conditions: (1) the buyer agrees not to engage in any extraordinary collection actions to obtain payment; (2) the buyer agrees not to charge interest in excess of the rate in effect under section 6621(a)(2) at the time the debt is sold (currently set at 7 percent through June 2023); (3) the debt is returnable to or recallable by the hospital facility upon a determination that the individual is financial assistance-eligible; and (4) if the individual is determined to be financial assistance-eligible and the debt is not returned or recalled, the buyer must adhere to specified procedures which ensure that the individual does not pay, and has no obligation to pay, the buyer and the hospital facility together more than that individual is personally responsible for paying under the financial assistance policy.

Treasury welcomes comment on the interplay between the requirements that apply to tax-exempt hospitals and medical payment products, including comments in response to any of the following specific questions:

1. What policy actions should Treasury consider taking to address problematic practices related to medical credit cards or loans, including debt collection and credit reporting practices, to conform with the existing tax laws and regulations pertaining to tax-exempt hospitals?

2. Should a tax-exempt hospital's signing patients up for medical payment products be considered similar to a tax-exempt hospital's selling medical debt, such that the special rules that only exclude debt sales from being extraordinary collection actions if certain requirements are met would be applied to these payment products?

3. How would applying the debt sale special rules to payment products change hospitals' and payment product providers' current practices, especially those related to financial assistance eligibility screening, extraordinary collection actions, interest rates, and recall or return of balances owed by FAP-eligible individuals?

4. How do tax-exempt hospitals' promotion of medical payment products compare to their operationalization of the requirement that their financial assistance policies be widely publicized?

5. What are best practices for hospitals publishing and making patients aware of financial assistance programs (beyond compliance with the widely publicized requirements found in the section 501(r) regulations)?

6. Are medical payment product companies advertising their products as delivering community benefits or as a form of financial assistance?

7. Are tax-exempt hospitals claiming that their promotion of medical payment products delivers community benefits or provides financial assistance, including in their filings of Form 990, Schedule H?

8. Does the availability of medical payment products generally benefit the community or assist patients financially?

Signing Authority for HHS

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

Thomas C. West Jr.,

Deputy Assistant Secretary for Tax Policy, Department of the Treasury.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for AmeriCorps Seniors Application Instructions, Progress Reporting, Independent Living and Respite Surveys

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public

information collection request (ICR) for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 11, 2023.

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 this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Robin Corindo, at (202) 489–5578 or by email to *rcorindo@cns.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on April 27, 2023 at 88 FR 25625. This comment period ended June 27, 2023. The Notice received 32 public comments, of which 26 were identical. Of the other comments, one was in support and one was without specific comment. The others detailed how completing the Progress Report Supplement (PRS) is a burden. AmeriCorps Seniors agrees that the reporting reporting requirements of the PRS may be burdensome and is therefore reducing the number of questions it requires within it. The PRS is the only document with proposed revisions.

Comment: AmeriCorps Seniors grants are awarded for a three-year period with required annual budget submissions. ASPN questions the value and additional time needed to update the grant application and workplan submission annually. With a three-year performance period, ASPN proposes for a grantee to submit an annual budget application and an executive summary to update amended community needs and changes instead of the entire grant application. This change would not only reduce the time needed of grantee staff, but also regional staff grant reviewers.

AmeriCorps Response: AmeriCorps is in the process of modernizing our grant management systems. As part of the modernization effort, AmeriCorps will propose that grantees submit a simplified budget application and an update through a simplified amendment process, rather than an entire grant continuation application.

Comment: While the Progress Report at the end of a grant year is straightforward, there is confusion as to how much information is needed in the narrative section. Instructions about the examples of info that is most helpful in the narrative sections would be welcome.

AmeriCorps Response: In addition to Progress Report Instructions and training, AmeriCorps provides Appendix A.4—AmeriCorps Seniors Progress Report Tips in each Program Handbook. This document shares examples about what information is worth considering for the narrative sections of the Progress Report. In addition, grantees can also speak with their Portfolio Manager about the type and extent of information they should include.

Comment: The Progress Report Supplement has been referred to as many different things over the years. With current Performance Measure workplans being very specific as to the special needs served by volunteers, this complete demographic report is burdensome for both program and station staff. ASPN has been told that there is no way for [AmeriCorps] to aggregate the data reported into a national needs snapshot. As such, ASPN strongly believes that if [AmeriCorps is] unable to aggregate this data, programs should not be asked to collect it. The current reporting dates do not take into account grant years; therefore, programs are reporting on portions of two different grant years, causing the information to often be incorrect. Demographics of the volunteers should be rolled into the annual Progress Report. The PPR–S should be eliminated and would reduce the administrative burden for both grantees and agency staff.

AmeriCorps Response: AmeriCorps can and does aggregate the demographic section of the Progress Report Supplement (PRS). We are in the process of updating our grant management systems so that volunteer information can be entered directly into the system. AmeriCorps Seniors anticipates that this will eliminate the need for the PRS and reduce the administrative burden for grantees and agency staff.

Comment: Independent Living and Respite Surveys: [Senior Companion Program] (SCP) directors report that national workplans do not require all the information requested on these surveys. If the workplan does not request the information, it would be best if those questions were eliminated from the survey and would possibly result in a better return on the number of clients completing the surveys. As Senior Companions serve those with dementia, it is often the caregiver of the client that completes this survey. In an effort to [lessen] caregiver burden, a shortened survey could be more easily completed which would then, in turn, produce a better response rate.

AmeriCorps Response: AmeriCorps Seniors disagrees that, at only 13 questions, this survey is too burdensome. Nevertheless, AmeriCorps Seniors will review the Independent Living and Respite Survey, and is interested in the specific questions which SCP Directors propose to be eliminated.

Title of Collection: Application Package for AmeriCorps Seniors Applications Instructions, Progress Reporting, Independent Living and Respite Surveys.

OMB Control Number: 3045–0143.

Type of Review: Renewal with change.

Respondents/Affected Public: Organizations and State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 1,250.

Total Estimated Number of Annual Burden Hours: 6,250.

Abstract: The AmeriCorps Seniors Grant Application is used by prospective and existing sponsors of AmeriCorps Seniors projects under the AmeriCorps Seniors RSVP (RSVP), AmeriCorps Seniors FGP (FGP), AmeriCorps Seniors (SCP), and AmeriCorps Seniors Senior Demonstration Program (SDP). The Project Progress Report and Project Report Supplement will be used to report progress toward accomplishing work plan goals and objectives, reporting volunteer and service outputs,

reporting actual outcomes of self-nominated performance measures, meeting challenges encountered, describing significant activities, and requesting technical assistance. The Application Instructions and PPR and PRS forms in this package conform to AmeriCorps' web-based electronic grants management system. The SCP Independent Living Survey and SCP Respite Survey are instruments that collect information from a sample of Senior Companion clients and caregivers. The purpose of the surveys is to assess the feasibility of conducting a longitudinal, quasi-experimental evaluation of the impact of independent living and respite services on clients' social ties and perceived social support. The results of the surveys may also be used to inform the feasibility of using a similar instrument to measure client and caregiver outcomes for an evaluation of RSVP. AmeriCorps seeks to renew the current information collection with revisions. The revisions are intended to capture the socioeconomic status of AmeriCorps Seniors volunteers. The information collection will otherwise be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2025.

Danielle Melfi,

Chief Program Officer.

[FR Doc. 2023–14776 Filed 7–11–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

U.S. Army Science Board Open Meeting; Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Government in the Sunshine Act of 1976, the Department of the Army announces the following committee meeting of the U.S. Army Science Board (ASB) Summer Voting Session.

DATES: The U.S. Army Science Board Summer Voting Session will meet from 8:15 a.m.–1:45 p.m. on Thursday, July 20, 2023.

ADDRESSES: The Arnold and Mabel Beckman Center of the National Academies of Sciences and Engineering, 100 Academy Way, Irvine, CA 92617.

FOR FURTHER INFORMATION CONTACT: Army Science Board, Designated Federal Officer, 2530 Crystal Drive, Suite 7098, Arlington, VA 22202; Ms. Heather J. Gerard (Ierardi), the ASB's Designated Federal Officer (DFO), at (406) 926–9090 or email: *heather.j.gerard.civ@army.mil,* and Mr. Vince L. Bullard, the ASB's Alternate Designated Federal Official at (571) 215–1408 or email: *vinson.l.bullard.civ@army.mil.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the U.S. Army Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its July 20, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of Meeting: The purpose of the meeting is for ASB members to review, deliberate, and vote on the findings and recommendations presented for one Fiscal Year (FY) 2020 study, one FY2021 study, and two (FY23) ASB studies.

Agenda: The board will present findings and recommendations for deliberation and vote on the following studies:

''An lndependent Assessment of the Army's Ability to Fight and Win on a Nuclear Battlefield.'' This FY21 study is classified and will be presented in a closed session at 8:15 a.m.–9:15 a.m.

''Surge Capacity in the Industrial Base.'' The study team collected data marked CUI from its source and cannot disseminate the information to the public. Reasons include (but are not limited to) the passing of proprietary business information and controlled technical information. This FY23 study is controlled unclassified and will be presented in a closed session at 9:30 a.m.–10:30 a.m.

''An Independent Assessment of the Army Implementation of Digital Engineering.'' This FY23 study is not classified and will be presented in an open session at 10:45 a.m.–11:45 a.m.

''An Independent Assessment of the 2040 Battlefield and its Implications for 5th Generation Combat Vehicle Technologies''. This FY20 study is not classified and will be presented in an open session at 12:45 a.m.–1:45 p.m.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 8:30 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Mr. Vince Bullard, the Alternate Designated Federal Official (ADFO) for the ASB, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and § 102–3.140(c) and 5 U.S.C. 1009(a)(3), the public or interested organizations may submit written comments or statements to the ASB about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Vince Bullard, the ADFO of the ASB, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the ADFO at least five (5) business days prior to the meeting so that they may be made available to the ASB for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the ASB until its next meeting. Please note that because the ASB operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be

treated as public documents and will be made available for public inspection.

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–14791 Filed 7–11–23; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research (BCER). This meeting is open to the public.

DATES: The BCER will meet from 8 a.m. to 5 p.m. on August 15, 2023, and from 1 p.m. to 5 p.m. on August 16, 2023, Central Standard Time Zone (CST). The Executive Session of the Board will convene from 8 a.m. to 11 a.m. on August 17, 2023. All sessions are open to the public and are held in CST.

ADDRESSES: The address of all sessions is Hilton Miami Dadeland Hotel, 9100 N Kendall Dr, Miami, FL 33176.

FOR FURTHER INFORMATION CONTACT: Dr. Julie Dean Rosati, the Board's Designated Federal Officer (DFO), (202) 761–1850 (Voice), *Julie.D.Rosati@usace.army.mil* (email). Mailing address is Board on Coastal Engineering Research, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, Coastal and Hydraulics Laboratory, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. Website: *https://www.erdc.usace.army.mil/Locations/CHL/CERB/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C.), Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and Title 41 Code of Federal Regulations (CFR), sections 102–3.140 and 102–3.150.

Purpose of the Meeting: The Board's mission is to provide broad policy guidance and review and develop research plans and projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers. The objective of this meeting is to identify coastal research needs and address Environmental Justice and Non-Structural Solutions.

Agenda: Starting Tuesday morning August 15, 2023, at 8 a.m. the Board will be called to order with an opening presentation on the Purpose and History of the BCER and Update on CW R&D Activities. Following this, a panel session entitled ''Jacksonville District's (SAJ) Coastal Setting and Challenges.'' Presentations include Overview of Miami-Dade Integrated Coastal Projects and R&D Needs; Miami and Collier County Back Bay Study; Partner Perspective: Miami-Dade County Back Bay; and Partner/USACE Perspective: Key Biscayne. After lunch, a second panel entitled ''BCER Action Items'' will begin. Presentations include CHART Fundamentals; NAD Environmental Justice and non-structural challenges; Environmental Justice: Incorporating in Planning, Engineering, and Design; and Industry Perspective: Tools to Assist Communities in Coastal Resilience. After a short break the final panel for the day entitled ''Broadening and Quantifying Benefits'' will present. Presentations include Quantifying Benefits of Natural and Nature-Based Solutions; and Coastal Storm Damages Prevented Tool; The meeting will then adjourn for the day.

The board will reconvene for day 2 starting at 1:30 p.m. with a panel session entitled ''Future Coastal R&D Innovations.'' Presentations include Machine Learning and Artificial Intelligence in Coastal Applications; Coastal Adaptation Pathways for Barrier Island Communities; and Summary of Outcomes and Recommendations. This will adjourn the 99th BCER meeting.

The Board will meet in Executive Session to discuss ongoing initiatives, future actions, and finalize plans for the 100th BCER Meeting on Thursday, August 17, 2023, from 8 a.m. to 11 a.m. After an overview of previous day topics, the board will discuss meeting logistics for the next annual session and give final comments.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to space availability, the meeting is open to the public both in-person and virtually. Because seating capacity is limited, advance registration is required. For registration requirements please see below. Persons desiring to participate in the meeting online or by phone are required to submit their name, organization, email, and telephone contact information to Ms. Tanita Warren at *Tanita.S.Warren@usace.army.mil* no later than Friday, August 11, 2023. Specific instructions for virtual meeting participation, will be provided by reply email.

Oral participation by the public is scheduled for 3:15 p.m. on Wednesday, August 16, 2023. For additional information about public access procedures, please contact Dr. Julie Dean Rosati, the Board's DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: It is encouraged for individuals who wish to attend the meeting of the Board to register with the DFO by email, the preferred method of contact, no later than August 11, 2023, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.015(j) and 102–3.140, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Dr. Julie Dean Rosati, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described

below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

David B. Olson,

Federal Register Liaison Officer, Corps of Engineers.

[FR Doc. 2023–14764 Filed 7–11–23; 8:45 am]

BILLING CODE 3720–58–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m.–3:30 p.m., July 13, 2023.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemption to close a meeting described in 5 U.S.C. 552b(c)(3) and 10 CFR 1704.4(c). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Tara Tadlock, Associate Director for Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: July 6, 2023.

Joyce Connery,

Chair.

[FR Doc. 2023–14824 Filed 7–10–23; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0129]

Agency Information Collection Activities; Comment Request; Teacher Education Assistance for College and Higher Education Grant Program (TEACH Grant Program) Service Obligation Certification and Suspension Request Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 11, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0129. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *https://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, the Department 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 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 Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, 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. The Department 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: Teacher Education Assistance for College and Higher Education Grant Program (TEACH Grant Program) Service Obligation Certification and Suspension Request Forms.

OMB Control Number: 1845–0158.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 54,495.

Total Estimated Number of Annual Burden Hours: 17,982.

Abstract: The U.S. Department of Education (the Department) is requesting a revision of the Teacher Education Assistance for College and Higher (TEACH) Grant Certification of Qualifying Teaching (Certification), and five Service Obligation Suspension

Requests (Suspension Requests) currently approved under Office of Management and Budget (OMB) No. 1845–0158. Under conditions that are specified in the TEACH Grant Program regulations, a grant recipient may request and receive a temporary suspension of the eight-year period for completing the service obligation, and a grant recipient who is subject to an extended call to active-duty military service may receive a discharge of some or all of the four-year service obligation. The requested revision to the information collection does not change the current number of respondents, responses, or burden hours. The only substantive proposed change is in the Certification. We have also made a minor conforming change in the TEACH Grant Service Obligation Suspension Request: Enrollment in a Qualifying Program or Completing Teacher Licensure Requirements form and minor formatting change to the TEACH Grant Service Obligation Suspension/Discharge Request: Military Service. We are otherwise proposing no substantive changes to the Certification and Suspension forms included with this submission.

Dated: July 6, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–14685 Filed 7–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–FSA–0121]

Privacy Act of 1974; Matching Program; Correction

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of new matching program; correction.

SUMMARY: On June 29, 2023, the Department of Education (Department) published in the **Federal Register** a notice of a new matching program between the U.S. Department of Education (ED or Department), as the recipient agency, and the U.S. Department of Treasury (Treasury), Internal Revenue Service (IRS) as the source agency. We are correcting the Docket ID used for submitting public comments. All other information in the notice of a new matching program remains the same.

DATES: This correction is applicable July 12, 2023.

Deadline for Transmittal of Public Comments: We must receive your comments on or before July 29, 2023.

FOR FURTHER INFORMATION CONTACT: Zelma Barrett, Program and Budget Analyst, U.S. Department of Education, Federal Student Aid, Washington, DC 20202. Telephone: (202) 377–4308.

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: On June 29, 2023, we published the notice of a new computer matching program in the **Federal Register** (88 FR 42052) with a Docket ID of [ED–2020–FSA–0145]. We are correcting the notice to reflect the correct Docket ID [ED–2023–FSA–0121].

Other than correcting the Docket ID, all other information in the notice remain the same.

Correction

In FR Doc. 2023–13846, appearing on page 42052 of the **Federal Register** of June 29, 2023 (88 FR 42052), we make the following correction:

On page 42052, in the first column, below the heading ''DEPARTMENT OF EDUCATION'', remove ''[Docket ID ED–2020–FSA–0145]'' and add, in its place, ''[Docket ID ED–2023–FSA–0121]''.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and the NPRM in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (TXT), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2023–14766 Filed 7–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0062]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 11, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. 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 Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: 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: eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits.

OMB Control Number: 1845–0072.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 6,632.

Total Estimated Number of Annual Burden Hours: 6,603.

Abstract: eZ-Audit is a web-based process designed to facilitate the submission of compliance and financial statement audits, expedite the review of those audits by the Department, and provide more timely and useful information to public, non-profit and proprietary institutions regarding the Department's review. eZ-Audit establishes a uniform process under which all institutions submit directly to the Department any audit required under the Title IV, HEA program regulations. eZ-Audit continues to have minimal number of financial template line items and general information questions. There has been no change to the form or method of submission.

Dated: July 6, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–14673 Filed 7–11–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Docket Numbers: EG23–220–000.

Applicants: PGR 2022 Lessee 8, LLC.

Description: PGR 2022 Lessee 8, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 7/5/23.

Accession Number: 20230705–5118.

Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: EG23–221–000.

Applicants: Porter Solar, LLC.

Description: Porter Solar, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 7/5/23.

Accession Number: 20230705–5127.

Comment Date: 5 p.m. ET 7/26/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1547–015; ER10–1975–031; ER10–2421–011; ER10–2585–010; ER10–2613–010; ER10–2616–025; ER10–2617–012; ER10–2619–013; ER21–2346–002; ER21–2347–002; ER10–2674–015; ER10–2677–016; ER11–2457–011; ER11–3857–017; ER11–3867–017; ER11–4266–018; ER11–4400–022; ER12–75–014; ER12–192–017; ER12–1769–013; ER12–2250–012; ER12–2251–012; ER12–2252–013; ER12–2253–012; ER13–2475–014; ER14–883–017; ER14–1569–018; ER14–2245–012; ER15–1596–018; ER15–1598–009; ER15–1599–018; ER15–1600–008; ER15–1602–008; ER15–1605–008; ER15–1607–008; ER17–1906–005; ER19–102–011; ER19–158–013; ER19–2803–010; ER19–2806–010; ER19–2807–010; ER19–2809–010; ER19–2810–010; ER19–2811–010.

Applicants: Viridian Energy, LLC, Viridian Energy PA, LLC, Viridian Energy NY, LLC, Energy Rewards, LLC, Connecticut Gas & Electric, Inc., Cincinnati Bell Energy LLC, Ambit Northeast, LLC, Luminant Energy Company LLC, Lake Road Generating Company, LLC, Washington Power Generation LLC, Miami Fort Power Company LLC, Hanging Rock Power Company LLC, Fayette Power Company LLC, Dynegy Energy Services (East), LLC, Dicks Creek Power Company LLC, Luminant Commercial Asset Management LLC, TriEagle Energy, LP, Dynegy Energy Services, LLC, Illinois Power Marketing Company, Kincaid Generation, L.L.C., Public Power & Utility of Maryland, LLC, Public Power (PA), LLC, Public Power & Utility of NY, Inc, Everyday Energy NJ, LLC, Everyday Energy, LLC, Liberty Electric Power, LLC, Public Power. LLC, Dynegy Power Marketing, LLC, Richland-Stryker Generation LLC, Masspower, LLC, Milford Power Company, LLC, Massachusetts Gas & Electric, Inc., Pleasants Energy, LLC, Calumet Energy Team, LLC, Blackstone Power Generation LLC, Bellingham Power Generation LLC, Kendall Power Company LLC, Ontelaunee Power Operating Company LLC, LLC, Dynegy Marketing and Trade, LLC, Sithe/Independence Power Partners, L.P., Casco Bay Energy Company, LLC, Energy Services Providers, LLC, Sayreville Power Generation LP, Hopewell Power Generation, LLC

Description: Triennial Market Power Analysis for Northeast Region of Hopewell Power Generation, LLC.

Filed Date: 6/29/23.

Accession Number: 20230629–5199.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10–2487–007; ER15–2380–005.

Applicants: Willey Battery Utility, LLC, Pacific Summit Energy LLC.

Description: Triennial Market Power Analysis for Northeast Region of Pacific Summit Energy LLC.

Filed Date: 6/29/23.

Accession Number: 20230629–5206.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER10–2924–016.

Applicants: Kleen Energy Systems, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Kleen Energy Systems, LLC.

Filed Date: 6/29/23.

Accession Number: 20230629–5204.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER11–2534–010; ER16–2234–006.

Applicants: EF Kenilworth LLC, Morris Cogeneration, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Morris Cogeneration, LLC, et al.

Filed Date: 6/29/23.

Accession Number: 20230629–5205.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER11–3861–016.

Applicants: Empire Generating Co, LLC.

Description: Triennial Market Power Analysis for Northeast Region of Empire Generating Co, LLC.

Filed Date: 6/29/23.

Accession Number: 20230629–5200.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER14–2498–013; ER14–2500–013.

Applicants: Newark Energy Center, LLC,EIF Newark, LLC.

Description: Triennial Market Power Analysis for Northeast Region of EIF Newark, LLC, et al.

Filed Date: 6/29/23.

Accession Number: 20230629–5201.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER15–1905–013.

Applicants: Amazon Energy LLC.

Description: Triennial Market Power Analysis for Northeast Region of Amazon Energy LLC.

Filed Date: 6/29/23.

Accession Number: 20230629–5203.

Comment Date: 5 p.m. ET 8/28/23.

Docket Numbers: ER22–2340–001.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Power Cooperative Amendment to Order No. 881 Compliance Filing to be effective 7/12/2025.

Filed Date: 7/6/23.

Accession Number: 20230706–5061.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2337–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 914 to be effective 6/13/2023.

Filed Date: 7/5/23.

Accession Number: 20230705–5112.

Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: ER23–2338–000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: Section 1/Attach. O Section 8— Assistance Energy and Measured Demand Definition to be effective 7/1/2023.

Filed Date: 7/5/23.

Accession Number: 20230705–5115.

Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: ER23–2339–000.

Applicants: Wisconsin Electric Power Company.

Description: § 205(d) Rate Filing: Formula Rate Update Filing for 2022 Rate Year to be effective 9/4/2023.

Filed Date: 7/5/23.

Accession Number: 20230705–5119.

Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: ER23–2340–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 412, LGIA with 302PN 8me, LLC to be effective 6/5/2023.

Filed Date: 7/5/23.

Accession Number: 20230705–5121.

Comment Date: 5 p.m. ET 7/26/23.

Docket Numbers: ER23–2341–000.

Applicants: CORE Electric Cooperative.

Description: Petition of CORE Electric Cooperative for Limited Waiver, or in the Alternative for Remedial Relief, Shortened Comment Period, and Expedited Action.

Filed Date: 7/3/23.

Accession Number: 20230703–5286.

Comment Date: 5 p.m. ET 7/24/23.

Docket Numbers: ER23–2342–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4089 Sholes Wind II GIA to be effective 6/14/2023.

Filed Date: 7/6/23.

Accession Number: 20230706–5040.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2343–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4096 Southwestern Power Admin/City of Sikeston MO Int Agr to be effective 8/1/2023.

Filed Date: 7/6/23.

Accession Number: 20230706–5043.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2344–000.

Applicants: MidAmerican Energy Company.

Description: § 205(d) Rate Filing: Concurrence in ITC CSA to be effective 9/4/2023.

Filed Date: 7/6/23.

Accession Number: 20230706–5046.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2345–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–07–06_SA 2838 METC–AEP IA Certificate of Concurrence to be effective 6/1/2023.

Filed Date: 7/6/23.

Accession Number: 20230706–5049.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2346–000.

Applicants: Oak Ridge Solar, LLC

Description: Baseline eTariff Filing: Oak Ridge Solar MBR Tariff to be effective 7/7/2023.

Filed Date: 7/6/23.

Accession Number: 20230706–5052.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2347–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits for Indiana Michigan Power Company terminating the Facilities Agreement between Indiana Michigan Power Co. and Covert Generating Company, L.L.C.

Filed Date: 7/6/23.

Accession Number: 20230706–5062.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2348–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.LIB to be effective 9/7/2023.

Filed Date: 7/6/23.

Accession Number: 20230706–5075.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2349–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6824; Queue No. AE2–120 re: deadline to be effective 9/5/2023.

Filed Date: 7/6/23.

Accession Number: 20230706–5085.

Comment Date: 5 p.m. ET 7/27/23.

Docket Numbers: ER23–2350–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6998; Queue No. T127 to be effective 9/5/2023.

Filed Date: 7/6/23

Accession Number: 20230706–5087.

Comment Date: 5 p.m. ET 7/27/23.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: July 6, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–14760 Filed 7–11–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0351; FRL–11152–01–OCSPP]

Definition of Lead-Based Paint Joint Virtual Workshop; Notice of Public Meeting and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is co-hosting a virtual workshop with the Department of

Housing and Urban Development (HUD) on October 17 and 18, 2023, to hear stakeholder perspectives on specific topics related to detection of and exposure to potential lead hazards from existing residential lead-based paint. This virtual workshop will be used to gather stakeholder input on innovative methods to address lead in paint and reduce lead exposure across the United States. EPA and HUD will use information shared during the workshop to inform their joint effort to revisit the federal definition of lead-based paint and revise it, if necessary. This document announces the virtual workshop and provides essential details for potential presenters and attendees in terms of registration, related activities and important dates.

DATES: *Presenter Abstracts:* If you wish to make a presentation at the virtual workshop, submit an abstract for your presentation on or before August 4, 2023. EPA and HUD will review the abstracts to determine appropriateness and sequencing for inclusion on the workshop agenda. Presentation abstracts and final materials for each presentation will be made available in the docket before the meeting.

Virtual Public Meeting: Will be held virtually on October 17 and 18, 2023, from 10:00 a.m. to approximately 5:00 p.m. (EDT) each day. See the additional details and instructions for registration that appear in Unit II of this document.

Written Comments: Submit your written comments on or before December 31, 2023.

Special accommodations: Requests for special accommodations should be submitted on or before September 29, 2023, to allow EPA time to process these requests.

ADDRESSES: *Virtual Public Meeting:* You must register online to receive the webcast meeting link and audio teleconference information. Please follow the registration instructions that will be announced on the lead program website at: *https://www.epa.gov/lead/2023-lead-based-paint-technical-workshop* by September 29, 2023. For additional instructions related to this meeting, see Unit II.

Written Comments: Submit written comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0351, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI; broadly defined as proprietary information, considered confidential to the submitter, the release of which would cause substantial business injury to the owner) or other information whose disclosure is restricted by statute. Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact Catherine Taylor, listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Catherine Taylor, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20004; telephone number: (202) 566–3008; email address: *taylor.catherine@epa.gov.* Individuals who have speech or other communication disabilities may use a relay service to reach the contact phone number provided. To learn more about how to make an accessible telephone call, visit the web page for the Federal Communications Commission's Telecommunications Relay Service, *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This notice is directed to the public in general. This notice may be of specific interest to persons who conduct or may be interested in lead-based paint (LBP) inspections, lead hazard screens, risk assessments, renovations, paint testing, interim controls, or abatements under the Toxics Substance Control Act or the Lead-Based Paint Poisoning Prevention Act. This workshop may be of specific interest to federal, state, local, and tribal regulators, LBP activities and Lead Renovation, Repair and Painting (RRP) experts and professionals, paint manufacturers, x-ray fluorescence (XRF) technology developers and manufacturers, lead test kit developers and users, lead testing laboratories, childhood lead exposure medical and health experts, environmental and community organizations, and academic researchers. Since other entities may also be interested in this notice, the EPA has not attempted to describe all the specific entities that may be interested in this subject.

B. Why are EPA and HUD having this workshop?

As part of EPA's and HUD's joint effort to revisit the definition of LBP, this virtual workshop will gather critical input on innovative methods to address lead in paint and reduce lead exposure from lead in paint across the United States. The workshop will focus on current and emerging measurement technologies used to quantify lead in paint relevant to EPA's Lead Renovation, Repair and Painting (RRP) program, EPA's Lead-Based Paint Activities (LBPA) program, HUD's Lead Safe Housing Rule (LSHR), and both agencies' joint Lead Disclosure Rule, and how those technologies could be applied for low levels of lead in residential paint. Through the workshop, EPA and HUD also seek to obtain new information on LBP characteristics (*e.g.,* density and components) and any medical evidence related to adverse impacts to humans as a result of exposure to low levels of lead in paint to help with EPA and HUD's reevaluation of the definition of LBP.

EPA and HUD define LBP as paint with lead levels that equal or exceed one milligram per square centimeter (mg/cm^2), or equal or exceed 0.5 percent by weight. Although LBP was banned for residential use in 1978, many homes built before 1978 still contain LBP, a major source of childhood lead exposure. EPA and HUD have prioritized addressing the dangers of childhood lead exposure through EPA's 2022 *Strategy to Reduce Lead Exposures and Disparities in U.S. Communities,* HUD's 2022–2026 Strategic Plan Focus Areas, and the 2018 Federal Lead Action Plan, all of which commit to reducing exposure to lead in homes with LBP.

C. What topics will be covered at the workshop?

EPA and HUD are seeking presenters possessing specific expertise for this workshop. If you are interested in being a presenter, please submit an abstract of your presentation by the deadline presented in **DATES** to allow EPA and HUD to review an determine appropriateness for the workshop and sequencing for the agenda. In addition to the topics mentioned previously, EPA and HUD are also interested in presentations on the following topics:

- Empirical information and/or the identification of modeling tools that characterize the relationship between levels of lead in paint <0.5% and <1 mg/cm^2 and levels of lead in dust, considering paint condition, maintenance, age, and other factors;

• Information on input, data sources and parameters for the exposure scenarios for considering LBP regulations, including: the frequency and characteristics of renovations, maintenance activities, paint flaking and deterioration, and other scenarios that result in the generation of dust-lead from lead in paint below 0.5% and 1 mg/cm^2; uncertainty due to other sources of dust lead aside from lead in paint; and data for characterizing the direct ingestion pathway from lead in paint below 0.5% and 1 mg/cm^2, including quantitative measures of ingestion and exposure (duration, frequency, paint chip characteristics);

• Empirical data that provides paint density for different mass fractions of LBP, and other information to assist in the possible development of a conversion equation between the two units used to define LBP (one definition being in milligrams per square centimeter, and the other a percentage by weight), as well as information on confounding considerations that might make such a conversion unsupported;

• Consideration of LBP metrics under varied field conditions such as the following: lead detection/measurement technologies used in the laboratory and in the field; technical insights and limitations to extending XRF ''thresholds'' (analogous to reporting limits) to or below 0.5 mg/cm^2, if any; performance of XRFs on layers of differing concentrations of lead in paint, measuring through encapsulants, and on a single layer of new paint; implications of material underlying paint (*e.g.,* old paint layers, plaster, metal, and concrete) on the reliability of lead detection estimates; and capabilities and limitations of alternative lead detection technologies;

• Considerations for comparing rhodizonate-based and other lead test kit results to other technology results, especially for lower levels of lead in paint;

• Consideration of how the distribution of lead in paint in U.S. housing affects the programmatic implications and estimates of health benefits of a lower LBP definition; and

• Consideration of any medical evidence that quantitatively supports the imposition of a lower level of lead in defining LBP.

D. How are EPA and HUD seeking public input?

Through this **Federal Register** document, EPA and HUD are announcing the intention to have a virtual public workshop on October 17 and 18, 2023, to hear stakeholder perspectives on specific topics related to detection of and exposure to potential lead hazards from existing residential paint using lower levels of lead than in the current definition of LBP. In addition to the presentations discussed previously, the workshop will include several audience question and answer segments as another means of hearing stakeholder perspectives. In addition, EPA and HUD are seeking abstracts from potential presenters.

E. How can I access information about the meeting or submit an abstract for consideration?

Information about this meeting is available at *https://www.epa.gov/lead/2023-lead-based-paint-technical-workshop* and in the docket for this meeting, identified by docket ID number EPA–HQ–OPPT–2023–0351, at *https://www.regulations.gov.*

The agenda and instructions for registration and for submitting abstracts for this meeting will be added to the EPA website and public docket established for this meeting at *https://www.regulations.gov;* docket ID number EPA–HQ–OPPT–2023–0351.

After the virtual public meeting, EPA will prepare meeting minutes summarizing the meeting. The meeting minutes will be posted on the EPA website and in the docket.

II. Public Participation Instructions

To participate in the virtual public meeting, please follow the instructions in this unit.

A. How can I provide comments?

To ensure proper receipt of comments it is imperative that you identify docket ID number EPA–HQ–OPPT–2023–0351 in the subject line on the first page of your request.

1. *Written comments.* Comments should be submitted using the instructions in **ADDRESSES** and in Units I.B. and C, on or before the date set in the **DATES** section. Anyone submitting written comments after this date should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Submitting CBI.* Do not submit CBI information to EPA through *https://www.regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

3. *Tips for preparing your comments.* When preparing and submitting your comments, see Tips for Effective Comments at *https://www.epa.gov/dockets.* Please note that once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket.

B. How can I participate in the virtual public meeting?

This meeting will be virtual and will be viewable via webcast. EPA intends to announce registration instructions, as well as abstract submission instructions, on the EPA website and in the public docket.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 5, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemicals Safety and Pollution Prevention.

[FR Doc. 2023–14682 Filed 7–11–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11113–02–OA; EPA–HQ–OEJECR–2023–0101]

National Environmental Justice Advisory Council; Notification of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. The meeting is open to the public. Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days public notice. For additional information about registering to attend the meeting or to provide public comment, please see *Registration* under **SUPPLEMENTARY INFORMATION**. Pre-Registration is required.

DATES: The NEJAC will convene a hybrid in-person public meeting with a virtual option. The public meeting will start on Tuesday, July 25, 2023, at approximately 2 p.m. to 5:30 p.m., Eastern Time. The NEJAC meeting continues Wednesday, July 26, 2023, from approximately 9 a.m. to 7 p.m. through Thursday, July 27, 2023, from approximately 9:00 a.m. to 6:00 p.m., Eastern Time. A public comment period relevant to current NEJAC charges and recommendations will be considered by the NEJAC at the meeting on Wednesday, July 26, 2023 (see **SUPPLEMENTARY INFORMATION**). Members

of the public who wish to participate during the public comment period must register by 11:59 p.m., Eastern Time, July 19, 2023.

ADDRESSES: The NEJAC meeting will be held at the Sheraton Puerto Rico, 200 Convention Blvd., San Juan, PR 00907.

FOR FURTHER INFORMATION CONTACT: Paula Flores-Gregg, NEJAC Designated Federal Officer, U.S. EPA; email: *nejac@epa.gov;* telephone: (214) 665–8123. Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, cross-cutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

Registration: Individual registration is required for the public meeting. No two individuals can share the same registration link. Information on how to register is located at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.* Registration to attend the meeting is available through the scheduled meeting days. The deadline to sign up to speak during the public comment period will close at 11:59 p.m., Eastern Time, July 19, 2023. When registering, please provide your name, organization, city and state, and email address. Please also indicate whether you would like to provide oral public comment during the meeting, or whether you are submitting written comments at time of registration.

A. Public Comment

The meeting discussions will focus on several topics including, but not limited to, workgroup activity, final recommendations for council consideration, presentations and charges created through collaborations with various EPA national program offices. The NEJAC is interested in receiving public comments relevant to the following charges and recommendations:

(1) Recommendations for National Environmental Policy Act (NEPA)/309 Training
(2) Recommendations for Water Infrastructure Technical Assistance
(3) Cumulative Impacts Framework Charge
(4) Farmworker and Pesticides Charge
(5) Environmental and Climate Justice Program Funding Opportunities: What infrastructure projects and capacity building activities provide the most beneficial impact within Puerto Rico and the Virgin Islands? What has kept organizations from applying for funding?

Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments; including your recommendations on what you want the NEJAC to advise the EPA to do. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways, (1) by using the webform at *https://www.epa.gov/environmentaljustice/forms/national-environmental-justice-advisory-council-nejac-public-comment,* (2) by sending comments via email to *nejac@epa.gov* and (3) by creating comments in the Docket ID No. EPA–HQ–OEJECR–2023–0101 at *https://www.regulations.gov.* Written comments can be submitted through August 9, 2023. More information about the NEJAC's current charges can be found here.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Paula Flores-Gregg, at (214) 665–8123 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Lilian Dorka,

Deputy Assistant Administrator for External Civil Rights, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2023–14803 Filed 7–11–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012307–007.

Agreement Name: Maersk/APL Slot Exchange Agreement.

Parties: APL Co. Pte. Ltd.; and Maersk A/S.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Amendment revises the duration/effective dates of the various space allocations set forth in the Agreement.

Proposed Effective Date: 8/20/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/176.

Dated: July 7, 2023.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2023–14765 Filed 7–11–23; 8:45 am]

BILLING CODE 6730–02–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 July 27, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198. Comments can also be submitted electronically to *KCApplicationComments@kc.frb.org:*

1. *Sharon Meek, Rogers, Arkansas;* to retain voting shares of Farmers Bancshares, Inc., and thereby indirectly retain voting shares of Independent Farmers Bank, both of Maysville, Missouri.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–14775 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of the Chief Information Officer

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of the Chief Information Officer (OCIO). OCIO restructured to optimize support for the CDC Moving Forward reorganization and Data Modernization Initiatives.

DATES: This reorganization of OSSAM was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of Office of the Chief Information Officer within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Customer Engagement Office (CAJRH) to the Customer Experience Office (CAJRH).
- Technology Solutions Branch (CAJRJB) to the Application Services Branch (CAJRJB).
- Policy Branch (CAJRKB) to the Governance, Risk and Compliance Branch (CAJRKB).

II. Under Part C, Section C–B, Organization and Functions, add the following:

Technology Modernization Office (CAJR18). (1) advances the field of public health information technology (IT) for the Agency through the execution of applied research and innovation; (2) evaluates IT solutions and processes with customer feedback to guide and refine ideas for investment prioritization; (3) transitions new technology-based solutions, standards, and techniques for deployment and implementation (4) leads IT investment strategy; (5) serves as principal advisor for the development and implementation of the OCIO enterprise portfolio; (6) establishes, implements, and communicates a comprehensive and integrated framework for CDC enterprise architecture; (7) identifies needs and resources for new initiatives and assigns responsibilities for their development; (8) coordinates the development of a research agenda for information technology and public health collaboration; (9) implements processes for transitioning applied research into the application of innovative technologies to operations; (10) facilitates cross-functional collaboration across OCIO to achieve targeted performance goals and business outcomes for strategic priority initiatives; and (11) participates and represents the agency on technology innovation committees, workgroups, organizations, and councils, within CDC and with other Federal agencies.

Global Activities Branch (CAJRHE). (1) maintains all network, security, storage, and computer systems to support global mission activities; (2) detects and responds to global incidents that affect network performance and availability; (3) develops and maintains backup and recovery processes to enable global IT services, and global help desk support capabilities; and (4) collaborates with partners to implement country-specific IT regulations and requirements.

Data Transport Branch (CAJRJG). (1) provides business and technology capabilities that enable the development of enterprise-specific products and services that support bi-directional exchange of data between CDC and external customers; (2) manages the vision and strategy for the Data Transport platform and products to ensure alignment to customer needs and modernization goals; (3) works across OCIO service teams as well as all Centers, Institute and Offices (CIOs) at CDC to define current and future platform and product capabilities and requirements; (4) establishes and maintains platform and product lifecycle roadmaps; and (5) coordinates cross-platform and cross-product collaboration.

Cloud Services Branch (CAJRJH). (1) provides business and technology capabilities that enable the development of enterprise products and services; (2) obtains and manages cloud services from cloud service providers; (3) designs, deploys, and maintains Software as a Service, Platform as a Service, and Infrastructure as a Service such as virtual machines, networks, and databases; (4) manages the vision and strategy for Cloud platforms and products to ensure alignment to customer needs and modernization goals; (5) works across OCIO service teams as well as all CDC CIOs to define current and future platform and product capabilities and requirements; (6) establishes and maintains platform and product lifecycle roadmaps; and (7) coordinates cross-platform and cross-product collaboration.

Data Analytics and Visualization Branch (CAJRJJ). (1) provides business and technology capabilities that enable the development of enterprise-specific products and services that support data analytics and data visualization; (2) manages the vision and strategy for the Enterprise Data Analytics and Visualization (EDAV) platform and products to ensure alignment with customer needs and modernization goals; (3) works across OCIO service teams as well as all CDC CIOs to define current and future platform and product capabilities and requirements; (4) establishes and maintains platform and product lifecycle roadmaps; and (5) coordinates cross-platform and cross-product collaboration.

Business Automation Branch (CAJRJK). (1) provides business and technology capabilities that enable the development of enterprise-specific products and services; (2) manages the

vision and strategy for the IT business management platform and products to ensure alignment to customer needs and modernization goals; (3) works across OCIO service teams as well as all CDC CIOs to define current and future platform and product capabilities and requirements; (4) establishes and maintains platform and product lifecycle roadmaps; and (5) coordinates cross-platform and cross-product collaboration.

Governance, Risk and Compliance Branch (CAJRKB). (7) Establishes and implements information security risk management protocols and processes; (8) performs penetration testing of all external and important systems; (9) conducts security architecture reviews of key technologies; (10) manages corrective efforts for weakness management, including Plan of Action and Milestones; (11) collects, synthesizes, and reports on compliance to standards and cybersecurity incidents, including risks, issues, incidents, violations, and the status of remediation efforts (Attack Surface Management); and (12) manages CDC cybersecurity-related insider threat detection, response, and security awareness training programs.

Workplace Productivity Branch (CAJRJL). (1) provides business and technology capabilities that enable the development of enterprise-specific products and services; (2) manages the vision and strategy for the Workplace Productivity platform and products to ensure alignment to customer needs and modernization goals; (3) works across OCIO service teams as well as all CDC CIOs to define current and future platform and product capabilities and requirements; (4) establishes and maintains platform and product lifecycle roadmaps; and (5) coordinates cross-platform and cross-product collaboration.

III. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statement for and replace with the following:

Office of the Chief Information Officer (CAJR). The mission of the OCIO is to administer the CDC's IT programs including collection, management, use, and disposition of data and information assets; development, acquisition, operation, maintenance, and retirement of information systems and information technologies; IT capital planning; enterprise architecture; information and cybersecurity; data privacy; accessibility program that includes responsibilities for executing sections 504 and 508 requirements; education, training, and workforce development in information and IT disciplines; development and oversight of information and IT policies, standards, and guidance; and administration of certain other general management functions and services for CDC.

Office of the Director (CAJRH1). (1) provides account management representing the entire range of OCIO products and services to OCIO customers; (2) maintains and expands OCIO customer relationships; (3) manages OCIO help desk response, coordination, tracking, and reporting; (4) provides and maintains end-user support services for OCIO products and devices; (5) works directly with customers to facilitate design sessions that integrate Human-Centered Design principles; (6) provides technical assistance for sections 504 and 508 of the Rehabilitation Act of 1973; (7) delivers Accessibility Program, closed captioning and meeting accessibility services; (8) evaluates assistive technologies and contract compliance; and (9) assesses and clears communication products for section 508 compliance.

Digital Services Office (CAJRJ). The Digital Services Office oversees agency-wide mission, business, and administrative customer-facing information technology solutions, and OCIO's modernization roadmap.

Office of the Director (CAJRJ1). (1) engages in appropriate governance processes necessary to approve new platform and product development and deployments for all customer-facing solutions; and (2) executes the OCIO modernization strategy and roadmap, and advocates for adequate resources to achieve the organization's strategic goals and objectives.

Application Services Branch (CAJRJB). (2) ensures applications and services meet customer and OCIO North Star architecture requirements and modernization objectives.

Infrastructure Services Branch (CAJRJE). (5) collaborates with Customer Experience Office to facilitate appropriate help desk support capabilities.

Office of the Director (CAJRK1). (1) manages CDC privacy policies, procedures, and processes; (2) ensures compliance with Federal Information Security Management Agency (FISMA), Office of Management and Budget, HHS, CDC, and other government mandates, and regulations; (3) provides FISMA management, including audits of agency IT assets (architecture, hardware, software, networks, hosted applications, etc.) for possible security risks and compliance to cybersecurity standards and policies identified by the Governance, Risk and Compliance Branch; (4) provides oversight and implementation of information security continuous monitoring activities, including maintenance of the agency's continuous diagnostics and mitigation and High Value Asset programs; (5) manages CDC cybersecurity-related insider threat detection, response, and security awareness training programs; (6) manages and executes privacy incident response, including compliance and remediation efforts; (7) performs personally identifiable information inventory and data classification mapping; and (8) works with OCIO offices and customers to effectively implement privacy standards in support of program outcomes.

IV. Under Part C, Section C–B, Organization and Functions, delete in its entirety the title and functional statement for the following:

- Enterprise Data Office (CAJR17).
- Emerging Technology and Design Acceleration Branch (CAJRHD).
- Product Management Branch (CAJRJC).
- Risk Compliance Branch (CAJRKC).

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–14695 Filed 7–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of Safety, Security and Asset Management

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of Safety, Security and Asset Management (OSSAM). OSSAM realigned internal emergency management functions with related functions such as public health emergency response functions to a single leader.

DATES: This reorganization of OSSAM was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of Office of Safety, Security and Asset Management within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

Under Part C, Section C–B, Organization and Functions, delete the functional statements for Office of Safety, Security and Asset Management (CAJS) and replace with the following:

Office of Safety, Security and Asset Management (CAJS). The Office of Safety, Security, and Asset Management (OSSAM) serves as the lead organizational entity for providing a safe, secure, and healthy workforce and workplace for the Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR) staff.

Delete item 3 in the Office of the Director (CAJS1) functional statement and insert the following:

(3) provides advice and counsel to the CDC Director, the Chief Operating Officer, and other senior Immediate Office of the Director (IOD) and Centers/Institute/Offices (CIO) officials on all OSSAM programs and activities.

Delete item 8 in the Office of the Director (CAJS1) functional statement and insert the following:

(8) manages space requests and acts on behalf of the Chief Operating Officer for approval for all CDC CIOs.

Delete item 29 in the Office of the Director (CAJS1) functional statement and insert the following:

(29) leads OSSAM performance management, including the development of strategic plans, performance metrics, dashboards, and Office of the Chief Operating Officer performance management initiatives.

Delete item 31 in the Office of the Director (CAJS1) functional statement and insert the following:

(31) ensures accurate and consistent information dissemination, including Freedom of Information Act requests and controlled correspondence.

After item 34 of the Office of the Director (CAJS1) functional statement, insert the following:

(35) performs enterprise risk management for OSSAM; (36) leads a comprehensive internal emergency management program that efficiently coordinates CDC resources to, first and foremost, protect lives, then to safeguard the environment and property through mitigation, preparedness training, response, continuity and recovery from all natural, man-made and technological hazards that may impact CDC facilities; (37) implements, maintains, and updates CDC's Occupant Emergency Plan/Program; (38) conducts and evaluates annual tabletop, functional, and full-scale exercises for all CDC facilities with Designated Officials and Occupant Emergency Organizations; (39) recommends future emergency management and emergency response-related programs, policies, and/or procedures; (40) provides leadership and coordination in planning and implementation for internal emergencies; and (41) provides leadership and coordination in planning and implementation for internal emergency incidents affecting the CDC facilities, including incident response and support.

Delete the functional statement for the Asset Management Services Office (CAJSB) and replace with the following:

Asset Management Services Office (CAJSB). The Asset Management Services Office (AMSO) provides a safe, secure, healthy, and functional workplace environment for CDC staff by ensuring that assets are managed effectively while maintaining efficient operations, customer satisfaction, and environmental stewardship.

Delete the functional statement for the Security Services Office (CAJSE) and replace with the following:

Security Services Office (CAJSE). The Security Services Office (SSO) serves as the lead organizational entity for providing the overall framework, direction, coordination, implementation, oversight and accountability for CDC's infrastructure protection, and personnel security program. Specifically, SSO: (1) serves as the primary liaison for homeland security activities; and (2) provides a secure work environment for CDC/ATSDR personnel, visitors and contractors.

Delete in its entirety the title and functional statement for the Internal Emergency Management Branch (CAJSEE).

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–14696 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of Financial Resources

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of Financial Resources (OFR). OFR established an activity in the Office of the Director, established two branches, and renamed existing branches within the Office of Acquisition Services.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the Office of Financial Resources within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, add the following:

Office of Risk Management and Internal Control (CAJE18). (1) provides systematic, disciplined approach to evaluate and improve the effectiveness of risk management, internal controls, and grant audit resolution; (2) maintains adherence to rules with all applicable Federal agencies on compliance activities associated with financial management, grants, and acquisitions functions; (3) plans, develops, and implements programs as appropriate to evaluate policies, procedures, and practices; (4) provides leadership, direction, guidance, and coordination on audits; (5) establishes priorities in resolving issues while providing exemplary customer service to our CDC partners; and (6) develops Annual Quality Assurance Plans.

Acquisition Branch 5 (CAJEWG). (1) plans, directs, and conducts acquisition of services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive) to support CDC's national and international public health operations utilizing a wide variety of contract types and pricing arrangements; (2) works closely with Centers, Institute, and Offices (CIOs) in carrying out their public health missions; (3) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (4) reviews statements of work to ensure conformity with laws, regulations, policies, and alignment to CDC's public health goals; (5) negotiates and issues contracts; (6) directs and controls acquisition planning activities; (7) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to ensure compliance with HHS and CDC policies; (8) coordinates and negotiates contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing closeout/termination activities; (9) assures that contractor performance is in accordance with contractual commitments; and (10) identifies and mitigates risks associated with contracts and purchase orders.

Acquisition Branch 6 (CAJEWH). (1) plans, directs, and conducts acquisition of services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive) to support CDC's national and international public health operations utilizing a wide variety of contract types and pricing arrangements; (2) works closely with CIOs in carrying out their public health missions; (3) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (4) reviews statements of work to ensure conformity with laws, regulations, policies, and alignment to CDC's public health goals; (5) negotiates and issues contracts; (6) directs and controls acquisition planning activities; (7) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to ensure compliance with HHS and CDC policies; (8) coordinates and negotiates contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing closeout/termination activities; (9) assures that contractor performance is in accordance with contractual commitments; and (10) identifies and mitigates risks associated with contracts and purchase orders.

II. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Infectious Disease and International Acquisition Branch to Acquisition Branch 1 (CAJEWB)
- Chronic Disease, Preparedness, Surveillance, and Environmental Acquisition Branch to Acquisition Branch 2 (CAJEWC)
- CDC-Wide, Business Services, and Office of the Director Acquisition Branch to Acquisition Branch 3 (CAJEWD)
- Occupational Safety and Health, Simplified Acquisition Branch to Acquisition Branch 4 (CAJEWE)

III. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

Office of Acquisition Services (CAJEW). (1) provides leadership for operations and policies relating to agency-level acquisition functions; (2) plans and develops CDC-wide policies, procedures, and practices in acquisition to support public health science and programs; and (3) maintains a continuing program of reviews, evaluations, inquiries, and oversight activities of CDC-wide acquisitions and assistance to ensure adherence to laws, policies, procedures, regulations, and alignment to CDC's public health goals.

Acquisition Branch 1 (CAJEWB). (1) plans, directs, and conducts acquisition of services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive) to support CDC's national and international public health operations utilizing a wide variety of contract types and pricing arrangements; (2) works closely with CIOs in carrying out their public health missions; (3) provides leadership, direction, procurement options, and approaches in developing specifications/statements of work and contract awards; (4) reviews statements of work to ensure conformity with laws, regulations, policies, and alignment to CDC's public health goals; (5) negotiates and issues contracts; (6) directs and controls acquisition planning activities; (7) provides continuing surveillance of financial and administrative aspects of acquisition-supported activities to ensure compliance with HHS and CDC policies; (8) coordinates and negotiates contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing closeout/termination activities; (9) assures that contractor performance is in accordance with contractual commitments; and (10) identifies and mitigates risks associated with contracts and purchase orders.

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–14694 Filed 7–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Strategic Business Initiatives Unit

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Strategic Business Initiatives Unit (SBI). SBI converted from an activity within the Office of the Director of the Office of the Chief Operating Officer to a stand-alone business service office known as the Office of Strategic Business Initiatives.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the Strategic Business Initiatives Unit within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, after the Office of Safety, Security and Asset Management (CAJS) insert the following:

- Strategic Business Initiatives (CAJT)
- Office of the Director (CAJT1)
- Management Operations Activity (CAJT12)
- Office of Business Integrity and Strategic Management (CAJTB)
- Office of the Federal Advisory Committee Act Program (CAJTC)
- Office of Management Analysis (CAJTD)
- Office of Transformation and Change Management (CAJTE)

II. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Strategic Business Initiatives (CAJT) to the Office of Strategic Business Initiatives (CAJT)

III. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

Strategic Business Initiatives (CAJT). (1) serves as the lead organizational entity delivering risk management training and support across CDC, providing Federal Advisory Committee Act program management, including assessments of applicability and guidance to all committees, boards and other groups established by law; (2) strengthens CDC's administrative guidance and change management through agency-wide conference, gift, policy, delegations of authority, organization and functions, and records management; (3) establishes a capability to deliver transformation and change management to the Office of the Chief Operating Officer (OCOO), the CDC and the Agency for Toxic Substances; and (4) serves as liaison to the HHS Office of Inspector General (OIG) on fraud, waste, and abuse allegations and fact finding.

Office of the Director (CAJT1). (1) directs, manages, coordinates and evaluates the programs and activities of the Office of Strategic Business Initiatives (SBI) I; (2) develops goals and objectives, and provides leadership, policy formulation, and guidance in program planning and development; (3) provides advice and counsel to the CDC Immediate Office of the Director (IOD), the COO, and other senior IOD and Centers, Institute, and Offices officials on all SBI programs and activities; (4) provides quality assurance and continuous improvement by establishing a framework for process improvement associated with all SBI functions; (5) conducts quality improvement audits on all SBI program areas of responsibility; (6) provides project management support to SBI; (7) develops and communicates vision/mission, strategic plans and goals/priorities for SBI and in alignment with OCOO; (8) prepares special reports and studies, as required, in collaboration with and support of SBI; and (9) serves as coordinator of continuity of operations activities for SBI.

Management Operations Activity (CAJT12). (1) provides overall budgetary, employee relations, human capital management, logistics and administrative support; (2) collaborates and maintains liaison with management officials to monitor and address priority issues of concern to CDC leadership; (3) provides direction, strategy, analysis, and operational support in all aspects of human capital management, including workforce and career development and human resources operations; (4) manages internal operational budget processes, including planning, execution, and monitoring; (5) manages internal acquisition processes; (6) serves as point of contact on all matters concerning facilities management, property management, equipment, travel, and space utilization and improvements; (7) coordinates SBI requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (8) develops and implements administrative policies, procedures, and operations, as appropriate, for SBI; and (9) maintains liaison with related CDC components and other officials.

Office of Business Integrity and Strategic Management (CAJTB). (1) provides fiscal advisory services; (2) researches and analyzes fiscal issues and recommends solutions to address appropriations law matters (*i.e.,* clearance for roller bags, sit-stand workstations; food purchases, etc.); (3) evaluates and conducts agency-wide enterprise risk monitoring and management training and support, assisting programs with assessments, building the agency risk profile, and conducting special studies; (4) conducts special reviews and appraises the adequacy and effectiveness of agency-wide practices and operations; (5) coordinates responses to the OIG hotline and other agency special reviews; (6) serves as the representative for the CDC Gift Review Panel; and (7) oversees the management and implementation of the CDC Conference Management Approval System to ensure agency fiscal and risk management in association with conferences, collaborates with the Office of Financial Resources travel office in this endeavor.

Office of the Federal Advisory Committee Act Program (CAJTC). (1) provides Federal Advisory Committee Act (FACA) program oversight and management, including assessments of applicability and guidance to all committees, boards and other groups established by law, the President, HHS or CDC officials; (2) provides FACA and ethics training for committee members and CDC staff and FACA applicability training to CDC programs and employees; (3) manage FACA ethics compliance, conflict of interest mitigation, and financial disclosure forms for special government employees serving on FACA committees and boards; (4) manages and supports scheduling all advisory committees meetings, and facilitates **Federal Register** notice postings; (5) oversees committee operations to include nomination and charter packages, correspondence procedures, and other documents related to committee members and management; and (6) coordinates with HHS/CDC officials on FACA-related matters to support compliance with FACA statutory, regulatory, and policy requirements.

Office of Management Analysis (CAJTD). (1) consults with and provides technical assistance to CDC programs, HHS, and interagency partners, as appropriate, on operational policies; (2) develops, coordinates, and formalizes CDC operational policies; (3) oversees and manages the operational policy management process, requirements, and database; (4) oversees the records management program; (5) serves as the liaison to the National Archives and Records Administration (NARA); (5) provides training and support to all programs on Federal records management requirements and best

practices; (6) ensures compliance with NARA and Federal records management requirements; and (7) interprets, analyzes, and makes recommendations concerning delegations of program and administrative authorities and develops appropriate delegating documents; (8) consults with and provides technical assistance to CDC program officials seeking to establish, modify, or abolish organizational structures and functions; (9) manages the official standard administrative codes, coordinating with HHS as appropriate; and (10) manages processes, procedures, requirements, and databases for delegations of authority and organizational structures and functions.

Office of Transformation and Change Management (CAJTE). (1) develops, enables, and promotes an OCOO transformation framework and learning organization; (2) develops and applies a structured approach to change management to promote participation and buy-in; (3) creates and maintains an internal collaboration site for programs to share and build upon innovative ideas and operational improvements; (4) establishes continuous process improvement ''community of practice'' to validate and share best practices across OCOO and CDC; (5) promotes a culture of continuous improvement through training, consultative services, facilitation and technical support to build process improvement expertise throughout OCOO; and (6) provide support to programs in their project work driving innovation including facilitating faster access to and dissemination of data and increased effectiveness in services to support CDC's overall mission.

V. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

Office of Strategic Business Initiatives (CAJ13) within the Office of the Director, Office of the Chief Operating Officer.

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–14697 Filed 7–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of Laboratory Science and Safety

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of Laboratory Science and Safety and the establishment of the Center for Laboratory Systems and Response.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: D'Artonya Graham, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329; Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the Office of Laboratory Science and Safety. Immediate Office of the Director, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

- Office of the Laboratory Science and Safety (CAN)
- Office of the Director (CAN1)
- Office of Infectious Diseases Laboratory Quality (CAN12)
- Office of Laboratory Safety (CAN13)
- Office of Laboratory Science (CAN14)
- Center for Laboratory Systems and Response (CANB)
- Division of Laboratory Systems (CANBB)
- Office of the Director (CANBB1)
- National Laboratory Response Systems Branch (CANBBB)
- Quality and Safety Systems Branch (CANBBC)
- Training and Workforce Development Branch (CANBBD)

II. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

Office of Laboratory Science and Safety (CAN). In carrying out its mission, the Office of Laboratory Science and Safety: (1) provides scientific, technical, and managerial expertise and leadership in the development and enhancement of laboratory safety programs; (2) oversees and monitors the development, implementation, and evaluation of the laboratory safety and quality management programs across CDC; (3) oversees the development and distribution of guidance and interpretation of Clinical Laboratory Improvement Amendments (CLIA) regulations for infectious disease laboratories and monitors and ensures laboratory compliance; and (4) bridges and strengthens the Nation's clinical and public health laboratory system by continually improving quality and safety, informatics and data science, and workforce competency.

Office of the Director (CAN1). (1) provides scientific, technical, and managerial expertise and leadership in the development and enhancement of laboratory science and safety programs; (2) oversees and monitors the development, implementation, and evaluation of the laboratory safety and quality management programs across CDC; (3) provides the understanding of CLIA regulations and tools needed by the infectious diseases laboratories to operate in compliance with established requirements; (4) advises on policy, partnerships, and issues management matters; (5) advises on matters related to internal and external public health communications; (6) provides oversight to ensure CDC compliance with regulations for select agents and toxins, and the safe possession, use, and transfer of select agents and toxins; (7) provides oversight to ensure CDC compliance with all applicable laws, regulations, policies, and standards regarding the humane care and use of laboratory animals at CDC; (8) serves as the Institutional Official for purposes of compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals; (9) makes appointments to the CDC Institutional Animal Care and Use Committees; (10) leads responses to laboratory incidents and emergencies; (11) guides the development of laboratory systems standards for quality and safety; and (12) bridges and strengthens the Nation's clinical and public health laboratory system by continually improving quality and safety,

informatics and data science, and workforce competency.

III. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

Office of Laboratory Science (CAN13). (1) provides high-level coordination of policies and guidance for core laboratory training programs in quality management, laboratory safety, and Food and Drug Administration (FDA)-regulated diagnostic devices; (2) manages the catalog of core laboratory quality, safety, and FDA-regulatory compliance training courses; (3) provides expertise and consultation for policy development and implementation of laboratory quality management activities; and (4) provides regulatory expertise and consultation to support policy development and compliance with FDA regulations for in vitro diagnostic devices.

Office of Laboratory Safety (CAN14). (1) provides high-level oversight and coordination of laboratory safety at all CDC campuses; (2) develops and assesses the effectiveness of agency-level plans, policies, manuals, and tools for implementation of laboratory safety standards; (3) provides regulatory compliance for biological safety, chemical safety, radiation safety, and the possession, use, and transport of select agents and toxins; (4) provides expertise and consultation for biological safety, chemical safety, and radiation safety; and (5) provides expertise for CDC-wide compliance with all applicable laws, regulations, policies, and standards regarding the humane care and use of laboratory animals at CDC.

Center for Laboratory Systems and Response (CANB). The mission of the Center for Laboratory Systems and Response (CLSR) is to collaborate with the Nation's clinical and public health laboratory systems as well as CDC's programmatic subject matter experts to ensure scientifically advanced, timely, and efficient laboratory response and diagnostic testing for infectious disease outbreaks, epidemics, and pandemics, and to provide cross-cutting laboratory operation and systems support for CDC's infectious disease laboratories. To carry out this mission, CLSR: (1) arranges and manages the transfer of CDC diagnostic tests used in national responses to public health and clinical laboratories, including appropriate testing and biosafety guidance; (2) provides cross-cutting laboratory products and services to support laboratory activities of CDC programs; (3) advances the Nation's capacity to electronically exchange clinical and public health laboratory testing data through the use of standards and common infrastructure; (4) develops and distributes state-of-the-art laboratory training and development courses and tools to strengthen the clinical and public health laboratory workforce; (5) supports the Nation's CLIA laboratory quality program in collaboration with FDA and the Centers for Medicare and Medicaid Services (CMS); (6) functions as the CDC lead for the National Laboratory Response System and oversees CDC's role in the national clinical and public health laboratory system before and during infectious disease outbreaks, epidemics, and pandemics; (7) provides scientific guidance, regulatory oversight, clearance review, and coordination across CLSR to support, promote, and ensure scientific quality and integrity of CLSR products and programs; (8) supports CLSR program monitoring, evaluation and reporting efforts to ensure that they advance both health equity and public health outcomes, and reinforces the importance of robust public health evaluation across all of CLSR's programs; (9) supports CLSR programs with strategy development and implementation plans; (10) provides leadership and guidance on policy issues, coordinates with agency and other government organizations about CSLR activities, and helps to define and pursue goals for policy formation and execution; and (11) provides communication services, coordinates with communication professionals about CLSR's activities, and facilitates partnerships across the center.

Division of Laboratory Systems (CANBB). The mission of the Division of Laboratory Systems (DLS) is to ensure the effectiveness of the National Laboratory Response System and to improve public health, patient outcomes, and health equity by advancing laboratory systems. To carry out this mission, DLS: (1) functions as the CDC lead for the National Laboratory Response System, and oversees CDC's role in this system before and during infectious disease outbreaks, epidemics, and pandemics; (2) advances the state of the national clinical laboratory system's quality and safety, data exchange, preparedness and response capacity, and workforce competency; (3) strengthens the capacity of the Nation's public health and clinical laboratory system, including diagnostic testing facilities, to prepare for and respond to infectious disease outbreaks, epidemics, and pandemics; (4) engages, supports, and bolsters the work of the Nation's public health and clinical laboratory community; (5) engages and supports partners and professional organizations in the clinical laboratory and diagnostic manufacturing industries as well as across the U.S. Government; (6) collaborates with CMS and FDA to implement the Federal CLIA program; (7) manages and executes CDC's responsibilities for the Federal CLIA program; (8) advances the Nation's capacity to electronically exchange clinical and public health laboratory testing data through the use of standards and common infrastructure; (9) develops and distributes state-of-the-art laboratory training and development courses and tools to strengthen the clinical and public health laboratory workforce; (10) fosters collaborations and cross-cutting activities with other CDC components and external organizations to support the mission, activities, and operations of DLS; (11) provides stewardship of the agency's cooperative agreement (CoAg) with the Association for Public Health Laboratories (APHL) and other division procurement, grants, CoAgs, materials management, interagency agreements, and extramural resources; (12) addresses policy issues that affect or could affect the National Laboratory Response System or other DLS programs and activities; (13) provides communications, web support, social media presence, responses to media requests, and promotion and outreach efforts to clinical and public health laboratories on emergency response and testing through the CDC's Laboratory Outreach and Communication System; and (14) responds to requests from other CDC programs for technical assistance relating to DLS capabilities.

Office of the Director (CANBB1). The DLS Office of the Director (1) provides leadership and guidance on the development of strategic goals, objectives, and milestones to advance the vision and mission of DLS and CLSR, (2) develops administrative policies, processes, and operations for the division; (3) ensures that health equity principles are applied in all DLS activities; (4) works with the CSLR Office of the Director (OD) to ensure that spending plans and budgets are executed and aligned with the strategic priorities of the division; (5) works with the CSLR OD to establish and maintain a diverse, equitable, inclusive, and accessible workplace; (6) provides DLS communications resources, including web support, writing and editing, social media presence, and promotion and outreach efforts to clinical and public health laboratories; (7) provides

scientific guidance and resources, regulatory oversight, clearance review, and coordination with DLS staff to support, promote, and ensure scientific quality and integrity of DLS products and programs; (8) manages the division's CoAgs, including the CDC APHL CoAg (OE20–2001) and Enhancing U.S. Clinical Laboratory Workforce Capacity CoAg (OE22–2202); (9) fosters existing and new partnerships with the clinical and public health laboratory and testing community, other CDC programs, Federal and state agencies, and professional organizations to further DLS mission and goals; (10) liaises with CMS and FDA CLIA program partners, CLIA-approved accreditation organizations and proficiency testing programs, and other CDC programs and offices for CLIA-related issues; and (11) analyzes and provides guidance on policy-related issues that affect DLS and the broader public and clinical laboratory community, and ensures that DLS activities, communications, and materials are aligned with agency policy.

National Laboratory Response System Branch (CANBBB). The mission of the National Laboratory Response System Branch (NLRSB) is to serve as CDC's lead for the National Laboratory Response System and to oversee CDC's role in this system before and during infectious disease outbreaks, epidemics, and pandemics. To carry out its mission, NLRSB (1) strengthens the Nation's diagnostic testing and reporting capabilities and capacity, especially before and during public health emergencies, through programs, partnerships, test deployment and distribution, and electronic data exchange; (2) coordinates and supports preparedness and response activities of public health laboratories (PHLs) that are members of the Laboratory Response Network (LRN) for biological threats; (3) develops and maintains partnerships for expanded emergency diagnostic testing capacity to national commercial and other clinical laboratories; (4) provides communication to clinical and PHLs and laboratory partners on laboratory matters of public health significance through the Laboratory Outreach Communication System; (5) provides informatics solutions and technical assistance to LRN member laboratories that share laboratory testing data with CDC for surveillance and response; (6) promotes the development and use of standards to advance the quality and semantic interoperability of laboratory data; (7) oversees the development of existing systems, new infrastructure, and tools and services for PHLs to receive electronic test orders from and submit test results to healthcare providers; (8) participates in and chairs interagency workgroups or task forces for the rapid development and deployment of emergency diagnostics, including the Tri-Agency Task Force for Emergency Diagnostics; and (9) supports clinical, research, outbreak, and other event response work by managing multiple aspects of the Enterprise Laboratory Information Management system, providing a centralized location for data storage, specimen management, testing, and reporting and allowing for harmonized data transfer and enhanced collaboration across CDC's laboratories.

Quality and Safety Systems Branch (CANBBC). The mission of the Quality and Safety Systems Branch is to improve the quality and safety of laboratory testing in clinical and public health settings across the Nation. To carry out its mission, QSSB (1) collaborates across CDC and engages broadly with external partners, including other Federal agencies, state agencies and programs, and professional organizations; (2) develops laboratory quality and safety standards, guidelines, and recommendations in collaboration with partners; (3) promotes the adoption of these products by clinical and public health laboratories; (4) provides scientific and technical support for the national CLIA program to ensure the quality and safety of clinical and public health laboratory testing; (5) hosts and manages the Clinical Laboratory Improvement Advisory Committee and its workgroups on behalf of a tri-agency partnership among CDC, CMS, and FDA; (6) provides expertise in the development and revision of CLIA technical standards and voluntary guidelines for laboratory quality and safety; (7) provides quality and safety subject matter expertise to the DLS Training and Workforce Development Branch for the development of training courses for external clinical and PHLs; (8) leads the Next Generation Sequencing Quality Initiative to develop adaptive quality management systems that support next generation sequencing workflows; (9) leads the implementation of biorisk management system standards for the safety of laboratory and testing professionals and their communities; (10) advances the integration of laboratory expertise in healthcare systems to improve the accuracy of diagnoses and to reduce diagnostic errors; (11) develops, promotes, and implements data science approaches for improved use of large and complex data sets in support of adherence to CLIA standards; and (12) leverages data acquired from large health databases to evaluate laboratory testing practices, capabilities, capacity, and public health outcomes.

Training and Workforce Development Branch (CANBBD). The mission of the Training and Development Branch (TWDB) is to strengthen laboratory practice and systems through strategic, innovative training, and leadership of initiatives to recruit, develop, and retain a diverse, well-prepared laboratory workforce. To carry out its mission, TWDB (1) develops, promotes, and disseminates laboratory capacity-building resources that enhance the clinical laboratory community's ability to combat emerging threats, learn evolving practices, and stay current with the newest standards and technologies; (2) designs and disseminates innovative training on laboratory core science, quality, safety, informatics, and emergency preparedness for U.S. clinical and public health laboratories and the testing community—including eLearning, printable and video job aids, live webinars, Training of Trainers programs, and virtual reality courses that build learners' skills in a safe, simulated laboratory environment; (3) engages clinical and public health laboratory professionals and point-of-care testers and connects them to CDC and to each other to rapidly identify and respond to urgent training needs and sustain a capacity-building community; (4) develops just-in-time training for an integrated network of domestic and international laboratories on how to respond to biological and chemical threats and other high-priority public health emergencies; (5) leverages expertise in instructional design, multimedia production, evaluation, and project management to rapidly identify and prioritize training needs, select the optimal format for a given training goal, audience, and timeline, and efficiently develop laboratory training that meets CDC Quality Training Standards and Section 508 standards for learners with disabilities; (6) maintains a free, publicly accessible learning management system tailored to the needs of U.S. clinical laboratory professionals; (7) facilitates site-specific training and increases U.S. clinical laboratories' capacity sustain to their own workforce development programs; (8) develops quality, safety, and regulatory affairs training informed by agency-specific policies and guidelines and tailored to the needs of CDC laboratory staff; (9) designs and delivers hands-on training at CDC's laboratory

training facilities; (10) provides leadership and support of the laboratory workforce through sustainable initiatives that strengthen recruitment, retention, management, and training; (11) increases awareness of and access to laboratory education and training opportunities among under-represented groups and communities to increase diversity within the laboratory workforce and ultimately advance health equity; (12) develops frameworks, models, and resources that support competency-based laboratory training; and (13) evaluates the efficiency and effectiveness of laboratory education, training and workforce development programs to ensure the effective knowledge transfer and skills attainment to improve laboratory practice.

V. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Office of Laboratory Safety and Science (CPQ)
- Office of the Director (CPQ1)
- Office of Laboratory Science (CPQB)
- Office of Laboratory Science (CPQC)
- Division of Laboratory Science (CPNB)
- Office of the Director (CPNB1)
- Laboratory Services and Compliance Branch (CPNBB)
- Training and Workforce Development Branch (CPNBC)
- Quality and Safety Systems Branch (CPNBD)
- Informatics and Data Science Branch (CPNBE)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the National Center for Health Statistics

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the National Center for Health Statistics (NCHS).

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: D'Artonya Graham, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329; Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the National Center for Health Statistics (NCHS), Office of Public Health Data, Surveillance, and Technology, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, after the Office of Public Health Data, Surveillance, and Technology (CAK) insert the following:

- National Center for Health Statistics (CAKL)
- Office of the Director (CAKL1)
- Office of the Deputy Director for Management and Operations (CAKL12)
- Office of the Director (CAKL121)
- Office of Management and Operations (CAKL1212)
- Office of the Director (CAK12121)
- Operations and Logistics Staff (CAKL12121B)
- Workforce and Career Development Staff (CAKL12121C)
- Office of Policy, Budget, and Legislation (CAKL1213)
- Office of Information Services (CAKL1214)
- Office of the Director (CAKL12141)
- Information Dissemination Staff (CAK12141B)
- Information Design and Publishing Staff (CAKL1214C)
- Office of Informatics, Governance and Assurance (CAKL1215)
- Office of the Deputy Director for Programs (CAKL13)
- Office of the Director (CAKL131)
- Office of Science (CAKL1312)
- Division of Analysis and Epidemiology (CAKLB)
- Office of Director (CAKLB1)
- Health Promotion Statistics Branch (CAKLBB)
- Measures Research and Evaluation Branch (CAKLBC)
- Data Linkage Methodology and Analysis Branch (CAKLBD)
- Population Health Reporting and Dissemination Branch (CAKLBE)
- Division of Vital Statistics (CAKLC)
- Office of Director (CAKLC1)
- Data Acquisition and Evaluation Branch (CAKLCB)
- Partner Engagement and Data Dissemination Branch (CAKLCC)
- Statistical Analysis and Surveillance Branch (CAKLCD)
- Information Technology Branch (CAKLCE)
- Division of Health Care Statistics (CAKLD)
- Office of the Director (CAKLD1)
- Data Analytics and Production Branch (CAKLDB)
- Planning and Operations Branch (CAKLDC)
- Technical Services Branch (CAKLDD)
- Division of Health Interview Statistics (CAKLE)
- Office of the Director (CAKLE1)
- Data Production and Systems Branch (CAKLEB)
- Survey Planning and Special Surveys Branch (CAKLEC)
- Data Analysis and Quality Assurance Branch (CAKLED)
- Division of Health and Nutrition Examination Surveys (CAKLG)
- Office of the Director (CAKLG1)
- Analysis Branch (CAKLGB)
- Informatics Branch (CAKLGC)
- Operations Branch (CAKLGD)
- Planning Branch (CAKLDE)
- Division of Research and Methodology (CAKLH)
- Office of the Director (CAKLH1)
- Collaborating Center for Statistical Research and Survey Design (CAKLHB)
- Collaborating Center for Questionnaire Design and Evaluation Research (CAKLHC)
- Research Data Center (CAKLHD)

II. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

National Center for Health Statistics (CAKL). (1) provides national leadership in health statistics and epidemiology; (2) collects, analyzes, and disseminates national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system: health costs and expenditures, changes in the health status of people, and environmental, social, and other health hazards; (3) administers the Cooperative Health Statistics System; (4) stimulates and conducts basic and applied research in health data systems and statistical methodology; (5) coordinates to the maximum extent feasible, the overall health statistical and epidemiological activities of the program and agencies of the HHS and provides technical assistance in the planning, management, and evaluation of HHS statistical programs; (6) maintains operational liaison with statistical units of other health agencies, public and private, and provides technical assistance within the limitations of staff resources; (7) fosters research, consultation, and training programs in international statistical activities; (8) participates in the development of national health statistics policy with other Federal agencies; (9) directs the environmental and epidemiological statistics programs of the NCHS; and (10) provides the Secretary, HHS with consultation and advice on statistical matters in its role as the Government's principal general-purpose health statistics organization as designated by the Office of Management and Budget (OMB).

Office of the Director (CAKL1). The Office of the Director (OD), NCHS, directs, administers, and coordinates scientific and administrative operations. For NCHS, the OD (1) plans, manages, and evaluates the total vital, health, and health statistics programs; (2) provides programmatic oversight of allocated resources, administrative services, and human capital; (3) defines and provides guidance on goals and objectives for vital and health statistics program policies, strategic planning and overall implementation; (4) guides cross-cutting functions including strategic planning, budget strategy, external affairs, and performance; (5) ensures the integrity, regulatory compliance and quality of all health statistics programs; (6) stimulates basic and applied research and developmental activities; (7) directs environmental and epidemiological statistics program activities; (8) provides national and international leadership in vital and health statistics programs and activities; (9) releases and disseminates all NCHS statistical products and related activities (10) provides assistance to government agencies in order to foster international relationships, and improve the broad fields of vital and health statistics, and epidemiology; (11) coordinates activities with public and private health statistics agencies; (12) coordinates NCHS activities on classification of diseases and procedures with the responsibility for development of revision proposals and the United States' position on decennial revisions of the International Classification of Diseases; (13) overseas NCHS research programs in areas of public health data modernization and analytical infrastructure including cutting edge advances in technologies and products; (14) develops new data-science related initiatives in areas of architected and productionized machine learning models for classification, regression, outlier detection, and language modeling in support of large complex statistical surveys; (15) provides support for CDC and HHS' Equal Employment Opportunity program; (16) provides executive-level leadership and guidance on Center-wide data resources and information technology management in support of scientific and program information and the research and development efforts on new information technologies, architectures, and systems; (17) provides executive-level leadership and guidance on data science (analytics and modernization) for large, complex surveys as well as research and development efforts to identify, analyze, visualize, and report on emerging public health data; and (18) releases and disseminates all NCHS statistical products and related activities in a manner consistent with OMB Federal Statistical Agency Director No. 4.

Division of Vital Statistics (CAKLC). The Division of Vital Statistics (DVS) plans and administers NCHS' complex data collection systems and conducts a program of methodologic and substantive public health research activities based on the nationwide collection of data from vital records. For NCHS, DVS (1) directs, plans, and coordinates the vital statistics program of the United States including the vital statistics cooperative program, the National Death Index (NDI), and standards for data collection including electronic systems, data reduction, and tabulation; (2) conducts various types of vital statistics related research including enhancing the ICD by determining cross-national comparability of causes of death in order to provide appropriate recommendations to the World Health Organization (WHO); research on data collection methodology, data quality, reliability, and statistical computation; development of new scientific knowledge on the demographics of natality and mortality; and developing tools for evaluation, utilization, and presentation of vital statistics data and medical classification; (3) interprets, classifies, and compiles complex demographic, economic, health, and medical data; (4) performs theoretical and experimental investigations into the content of the vital statistics data collection effort including developing sophisticated approaches to making vital statistics data available to users, assessing the security of DVS IT systems and data files, and developing and implementing strategies to minimize security risks and avoiding disclosure of confidential data; (5) conducts descriptive analyses and sophisticated multivariate analyses that integrate vital statistics data across multiple data sets; (6) provides technical assistance and consultation to international, state, and local offices with vital registration responsibilities on vital registration, vital statistics, and data processing; (7) researches, designs, develops, and implements state-of-the-art computing systems for collecting, storing, and retrieving vital records and for subsequent analysis and dissemination; (8) produces and publishes a wide variety of vital statistics analytic reports and tabulations in multiple formats; and (9) participates in the development of policy, long-range plans, and programs of the for NCHS; develops and sustains collaborative partnerships within NCHS, CDC, HHS, and externally with public, private, domestic and international entities on vital statistics programs; and is the United States representative for ICD for mortality data and the classification and coding of cause of death.

Office of the Director (CAKLC1). The Office of the Director (1) participates in the development of policy, long-range plans, and programs of NCHS; (2) provides leadership for the monitoring and statistical evaluation of national vital statistics; (3) directs, plans, and coordinates the statistical and research activities of the Division; (4) develops policy for the NDI program; (5) plans and conducts programs to improve the vital registration and statistics program for the United States; (6) conducts studies of new vital registration techniques; (7) recommends content and format of model legislation, regulations,

standard certificates, and other aids to registration systems; (8) provides international leadership and consultation on vital registration and statistics issues to other countries; and (9) establishes collaborative partnerships within NCHS, CDC, HHS, and externally with public, private, domestic and international entities on vital statistics programs.

Data Acquisition, Classification, and Evaluation Branch (CAKLCB). The Branch (1) provides policy direction to states regarding vital statistics data acquisition and quality control including promoting state participation in the vital statistics cooperative program and the NDI program; (2) manages the acquisition of vital statistics data from the 57 registration areas to assure a national file of timely and complete data; (3) develops specifications for coding, editing and processing of vital registration, and statistics data; (4) develops and administers funding formulas that determine the level of reimbursement to states and the procurement mechanisms to effect this reimbursement; (5) develops and directs a comprehensive statistical quality assurance program throughout the U.S. vital statistics system including best statistical practices to maximize the utility of vital statistics data and to assure that the data received from each registration area are acceptable for national use; (6) provides technical assistance to states, local areas, other countries, and private organizations on data files, software, training, processing, and coding of vital statistics data; (7) conducts evaluation studies and other research on issues related to the collection of vital statistics data in consultation with various U.S. health departments; (8) prepares and publishes information obtained from special projects conducted on vital registration and statistics data; (9) conducts methodological research in data preparation and medical classification of mortality data; (10) directs a comprehensive program of technical assistance and consultation related to mortality medical data classification to states, local areas, other countries, and private organizations; and (11) interprets, classifies, codes, keys, and verifies medical and demographic information of value to researchers and public policy officials.

Information Technology Branch (CAKLCE). The Branch (1) conducts research into the design, development, and administration of vital statistics information technology systems; (2) performs systems analysis and computer programming of vital registration data; (3) develops technologies, data architectures, security infrastructure, and database management related to vital records and record linkage consistent with NCHS, CDC, and HHS information technology requirements, policies and architecture; (4) develops, maintains, and employs state-of-the-art information technologies (*e.g.,* relational databases, Web-enabled applications, applications development and dissemination activities) associated with vital statistics; (5) develops and maintains systems and databases to support the NDI program; (6) provides consultation and expert technical assistance to the division concerning SQL server, web services, networking applications, and other technologies that may arise; (7) prepares and maintains population databases as well as conducts studies on statistical computation and data quality; (8) designs and implements information technology applications to produce final edited and imputed vital statistics data; (9) provides consultation, policy guidance, and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, Federal, local, and international governments, researchers, and individuals, in regard to vital statistics systems design, administration, and usage; (10) manages national vital statistics data files and databases; (11) develops, enhances, and maintains medical classification software and procedures for collecting and processing of mortality medical data in states and at NCHS following HHS Enterprise Life Cycle Framework; and (12) tests, refines, and updates automated coding systems that assist in the production of mortality data.

Division of Health Care Statistics (CAKLD). The Division of Healthcare Statistics (DHCS) plans and administers NCHS' complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities on the healthcare system and the use of healthcare services. For NCHS, DHCS (1) participates in the development of policy, long-range plans, and programs; (2) plans, directs, and coordinates NCHS' healthcare statistics program; (3) develops standards for healthcare statistics data collection, data reduction, and tabulation; (4) conducts research on data collection methodology, survey methodology, data quality and reliability, statistical computation, and utilization of healthcare statistics data; (5) conducts multidisciplinary research directed towards the development of new scientific knowledge on the provision, use, quality, and appropriateness of ambulatory, hospital, and long-term care including interactions within the healthcare delivery system, and the effects of the system and its financing on services provided; (6) performs theoretical, experimental, and evaluative investigations into the content of the healthcare statistics data collection effort; (7) develops sophisticated approaches for making healthcare statistics data available to users, including techniques to avoid disclosure of confidential data; (8) conducts descriptive analyses and sophisticated multivariate analyses that integrate healthcare statistics across multiple surveys or data sets; (9) designs, develops, and implements state of the art computing systems for collecting, storing, and retrieving healthcare statistics data for subsequent analysis and dissemination; (10) provides technical assistance, consultation, and liaison to international, Federal, state, and local government agencies, as well as the private sector, on statistics describing healthcare resources and utilization and future data needs of particular relevance for public health, health services research, and health policy; (11) fosters the integration of healthcare data systems as well as greater linkages of data for analytic purposes; (12) analyzes and produces and publishes a wide variety of healthcare statistics reports and tabulations in multiple formats; and (13) develops and sustains collaborative partnerships within NCHS, CDC, and HHS, and externally with public, private, domestic, and international entities on healthcare statistics programs.

Office of the Director (CAKLD1). The Office of the Director (1) participates in the development of policy, long-range plans, and programs for NCHS; (2) provides leadership for the development, conduct, and evaluation of national healthcare surveys and statistics; (3) directs, plans, and coordinates the statistical and research activities of the division; (4) develops and administers a research and analytic program to characterize the healthcare delivery system and patients and providers interacting within it; (5) coordinates activities within the division and with other NCHS components aimed at obtaining and using healthcare data from other Federal, state, and local government agencies, as well as from non-government sources; and (6) provides advice and leads development of collaborative partnerships within

NCHS, CDC, and HHS, and externally with public, private, domestic and international entities on healthcare statistics and the manner in which statistics may impact policy issues.

Technical Services Branch (CAKLDD). The Branch (1) conducts research into the design, development, and administration of healthcare statistics information technology systems; (2) performs systems analysis and computer programming (*e.g.,* edits, imputations, disclosure risk analysis, and statistical weighting) of healthcare statistics data; (3) develops and implements computer technologies, data architectures, security infrastructure, and database management for division programs consistent with NCHS and CDC information technology requirements; (4) develops, maintains, and employs state-of-the-art information technologies (*e.g.,* cloud computing, data lakes, data warehouses, relational databases, web-based applications, data transport mechanisms, applications development tools) in support of data collection, processing, maintenance, analysis, and dissemination activities associated with national healthcare surveys; (5) advises division staff regarding resources for web portals, cloud computing applications, and emerging applications; (6) prepares and maintains databases and file libraries, as well as conducts studies of statistical computation and data quality; (7) produces a wide variety of data products in multiple formats; (8) develops quality control measures; and (9) provides consultation, policy guidance, and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, Federal, local, and international governments, researchers, and individuals, in regard to healthcare survey and computer systems design and usage.

Division of Health Interview Statistics (CAKLE). The Division of Health Interview Statistics (DHIS) plans and administers NCHS' complex data collection systems and analytic programs and conducts a program of methodologic and substantive public health research activities based on the collection of data from nationwide and special health interview surveys. For NCHS, DHIS (1) participates in the development of policy, long-range plans, and programs; (2) plans, directs, and coordinates the health interview statistics program comprised of national health interview surveys, longitudinal surveys, population-based online panel surveys, targeted follow-up studies, and national and subnational surveys on selected health topics; (3) conducts research on data collection and estimation methodology, survey methodology, questionnaire design, data quality and reliability, and statistical computation related to health and health status assessment; (4) analyzes data and publishes reports on the prevalence and incidence of disease and associated disabilities, health status and fertility, health-related behaviors, utilization of healthcare resources, health insurance status, family formation and dissolution, and other health and well-being related topics; (5) conducts multidisciplinary research directed toward development of new scientific knowledge in areas related to health and healthcare, demography, economics, epidemiology, statistics, and disability; (6) performs innovative theoretical and experimental investigations of the content of health interview surveys using sophisticated approaches to making health interview statistics data available to users, including techniques to avoid disclosure of confidential data; (7) conducts descriptive analyses and sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (8) designs, develops, and implements state-of-the-art computing systems for collecting, storing, and retrieving health interview statistics data and for subsequent analysis and dissemination which are consistent with NCHS and CDC information technology requirements; (9) incorporates novel system improvement efforts to maintain timeliness, efficiency, cost effectiveness, and accuracy of data systems over multiple years; (10) conducts methodological research on the utilization, evaluation, and presentation of health interview statistics; (11) produces and publishes a wide variety of health interview statistics reports, papers, and tabulations in multiple formats as well as makes presentations on analyses of such data; and (12) develops and sustains collaborative partnerships with, and provides expert advice and technical assistance to NCHS, CDC, and HHS and externally with public, private, domestic and international entities on issues regarding health interview statistics data.

Office of the Director (CAKLE1). The Office of the Director (1) participates in the development of policy, long-range plans, and programs of NCHS; (2) provides leadership for the design, development, conduct, and statistical evaluation of the division's data systems; (3) oversees the analysis and dissemination of national and subnational health interview statistics through national health interview surveys, national surveys of family formation, growth, and dissolution, and special surveys of subnational and demographic subgroups; (4) coordinates the planning and production activities of the division including data collection, information technology, and data dissemination systems; (5) directs, plans, and monitors the scientific integrity and relevance to public health of the division's data, publications, services, and other products; (6) develops and administers a research, analytic, and methodological program in health interview statistics; (7) conducts theoretical and experimental research to improve the usefulness of the division's statistics and data to policymakers, researchers, and academia; and (8) provides advice and leads development of collaborative partnerships within NCHS, CDC, and HHS, and externally with public, private, domestic and international entities on issues regarding health interview statistics and the manner in which statistics may impact policy issues.

Data Production and Systems Branch (CAKLEB). The Branch (1) conducts research into the design, development, deployment, and administration of survey and information technology systems to collect, process, and disseminate national health interview survey data; (2) develops system improvement plans and strategies to ensure timely, cost-effective, accurate, and confidential data collection and production systems; (3) performs systems analysis and computer programming of health interview statistics data, employing state-of-the-art information technologies in support of data collection, processing, maintenance, analysis, and dissemination activities; (4) develops and adopts computer technologies, data architectures, security infrastructure, and database management for health interview statistics systems that are consistent with NCHS and CDC information technology requirements; (5) develops and implements data collection and production standards for the Division's surveys; (6) provides planning for the utilization of evolving computing, networking, data storage, and data protection technologies in division survey efforts including studies and analyses of data collection, processing, and dissemination systems to ensure data confidentiality; (7) designs and implements computer applications to produce final edited and imputed health interview survey data and statistics producing health statistics reports and tabulations of data from health interview surveys in multiple

formats; and (8) provides consultation and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, Federal, local, and international governments, researchers, and individuals regarding systems design and administration on health interview statistics technology systems.

Survey Planning and Special Surveys Branch (CAKLEC). The Branch (1) establishes the design and content of national health interview surveys and special surveys of subnational and demographic subgroups in response to public health priorities; (2) converts identified data needs into research, development, and evaluation activities and related public health information; (3) designs and conducts methodological, analytical, developmental, and evaluation studies of health interview survey processes, questions, and data; (4) performs theoretical and experimental research on the design and content of health interview surveys in order to improve the timeliness, availability, and quality of the health interview statistics data; (5) plans and conducts national surveys of family formation, growth, and dissolution; (6) publishes and presents results of methodological, analytical, developmental, and evaluation studies of special population surveys and data; (7) collaborates with other programs and through contracts, grants, and interagency agreements with outside sponsors of surveys for the development and implementation of survey questions and data including serving as the NCHS resource on special population surveys data and their use in addressing critical public health issues; and (8) provides consultation and technical assistance to a wide range of researchers and institutions at the state, national, and international levels, addressing the definitions, needs, and uses for national and subnational health interview statistics and data.

Data Analysis and Quality Assurance Branch (CAKLED). The Branch (1) conducts research, analysis, interpretations, and recommendations on topics relevant to public health including scientific papers and presentations on the health status of the population, broad health trends, and characteristics of persons with health problems using data from national health interview surveys; (2) plans, develops, and implements analytic techniques and guidelines to assure data quality standards for the division surveys and supplements; (3) converts identified health interview statistics data needs into research, development, and evaluation activities; (4) conducts descriptive analyses as well as multivariate analyses that integrate data across multiple surveys or data sets; (5) administers analytic and scientific peer review of manuscripts produced from data collected in the division's programs; (6) develops and implements a data dissemination plan to address needs of researchers; (7) serves as the resource on health interview survey data and their use in assessing the prevalence and incidence of disease and associated disabilities, health status and fertility, health related behaviors, health insurance status, family formation and dissolution, and other health and well-being related topics; and (8) provides consultation, technical assistance, and liaison to academia, other research groups, and state, Federal, and international entities concerning the development, uses, and dissemination of health interview survey data.

III. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

Office of the Deputy Director for Management and Operations (CAKL12). The Office of the Deputy Director for Management and Operations (ODDMO) is a vital member of the NCHS senior staff providing executive-level leadership, guidance, and support for all operational, administrative, technical, dissemination, policy, legislative, and budget-related functions. For NCHS, the ODDMO provides leadership, guidance, and coordination for NCHS in areas of: (1) operational and administrative related programs; (2) policy development, budgetary activities, and implementation; (3) legislative activities; (4) information services production and dissemination; and (5) information technology planning, procedures, and training.

Office of the Director (CAKL121). (1) provides functional oversight and management of operational-related activities regarding programmatic direction for planning and administration of allocated resources, human resource management, and general administrative support; (2) interprets and guides on existing policies and development of new internal policies and procedures to assure statutory compliance for all management and operational areas; (3) assesses the efficiency and responsiveness of administrative and operational activities; (4) provides programmatic oversight of planning, formulation, and execution of allocated budgeted resources; (5) provides oversight of legislative activities; (6) supports the functional needs of NCHS' Federal Advisory Committees (FACA); (7) supports the health statistics information dissemination and production activities; (8) monitors investments, and evaluates information technology requirements, resources, and infrastructure; and (9) provides for the protection of assets through information technology risk management and security.

Office of Management and Operations (CAKL1212). The Office of Management and Operations (OMO) participates in the development of NCHS policy, long-range plans, and programs. For NCHS, OMO (1) plans, coordinates, directs, and provides advice and guidance on management and administrative operations including human capital, employee development, time and attendance, domestic and international travel, conference approval, records management, diversity initiatives, information management, facilities support, accountable property, mail distribution, ethics, and other administrative related services; (2) reviews the effectiveness and efficiency of operational support provided to all programs; (3) conducts management and organizational analyses as well as consultation and advice on organizational structure and program reorganizations; (4) plans, directs, and coordinates building support services and work-life activities; (5) serves as liaison with various CDC Centers, Institute, and Offices (CIOs) including the CDC Management Board and Management Operations Team, and (6) provides oversight of budget expenditures and distribution.

Office of the Director (CAKL12121). (1) participates in the planning, policy development, and oversight of all administrative and operational functions including human capital, travel, records and information management, facilities, accountable property, diversity initiatives, sustainability, and transportation; (2) coordinates and manages the day-to-day oversight of budget expenditures and distribution; (3) provides NCHS budget-related functions, financial data analysis, and reporting; (4) directs and manages the execution of the budget, including a system of budgetary and expenditure controls, financial reports, and assistance to staff; (5) provides planning, operational review and administrative coordination for NCHS regarding the Interagency Agreement process; (6) provides financial related information in support of short- and long-range statistical program planning and budgeting; (7) provides oversight, guidance, and coordination of acquisition and purchase activities; (8) manages and coordinates requirements related to contracts, grants, cooperative

agreements, interagency agreements, and reimbursable agreements; (9) assures compliance with all laws, regulations, policies, and decisions related to financial execution and planning; (10) serves as liaison, and works closely with CDC's Office of Financial Resources on financial and contractual related matters; (11) responds to reporting requirements from CDC, HHS, and OMB; (12) provides short and long range budget planning data, policy development information, and program analysis; (13) assists in the review of Congressional bill language to identify and properly account for earmarks and other directed programs; and (14) coordinates the full range of complex service contracting functions including acquisition strategy, acquisition planning, procurement package input and validation.

Operations and Logistics Staff (CAKL12121B). The Staff (1) coordinates all activities related to personnel security and physical security operations; (2) plans and manages the Continuity of Operations Plan; (3) facilitates the development, issuance, implementation, and maintenance of administrative internal controls, policies, standard operating procedures, delegations of authority, and forms; (4) oversees the records management program; (5) manages the conference clearance and approval process for staff; (6) provides administrative management services to all offices and divisions; (7) plans, directs, and coordinates facilities support including managing facility operations, building maintenance and custodial services, monitoring lease provisions, facility improvements, parking, and logistics support for special events (on-site conferences, meetings, seminars, ceremonies); (8) evaluates administrative data, processes, and procedures to determine the effectiveness of administrative and business services policies and support to all divisions and offices; (9) manages the lifecycle and accountability of all government property; (10) manages the sustainability program to promote environmental, conservation, and recycling stewardship in the workplace; (11) provides mail receipt and distribution, and copying services; (12) coordinates and manages the government vehicle program and transportation incentive program; (13) manages and coordinates the domestic and international travel programs; and (14) manages administrative communications via email announcements, intranet, and electronic boards.

Workforce and Career Development Staff (CAKL12121C). The Staff (1) manages human capital activities with the goal of improving organizational effectiveness, employee morale, motivation, and productivity; (2) develops and implements internal administrative human capital-related policies and procedures as appropriate; (3) maintains liaison with related staff offices and other CDC officials; (4) coordinates and manages the incentive and honor awards programs including planning and coordinating the annual NCHS Director's Awards Ceremony; (5) coordinates and manages the performance appraisal system in accordance with Office of Personnel Management, HHS, and CDC policies, procedures and regulations; (6) coordinates the processing of personnel actions and activities in the areas of recruitment, staffing and retention of staff; (7) provides advice and guidance on strategies and tools available to effectively recruit, and plan for succession of staff, and retention of knowledges and skills; (8) directs organizational development activities that focus on skill assessment, career counseling, training administration, workforce planning and conflict management; (9) provides advice, guidance and assistance on the establishment or modification of position development, organizational structure and functional assignments; (10) coordinates the administration of the fellowship and intern program; (11) serves as the diversity champion and oversees the implementation of diversity initiatives; (12) coordinates and manages telework programs; (13) manages the new employee orientation process; (14) serves as liaison with the CDC Office of Human Resources and NCHS supervisors on employee and labor relations activities; (15) coordinates and provides advice and guidance on a variety of administrative functions related to pay and leave administration; (16) coordinates all activities related to staff requirements for the CDC Ethics Program; and (17) serves as the liaison with the Office of Commissioned Corps Personnel for NCHS Commissioned Officers.

Office of Policy, Budget, and Legislation (CAKL1213). The Office of Policy, Budget, and Legislation (OPBL) leads NCHS policy development, fiscal direction, and legislative activities. For NCHS, OPBL (1) leads policy development activities, advises on strategic and policy direction for short- and long-range statistical programs, and program analysis; (2) serves as focal point for policy and program activities including planning and development of new programs, communication on program and policy issues, integration of program activities, and organizing teams for high priority initiatives; (3) assists the NCHS Director in the assessment of program accomplishments and planning development through a program review process; (4) serves as principal advisor on resource development and budget formulation and programmatic oversight of allocated resources; (5) provides leadership for the direction and improvement of fiscal policies; (6) develops and coordinates legislative activities while serving as the principal liaison between programs and executive and legislative branch officials on legislative-related affairs; (7) provides representation for high-level internal and external policy, issues management, and partnership activities and groups; (8) maintains regular and proactive two-way communications with the CDC and HHS policy community and uses the results to contribute to problem solving; (9) partners with Federal agencies and private organizations to promote and support the NCHS mission; (10) promotes the dissemination, adoption and use of public health data standards, including developing and documenting comprehensive policy analyses, contributes to special reports and newsletters, provides planning, operational review, engagement and coordination with Federal Interagency Forums and related activities; (11) provides scientific, technical support and Executive Secretariat services to the National Committee on Vital and Health Statistics (NCVHS); (12) takes a leadership role in assuring representation on intra- and interagency task forces and committees including NCVHS, NCHS' Board of Scientific Counselors, and other FACA committees; (13) fosters communication between programs and serves as principle liaison with clearance officials in CDC, HHS, and OMB; (14) assures that NCHS' legislative mandates are reflected in confidentiality and privacy policies; (15) provides policy guidance on data sharing and data release agreements in consultation with the NCHS -Office of Science (OS); and (16) supports OS in reviewing and responding to Freedom of Information Act (FOIA) requests that include policy implications.

Office of Information Services (CAKL1214). The Office of Information Services (OIS) plans and administers complex information services production and dissemination systems for promoting access to, use, and value of NCHS health statistics data to government officials, health

organizations, researchers, and academia. For NCHS, OIS (1) plans, directs, coordinates and evaluates the information services program of the Center; (2) develops standards for information services production and dissemination; (3) conducts a technologically enhanced information services program utilizing state-of-the-art advancements in internet and external web-based products and services; (4) coordinates information services with other NCHS divisions and programs to meet Center goals effectively; (5) conducts research to improve methods and operations of information production and dissemination programs, emphasizing web-based services; (6) designs, develops, and implements state-of-the-art systems for information production and dissemination, emphasizing web-based systems; (7) provides technical assistance, consultation, and liaison to NCHS, CDC, HHS, and outside private, domestic, and international organizations on information services programs and services which improve the access to, use, and availability of health statistics data for analysis; (8) promotes the integration of health statistics data information systems; and (9) develops and sustains collaborative partnerships within NCHS, CDC, HHS, and externally with public, private, domestic, and international entities on health information services programs.

Office of the Director (CAKL12141). (1) provides leadership for the development, conduct, and evaluation of the National Health Statistics Information Services Program; (2) directs, plans, and coordinates the health information dissemination and information production activities of the division; (3) develops and administers a research and analytic program to improve the delivery of information services to constituents; (4) determines the most effective mix to provide the Center cost-effective and timely information dissemination, publications, and Internet/Extranet services using in-house and contractor-based resources; (5) provides technical assistance regarding data and information dissemination, publications and internet services to Federal, state, local, public, and private organizations; and (6) leads development of collaborative partnerships within NCHS, CDC, and HHS and externally with public, private, domestic, and international entities on health information services and the manner in which health statistics data may be accessed by users.

Information Dissemination Staff (CAKL12141B). The staff (1) plans, directs, and coordinates the NCHS health statistics information dissemination program; (2) designs, develops, and implements systems to disseminate and promote the use of NCHS data and information products; (3) manages a broad program of electronic dissemination activities using cutting-edge tools such as the internet, extranet, CD–ROM, and other media; (4) develops and promotes the dissemination of a wide range of other information materials, including brochures, fact sheets, and exhibits to reach general and specialized audiences; (5) develops standards and policies for formatting and organizing electronic data and information products including micro-data, Listserv, publications, web-only data releases, fact sheets and other dissemination tools; (6) coordinates with NCHS programs to identify, develop, produce, disseminate and market a range of printed and electronic information materials designed to meet user needs; (7) develops and sustains relationships with Federal, state, and local agencies, the scientific and research community, libraries, and national and international health organizations which foster access to and use of NCHS statistical information services; (8) operates a public inquiries program to respond to data and information requests; (9) provides technical assistance to users in acquiring and using NCHS data and information products; (10) conducts and participates in conferences, seminars, workshops, and exhibits to present the information and data of NCHS; (11) evaluates the presentation and dissemination of NCHS information; (12) conducts user surveys to determine user's needs and translates these needs into NCHS product development and dissemination plans; (13) researches, evaluates, develops, and implements improved methods of information dissemination; (14) manages the inventory and storage of NCHS information products; and (15) keeps abreast of Federal information dissemination policies and programs.

Information Design and Publishing Staff (CAK12141C). The Staff (1) plans, directs, and conducts the NCHS information publishing program; (2) develops, recommends, and implements policies and standards for electronic and printed publishing at NCHS; (3) provides consultation and technical assistance to NCHS programs regarding publication policies, operational procedures, presentation techniques, and graphic services; (4) interprets and applies CDC standards and provides input to CDC officials regarding issues unique to the design and production of NCHS electronic and printed materials; (5) researches and adopts emerging technology to improve timeliness, cost-savings, and quality of electronic and printed products; (6) directs, coordinates, and provides liaison between NCHS and other agencies on joint information design and publishing projects; (7) provides design and production support for all NCHS published products, including the NCHS website; (8) plans, designs, produces, monitors, and administers the NCHS website; (9) develops specifications, sets standards, coordinates, and produces NCHS reports; (10) provides graphic and multimedia design services for all NCHS programs; (11) prioritizes, coordinates, and controls all NCHS electronic publications and print products; (12) establishes, administers, and monitors contracts to provide graphics support and printing services for NCHS; and (13) plans, develops and implements systems for tracking production of NCHS electronic information products, printed publications, and graphic products to ensure timely releases.

Office of Informatics, Governance and Assurance (CAKL1215). For NCHS, the Office of Informatics, Governance and Assurance (1) directs, plans and coordinates information technology frameworks and services for the Center; (2) develops, implements, and monitors the NCHS information technology (IT) strategic planning processes; (3) represents NCHS in developing technology partnerships with other CDC components, communities of practice, work groups, Federal agencies, and non-Federal public and private entities; (4) chairs NCHS information resource governance, serving as a clearinghouse for IT information on issues under consideration by agency IT and data governance oversight; (5) coordinates enterprise architecture, capital planning and business case development with OCIO for IT investments; (6) develops and administers an annual planning process to identify the emerging requirements of NCHS programs for new IT infrastructure products and services; (7) plans, coordinates and conducts computer training activities to enhance the use of information technologies and methodologies by all staff; (8) devises IT practices and procedures in partnership with NCHS programs to gain efficiencies in use of information technology services and infrastructure at NCHS; (9) manages and administers Center-wide contracts for information technology services, provides IT-based technical and security consultations to offices and

divisions for the contracting of information management services, including solution development, computing platform adoption and integration of technology innovation; (10) provides solution development consultation for database management, research, design and support services needed by survey, registration and administrative systems, emphasizing projects which are not program specific; (11) develops information technology solutions, including prototypes, to bridge gaps between enterprise systems, business requirements and program solutions; (12) conducts alternative analysis and research of design, development, integration and administration options for cross-cutting systems that satisfy emerging requirements for data access, storage, statistical computing and information dissemination; (13) assesses and guides the adoption of consolidated computing environments for data management, such as Consolidated Statistical Platform (CSP) Confidential Information Protection and Statistical Efficiency Act (CIPSEA) server, AWS cloud services and use of emerging virtualized environments that align with CDC's enterprise architecture standards and guidance; (14) liaises between NCHS and agency Chief Information Security Officer and agency Chief Privacy Officer through NCHS' senior information security officer in coordination/collaboration with NCHS confidentiality officer and other key points of contact; (15) negotiates agency security and privacy requirements and NCHS business and mission needs in exercising cybersecurity oversight, security and privacy compliance, system assessments and authorizations to operate, Privacy Impact Assessments, risk-based decisions, and related approvals and documentation; (16) advises and provides oversight for data and system owners to plan, develop procedures, and test continuity of operations for information systems that support the operations and assets of CDC; (17) evaluates the NCHS IT program to certify adherence to all Federal IT, security and risk management policies and standards; and (18) coordinates and conducts security assessments, risk analysis and incident management to protect the integrity, access, and reliability of assets, including data, systems and services.

Office of the Deputy Director for Programs (CAKL13). The Office of the Deputy Director for Programs (ODDP) serves as the NCHS Principal Deputy Director and is a vital member of the senior staff providing direction, coordination, support, and overall guidance to management and staff for national leadership in health statistics and epidemiological-related programs. For NCHS, ODDP provides leadership, guidance, and coordination for NCHS in areas of (1) science, regulatory compliance, and cross clearance; (2) research and analysis in epidemiology, and in health status, services, promotion, and economics; (3) methodologic and substantive public health research activities based on the nationwide collection of data from vital records; (4) research and use of healthcare services; (5) collection and research on national health interview surveys; (6) methodologic and substantive public health research activities based on the nationwide collection of data from health and nutrition examination surveys; and (7) applied research, survey design and methodology.

Office of the Director (CAKL131). (1) coordinates NCHS' public health efforts to ensure provision of the utmost scientific quality, usefulness and relevance; (2) takes a leadership role in public health data standards through collaborative development of tools, guidelines and partnerships with Federal, private and professional organizations; (3) provides oversight of recommendations for the International Classification of Diseases and related classifications; (4) coordinates U.S. Government activities for the ICD including liaison with WHO through direction of the WHO Collaborating Center for Classification of Diseases of North America; (5) identifies, implements, and coordinates strategies to support various program responsibilities; (6) provides crosscutting direction, expertise and guidance to divisions and offices in support of their program planning and execution efforts; (7) assists with collaboration of divisions and offices, CDC CIOs, Federal organizations, private partners and key partners in supporting program implementation strategies; (8) ensures the use of best practices to collect, analyze, and disseminate health data to enable internal and external partners to make actionable decisions; (9) assists in developing resources and tools to support implementations of various NCHS programmatic responsibilities; (10) provides and interprets policies and procedures affecting the overall completion of functional requirements; (11) provides executive-level leadership and guidance on data analytics and data modernization initiatives for NCHS' large complex surveys; (12) leads research and development efforts to identify, analyze, visualize, and report on emerging public health data; (13) delivers executive-level leadership and guidance on NCHS-wide data resources and information technology management in support of scientific and program information; (14) directs research and development efforts on new information technologies, architectures and systems; and (15) facilitates communication regarding scientific and programmatic actions among divisions and offices.

Office of Science (CAKL1312). For NCHS, the Office of Science (OS) (1) provides scientific leadership and informs and guides staff on scientific matters; (2) ensures the highest quality, most useful, and most relevant science possible is produced; (3) ensures compliance with the various statutes, regulations, and policies governing the conduct of science by the Federal Government including: human subjects research determinations, the protection of human research subjects, the use of Institutional Review Boards (IRBs), the OMB Paperwork Reduction Act, the OMB Information Quality Bulletin, Confidentiality Protection activities, and oversight of compliance with CIPSEA, the Privacy Act, and related policies; (4) develops and maintains the NCHS Clearance Policy and manages and conducts clearance for scientific documents; (5) coordinates and manages document cross-clearance with other parts of CDC including facilitating internal reviews of external documents, coordinating and managing information quality requests concerning NCHS documents, coordinating and managing external peer review for NCHS documents as well as intramural programs; (6) provides oversight for compliance with CDC ethics activities and coordinates involvement in CDC public health ethics activities; (7) coordinates involvement in CDC science awards activities including the Shepard Award, and CDC/Agency for Toxic Substances and Disease Registry (ATSDR) Honor Awards; (8) organizes, sponsors, and conducts select training opportunities in such areas as Human Subjects/Institutional Review Board (IRB), OMB/Paperwork Reduction Act, and eClearance Training for Authors and Reviewers; (9) represents NCHS on various CDC/ATSDR committees, work groups, and task forces, such as the CDC/ATSDR Office of the Chief Science Officer's Excellence in Science Committee; (10) coordinates international statistics health activities; (11) prepares an annual inventory of

NCHS publications; (12) ensures that NCHS' confidentiality and privacy policy are consistent with legislative mandates, and that these policies and the Privacy Act are clearly articulated and enforced; (13) coordinates FOIA requests and produces quarterly FOIA reports for NCHS leadership; and (14) directs the Open Data Access policy and assures scientists follow CDC's policies on data release and sharing.

Partner Engagement and Data Dissemination Branch (CAKLCC). The Branch (1) manages the routine operation of the NDI—promoting its use while evaluating and implementing its operational and technical enhancements to improve access and utility for research and public health surveillance; (2) provides international leadership and consultation on vital registration and statistics issues; (3) coordinates with global, regional, and country partners to provide technical assistance to improve civil registration and vital statistics systems in low- and middle-income countries; (4) provides technical assistance and developing and evaluating tools to improve the timeliness and quality of mortality and high quality vital statistics data internationally collected for civil registration purposes while promoting the use of these data for public health surveillance and analysis; (5) develops, coordinates and promotes activities for medical examiners and coroners related to public health and improving the collection and reporting of mortality data for sudden and unexpected deaths; (6) promotes quality and consistency in death investigation, cause and manner of death determination and reporting by medical examiners and coroners; (7) promotes modernization of medical examiner and coroner systems for collection, management, and distribution of medicolegal death investigation data; (8) facilitates information sharing with the medical examiner, coroner, and public health community; (9) manages the vital statistics data request program for the division; and (10) develops and manages data use and data sharing agreements with researchers and external partners.

Statistical Analysis and Surveillance Branch (CAKLCD). The Branch (1) establishes the research agenda for natality, mortality and fetal death statistics in response to public health priorities; (2) converts identified data needs into statistical and research programs to obtain, evaluate, analyze, and disseminate natality, mortality and fetal death statistics data; (3) conducts research to improve data collection of vital records and record linkage methodologies related to natality, mortality and fetal death statistics; (4) designs and performs theoretical, experimental and methodological research that improves the data collection effort, timeliness, availability, quality, use and interpretation of natality, mortality and fetal death statistics data; (5) conducts research into life tables methodology and produces annual and decennial U.S. and State life tables; (6) recommends content of U.S. Standard Certificates; (7) assesses disclosure risk and develops optimal data release strategies to maximize the utility of vital statistics data for policy analysis and decision-making purposes; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple data sets; (9) conducts research and national and state-specific comparability studies of cause of death classification to facilitate the study of mortality trends and classification across International Classifications of Death revisions; (10) provides nosological assistance and training to DVS medical coding staff and to both national and international groups with respect to ICD information for mortality and new revisions of the ICD; (11) develops and promotes training activities related to the collection, production, use and interpretation of natality, mortality, and fetal death statistics; (12) provides leadership to the international community in the use and adoption of automated mortality medical classification systems; (13) develops and implements training programs for cause-of-death coding and provides technical assistance to NCHS, other Federal agencies, state, and local governments, non-government agencies, and international agencies; and (14) provides consultation and advice to Members of Congress, the press, and a broad range of researchers and institutions at the international, national, state, and local levels on natality, mortality, and fetal death statistics and data.

Data Analytics and Production Branch (CAKLDB). The Branch (1) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision- making; (2) prepares public-use data files and associated documentation for ambulatory, hospital and long-term care data; (3) prepares descriptive analyses as well as sophisticated multivariate analyses, (and when applicable) with a focus on the integration of data across ambulatory, hospital, and long-term care surveys or data sets; (4) develops a wide variety of reports, tabulations, and data visualizations in multiple formats and arranges for distribution/dissemination through appropriate media/outlets; (5) develops content for outreach materials to encourage participation in the ambulatory, hospital, and long-term care surveys; (6) provides content to web pages for the ambulatory, hospital, and long-term care surveys; (7) provides technical advice and consultation in survey methodology, data collection, quality control, and analysis of ambulatory, hospital, and long-term care data to other health professional personnel and researchers; and (8) reviews Research Data Center proposals that use ambulatory, hospital and long-term care survey data and assists in the preparation for data files for researcher use.

Planning and Operations Branch (CAKLDC). The Branch (1) develops and maintains a national register of ambulatory, hospital care and long-term care providers; (2) assesses information and data needs for ambulatory, hospital care and long-term care statistics, and translates data needs into plans for ambulatory, hospital care and long-term care surveys, inventories, and research activities; (3) prepares specifications for the collection, coding, editing, and imputation of ambulatory, hospital care, and long-term care statistics data; (4) conducts complex research studies relating to ambulatory, hospital care, and long-term care facilities and their utilization; (5) converts identified data needs into research, development, and evaluation activities; and (6) performs theoretical and experimental research that improves the content of the ambulatory, hospital, and long-term care data collection efforts and the timeliness, availability, and quality of ambulatory, hospital care, and long-term care data.

IV. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Office of Management and Operations (CPC12)
- Building Operations and Services Staff (CPC122)
- Business Logistics Staff (CPC123)
- Workforce and Career Development Staff (CPC124)
- Office of Planning, Budget, and Legislation (CPC14)
- Office of Information Services (CPC15)
- Information Dissemination Staff (CPC152)
- Information Design and Publishing Staff (CPC153)
- Classifications and Public Health Data Standards Staff (CPC16)

- Office of Information Technology (CPC17)
- Information Technology Solutions and Services Staff (CPC172)
- Mortality Statistics Branch (CPCCC)
- Reproductive Statistics Branch (CPCCD)
- Ambulatory and Hospital Care Branch (CPCDB)
- Long-Term Care Statistics Branch (CPCDD)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the National Center for Emerging and Zoonotic Infectious Diseases

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the National Center for Emerging and Zoonotic Infectious Diseases (NCEZID). NCEZID reorganized to improve collaboration between science and public health programs within NCEZID as well as with our partners across and outside the agency, which will increase our public health impact.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

- National Center for Emerging and Zoonotic Infectious Diseases (CR)
- Office of the Director (CR1)
- Division of Foodborne, Waterborne, and Environmental Diseases (CRB)
- Office of the Director (CRB1)
- Enteric Diseases Epidemiology Branch (CRBB)
- Enteric Diseases Laboratory Branch (CRBC)
- Outbreak Response and Prevention Branch (CRBD)
- Waterborne Disease Prevention Branch (CRBE)
- Mycotic Diseases Branch (CRBG)
- Division of Global Migration Health (CRC)
- Office of the Director (CRC1)
- Travel Risk Assessment and Mitigation Branch (CRCB)
- Immigrant and Refugee Health Branch (CRCC)
- Travelers' Health Branch (CRCD)
- Port Health Protection Branch (CRCE)
- Southern Border Health and Migration Branch (CRCG)
- Division of Healthcare Quality Promotion (CRD)
- Office of the Director (CRD1)
- Antimicrobial Resistance Coordination and Strategy Unit (CRD12)
- Immunization Safety Office (CRDB)
- Clinical and Environmental Microbiology Branch (CRDC)
- Prevention and Response Branch (CRDD)
- Surveillance Branch (CRDE)
- Epidemiology Research and Innovations Branch (CRDG)
- Healthcare Systems Strengthening, Resilience, and Training Branch (CRDH)
- International Infection Control Branch (CRDJ)
- Medical Product Safety Branch (CRDK)
- Division of High-Consequence Pathogens and Pathology (CRE)
- Office of the Director (CRE1)
- Prion and Public Health Office (CRE12)
- Viral Special Pathogens Branch (CREB)
- Poxvirus and Rabies Branch (CREC)
- Infectious Diseases Pathology Branch (CRED)
- Chronic Viral Diseases Branch (CREE)
- Bacterial Special Pathogens Branch (CREG)
- Division of Infectious Disease Readiness and Innovation (CRG)
- Office of the Director (CRG1)
- Arctic Investigations Program (CRGB)
- Epidemiology Laboratory Capacity and Informatics Branch (CRGC)
- Rapid Response Research and Surveillance Branch (CRGD)
- Office of Advanced Molecular Detection (CRGE)
- Division of Core Laboratory Services and Response (CRH)
- Office of the Director (CRH1)
- Advanced Diagnostics and Biotechnologies Branch (CRHB)
- Comparative Medicine Branch (CRHB)
- Preparedness, Response, and Outbreak Services Branch (CRHD)
- Laboratory Products and Services Branch (CRHE)
- Division of Vector-Borne Diseases (CRJ)
- Office of the Director (CRJ1)
- Arboviral Diseases Branch (CRJB)
- Bacterial Diseases Branch (CRJC)
- Dengue Branch (CRJD)
- Rickettsial Zoonoses Branch (CRJE)
- Division of Parasitic Diseases and Malaria (CRK)
- Office of the Director (CRK1)
- Malaria Branch (CRKB)
- Parasitic Diseases Branch (CRKC)
- Entomology Branch (CRKD)
- Laboratory Science and Diagnostics Branch (CRKE)

II. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Division of Global Migration and Quarantine to Division of Global Migration Health (CRC)
- Division of Scientific Resources to Division of Core Laboratory Services and Response (CRH)

III. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

National Center for Emerging and Zoonotic Infectious Diseases (CR). The National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) saves lives through the prevention, early detection, and control of infectious disease threats. In carrying out these activities, NCEZID: (1) works collaboratively across CDC and with external partners to conduct, coordinate, support, and evaluate public health efforts to prevent and minimize morbidity and mortality due to

infectious diseases, promoting a One Health approach involving the interface of animal, human, and environmental factors; (2) leads agency-wide efforts in planning for and responding to infectious disease outbreaks in the United States and around the world; (3) develops, evaluates, and advances science, programs, management, and operations toward meeting the agency's infectious disease-related mission and goals and improving the agency's response readiness; (4) conducts epidemiologic and laboratory science and applied research aimed at identifying risk factors and disease burdens and developing and implementing public health programs, practices, and policies for infectious disease prevention and control including increasing health equity; (5) works with domestic and global partners to provide technical and subject matter expertise in responding to outbreaks and in establishing, maintaining, and evaluating disease control and prevention programs; (6) supports a broad range of cross-cutting and collaborative programs aimed at enhancing response readiness and public health capacity at the local, state, and national levels; (7) works to improve the quality and safety of healthcare through efforts to reduce healthcare associated infections and antimicrobial resistance and to ensure the safety of medical products, including vaccines; (8) conducts activities to improve the safety of food and water and reduce related enteric illnesses; conducts activities to address diagnosis, prevention, and control of vector-borne diseases, including malaria, in the United States and globally; (9) administers a national public health program to prevent U.S. importation and spread of infectious diseases; (10) works with CDC colleagues and external partners to improve public health preparedness at the local, state, and national levels; and (11) works to increase public health prevention efforts for populations at increased risk for infectious diseases.

Office of the Director (CR1). (1) provides leadership in developing, prioritizing, advancing, and evaluating the Center's science, programs, management, and operations toward meeting agency mission and goals; (2) advises the CDC Director and Immediate Office of the Director (IOD) on priority issues affecting the Center; (3) identifies and facilitates synergies within NCEZID, across CDC, and with external partners for enhancing infectious disease response readiness and addressing emerging and zoonotic infectious diseases domestically and globally; (4) enhances collaborations and partnerships across multiple disciplines, including human and animal health; and works to systematically reduce disparities related to emerging and zoonotic infectious diseases; (5) serves as the focal point and programmatic home for activities on One Health, an integrated approach to optimizing human and animal health that considers the interrelatedness among humans, animals, and their environments; (6) builds and manages a portfolio of One Health activities, plans, and accomplishments; (7) leads Center-wide enhancement of data systems to support predictive data science and rapid sharing of information, supported by modern information technology platforms and enterprise services that facilitate CDC's public health mission; (8) provides assay validation and surge testing support for outbreak response; (9) provides foundation for design control for assay development and supports compliance with agency quality plan; (10) maintains close programmatic oversight of the Division of Healthcare Quality Promotion's Antimicrobial Resistance Coordination and Strategy Unit and the Division of Infectious Disease Readiness and Innovation's Office of Advance Molecular Detection, assuring a direct line for communication with the directors of those programs; (11) provides leadership, guidance, and technical assistance on policy and communication issues affecting the center; (12) serves as liaison with CDC counterparts, CDC/IOD, other government agencies, and external partners on policy, program, legislative, communication, and budgetary issues related to NCEZID; (13) serves as the Designated Federal Official (DFO), provides leadership for, and manages the infectious diseases Board of Scientific Counselors, a chartered Federal advisory committee that advises on strategies, goals and priorities for CDC's infectious disease programs and research; (14) recruits and supports a strong, diverse Center-wide workforce and builds leadership at the division and branch levels to promote the integration of diversity into all aspects of the workforce; (15) ensures program accountability, supporting achievement of programmatic goals with measurable impact; (16) supports effective administrative services for NCEZID as well as effective cross-cutting scientific and program services for all CDC's infectious disease national Centers; and (17) provides staffing and support for emergency responses at program, division, Center, and agency levels.

Division of Foodborne, Waterborne, and Environmental Diseases (CRB). The mission of the Division of Foodborne, Waterborne, and Environmental Diseases (DFWED) is to improve public health nationally and internationally through the prevention and control of disease, disability, and death caused by foodborne, waterborne, other enteric, and fungal infections. In carrying out its mission, DFWED: (1) develops and leads national surveillance platforms and conducts surveillance, investigations, and studies of foodborne bacterial diseases, waterborne diseases, and mycotic diseases to determine the sources and develop effective methods for diagnosis, prevention, and control; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodologies, materials, diagnostics, and therapeutic practices used for environmental detection, diagnosis, treatment, investigation, and control of foodborne and zoonotic bacterial diseases, water, sanitation, and hygiene-related diseases, and mycotic diseases, including those affected by changes in the environment or climate; (3) conducts environmental microbiology research activities at CDC through partnerships and external activities to promote research on prevention and control of infectious disease transmission from the environment to humans; (4) provides epidemiologic consultation, upon request, to state and local health departments, other Federal agencies, national and international health organizations, and ministries of health; (5) provides reference/diagnostic services for foodborne and zoonotic bacterial diseases, waterborne bacterial and parasitic diseases, and mycotic diseases to state and local health departments, other Federal agencies, and national and international health organizations; (6) investigates outbreaks, conducts surveillance, and engages in research studies concerning the emergence and spread of antimicrobial resistant enteric and mycotic pathogens across the One Health spectrum; (7) provides scientific and technical assistance to other CDC components when the work requires unique expertise or specialized equipment not available in other components; (8) provides intramural and extramural technical expertise and assistance in professional training and proficiency testing activities; (9) serves as appropriately designated national and international reference centers for

various foodborne bacterial diseases, waterborne bacterial and parasitic diseases, and mycotic diseases; (10) develops clear health promotion strategies, campaigns, and messages to promote prevention and control, including strategies specifically aimed to improve the health outcomes of populations at disproportionate risk of these diseases; (11) coordinates with other Federal agencies and partners organizations to prevent foodborne, waterborne, other enteric, and mycotic diseases; (12) provides staffing and support for emergency responses at program, division, Center, and agency levels; and (13) trains Epidemic Intelligence Service (EIS) officers, fellows, students, staff, and visiting scientists from the United States and abroad.

Office of the Director (CRB1). (1) directs and manages the programs and activities of DFWED; (2) provides leadership and guidance on policy, communication, prevention science, program planning and development, program management, and operations; (3) coordinates or assures coordination with the appropriate CDC and NCEZID offices on administrative and program matters; (4) reviews, prepares, and coordinates Congressional testimony and briefing documents related to enteric and fungal diseases and analyzes programmatic and policy implications of legislative proposals and analyzes programmatic and policy implications of legislative proposals; (5) represents CDC and NCEZID programs and prevention policies in meetings with governmental, private, and international organizations; (6) advises CDC and NCEZID on policy and communication matters concerning DFWED programs and activities; (7) coordinates, advises, and conducts internal and external communications activities for the division, including communication research, public affairs, social media, and web; (8) leads and manages consumer food safety education for the division, including representing cross-cutting CDC consumer food safety education efforts with governmental, private, and international organizations; (9) provides statistical support across the division by developing novel methods or adapting existing methods for assisting in outbreak investigations, disease surveillance efforts, research studies, and developing statistical acumen of staff; (10) coordinates the division's data management and informatics efforts to align with division and agency data and surveillance priorities; (11) facilitates the division capacity-building program activities under the Epidemiology and Laboratory Capacity (ELC) Cooperative Agreement including providing guidance and technical assistance to state, local, and territorial agencies about implementing foodborne, waterborne, and other enteric disease surveillance and response activities; (12) supports the development, implementation, and evaluation of model practices and quality improvement initiatives associated with division's capacity building activities; (13) defines and implements division-wide priority prevention efforts; (14) collaborates with Federal agencies and industry partners to support related external activities; (15) provides oversight for CDC involvement in the World Health Organization (WHO) International Food Safety Authorities Network and training in foodborne, waterborne, and other enteric disease control and prevention; (16) provides subject matter expertise on environmental research, and promotes and coordinates related research activities at CDC and with collaborative partners; (17) provides leadership in preventing and controlling foodborne illness by coordinating related activities within CDC and with other local, state, Federal, and international organizations; (18) advises and supports the activities related to development of long-term NCEZID and CDC strategies, policies, and budgets for foodborne disease prevention activities; (19) allocates and tracks resources, including interagency, within CDC for foodborne disease surveillance, outbreak response, applied research, education and training; (20) administers and tracks resources for foodborne disease prevention and control activities of national organizations representing state and local health departments; (21) represents NCEZID and CDC programs and prevention policies in meetings with governmental, non-governmental, private, and international organizations, and (22) enhances interagency coordination and collaboration of public health activities with the Food and Drug Administration (FDA) and the U.S. Department of Agriculture, including through interagency liaisons.

Enteric Diseases Epidemiology Branch (CRBB). (1) conducts surveillance, investigation, analyses, and research on bacterial enteric diseases and provides consultations to state and local health departments, other Federal agencies, and national and international health organizations on pathogens transmitted by food, water, and contact with animals or their environments, and from one person to another; (2) conducts surveillance for and analyses of summary data on outbreaks of acute enteric illness in the United States; (3) devises methods and conducts analyses to measure the burden of and trends in bacterial enteric diseases, with a special focus on those transmitted by food; (4) devises methods and conducts analyses to attribute bacterial enteric illnesses to specific food categories; (5) as part of the National Antimicrobial Resistance Monitoring System (NARMS), conducts surveillance, investigation, analyses, and research on antimicrobial resistance in bacterial enteric organisms, including measurements of trends; (6) performs studies to determine risk factors for, and host and etiologic agent factors related to, bacterial enteric diseases; (7) coordinates and collaborates in national and international enteric disease surveillance, training, and studies; (8) coordinates the investigation and control of enteric diseases with other CDC groups and with other U.S. Federal and local government agencies, state health departments, and international health agencies; (9) participates with other CDC groups, state health departments, regulatory agencies, industry, and other groups in determining and assessing the effectiveness of prevention strategies for acute bacterial enteric diseases; (10) prepares and disseminates health communication materials on the prevention of acute bacterial enteric diseases and their long-term health effects; and (11) provides information and expert advice to policy makers about bacterial enteric diseases and their acute and long-term health effects.

Enteric Diseases Laboratory Branch (CRBC). (1) uses molecular surveillance to identify problems and track trends in foodborne and diarrheal diseases; (2) maintains expertise in microbiology, molecular biology, immunology, and microbial pathogenesis of organisms that cause foodborne and diarrheal diseases; (3) coordinates PulseNet, a network of public health laboratories created to build capacity to identify, investigate, and control health threats across the nation; (4) informs outbreak investigations, other public health investigations, and applied research to identify risk factors and improved prevention strategies; (5) detects and characterizes bacterial enteric pathogens, including *Clostridium botulinum,* that could be involved in unintentional or bioterrorism events (6) conducts surveillance, investigation, analyses, and research on antimicrobial resistance, including managing the laboratory component of the NARMS at CDC; (7) improves methods for and utilization of laboratory–based

surveillance; (8) uses laboratory and other data to guide control and prevention strategies for foodborne and diarrheal illness; and (9) partners with reference laboratories throughout the world to build capacity for the diagnostic and molecular surveillance of foodborne infections both domestically and internationally.

Outbreak Response and Prevention Branch (CRBD). (1) provides epidemic aid, investigation, analysis, and consultation on foodborne and zoonotic diseases outbreaks to state and local health departments, other Federal agencies, and national and international health organizations; (2) coordinates outbreak response activities within the Enteric Diseases OutbreakNet, a national network of epidemiologists and other public health officials who investigate outbreaks of foodborne, zoonotic, waterborne, and other enteric illnesses in the United States; (3) coordinates the investigation and control of enteric health problems with other CDC groups, and within other U.S. Federal and local government agencies, state health departments, and foreign health agencies; (4) develops and evaluates prevention strategies for foodborne and zoonotic diseases in consultation with regulatory agencies, industry, and other health agencies; (5) develops, evaluates, and supplies outbreak investigation tools and training materials for state and local health departments; (6) supervises EIS field investigations; (7) prepares and disseminates health communications materials on the control and prevention of foodborne and zoonotic disease outbreaks; and (8) provides information and expert advice to policy-makers and regulatory authorities on the control and prevention of foodborne and zoonotic disease outbreaks.

Waterborne Disease Prevention Branch (CRBE). (1) identifies, tracks, and assesses risk factors, causes, and sources of water, sanitation, and hygiene (WASH)-related illness cases and outbreaks; (2) prepares for and responds to water-related emergencies and disease outbreaks, provides assistance and capacity to state and local health departments, other Federal agencies, national ministries of health, and international health organizations; (3) develops appropriate sampling, detection, tracking, and assessment methods for clinical, water, and other environmental specimens; (4) develops and evaluates methods for pathogen inactivation or removal; (5) provides diagnostic and clinical consultation services for waterborne protozoan parasitic infections; (6) develops, monitors, and evaluates existing and new public health interventions; (7) develops clear health promotion strategies, campaigns, and messages; (8) provides partners with technical and capacity building assistance; (9) leads national surveillance systems for WASH-related diseases and outbreaks; (10) collects data for public health policy development and evaluation; and (11) coordinates with Federal agencies and partner organizations on WASH-related disease prevention efforts.

Mycotic Diseases Branch (CRBG). (1) provides epidemic aid, surveillance, laboratory support, and consultation on the prevention and control of established, emerging, reemerging, and opportunistic mycotic (*i.e.,* fungal) diseases; (2) provides reference and diagnostic support for agents causing mycotic diseases and for the identification of unknown mycotic isolates associated with human disease; (3) coordinates and collaborates with state and local health departments, other Federal agencies, and national and international health organizations in order to detect, respond to, and prevent mycotic diseases; (4) evaluates methods for the detection of established, emerging, reemerging, and opportunistic mycotic diseases; (5) develops, implements, and evaluates prevention and control strategies for these diseases; (6) collaborates with other CDC Centers, Institute, and Offices (CIOs), NCEZID divisions, state and Federal agencies in addressing reemerging mycotic diseases; and (7) provides information and expert advice to policy-makers and regulatory authorities on the control and prevention of mycotic diseases outbreaks

Division of Global Migration Health (CRC). The mission of the Division of Global Migration Health (DGMH) is to reduce morbidity and mortality among immigrants, refugees, travelers, expatriates, and other globally mobile populations, and to prevent the introduction, transmission, and spread of communicable diseases through regulation, science, research, emergency preparedness, and response. In carrying out its mission, DGMH: (1) administers a national public health program to protect the United States against the introduction of diseases from foreign countries and the transmission of communicable disease between states; (2) administers an overseas program for the medical examination of immigrants, refugees, and as necessary, other migrant populations applying for legal entry to the United States, to identify those with inadmissible health conditions that would pose a threat to public health and impose a burden on public health and hospital facilities; (3) conducts public health surveillance, research, and prevention programs to detect, prevent, and minimize morbidity and mortality among globally mobile populations entering and leaving the U.S.; (4) maintains liaison with other Federal agencies, state and local health departments, and other partners, and provides information on global migration and public health threats related to travel and migration and on requirements under CDC's authority and International Health Regulations (IHR); (5) serves as a liaison with international health organizations and participates in the development of international agreements affecting the health of globally mobile populations; (6) develops, enforces, and evaluates policies necessary for implementation of Federal quarantine authorities protecting the public's health through actions taken at ports of entry (POE) or for travelers entering or traveling interstate within the United States or of CDC-regulated items; (7) conducts studies to provide new information about health hazards abroad, measures for their prevention, and the potential threat of disease introduction into the United States, and develops educational materials for travelers and travel medicine providers; (8) provides logistic support to other programs of the CDC in the distribution of requested therapeutics available under CDC-maintained investigational new drug protocols and movement of biological specimens through U.S. POE; (9) advances preparedness and response for public health emergencies and threats associated with the introduction of diseases from foreign countries and the transmission of communicable disease between states; and (10) provides staffing and support for emergency responses at program, division, Center, and agency levels.

Office of the Director (CRC1). (1) manages, directs, and coordinates the strategies and activities of the division; (2) provides scientific leadership including oversight of scientific integrity and quality and health equity; (3) directs development of division policy, program planning, and partnerships, and implements regulatory responsibilities,; (4) identifies needs and resources for new initiatives and assigns responsibilities for their development; (5) coordinates liaison with international health organizations, other Federal agencies, state and local health departments, and interested industries on matters related to travel and migration; (6) provides support for the administration of interstate and foreign quarantine regulations and compliance with the IHR; (7)

coordinates division emergency preparedness, readiness, response guidance and operations for international and domestic public health incidents; (8) reviews and evaluates all administrative services for headquarters, border health stations, and overseas offices, and provides policy procedures and guidance on such matters; (9) provides communication strategy and product development; (10) coordinates division strategic workforce and Diversity, Equity, Inclusion, Belonging, and Accessibility objectives, and (11) supports science with data, advanced analytics, and technology.

Division of Healthcare Quality Promotion (CRD). The mission of the Division of Healthcare Quality Promotion (DHQP) is to protect patients; protect healthcare personnel; and promote safety, quality, preparedness, resilience, equity, and value in both national and international healthcare delivery systems. In carrying out its mission, DHQP: (1) measures, validates, interprets, and responds to data relevant to healthcare-associated infections (HAI); antimicrobial use and resistant infections; sepsis, adverse drug events; blood, organ and tissue safety; and immunization safety; environmental hygiene; and other related topics and adverse events in healthcare settings; (2) leads responses to, investigates and addresses emerging problems and infections, antimicrobial resistance, and related adverse events among patients and healthcare personnel, and in communities affected by antimicrobial resistant or healthcare-associated pathogens; (3) develops and maintains the National Healthcare Safety Network (NHSN), a national system for monitoring healthcare-associated infections, antimicrobial use and resistance, measuring healthcare outcomes and processes, and monitoring healthcare personnel vaccination and selected health measures in healthcare facilities; (4) assesses local, regional, national scope and burden of infections caused by antimicrobial resistant-bacteria in the United States and internationally, through surveillance and special studies, review of healthcare data sets, and laboratory surveillance programs; (5) conducts epidemiologic, and basic and applied laboratory research to identify new strategies to detect, track, and prevent infections/antimicrobial resistance, and related adverse events or medical errors, including those associated with the safety of medical or surgical procedures, indwelling medical devices, medical product contamination, dialysis, healthcare environments and water; (6) collaborates with academic, industry, and government partners to design, develop, and evaluate new public health approaches to monitoring infections and the efficacy of interventions for preventing infections, improving antibiotic use, and reducing antimicrobial resistance, and related adverse events or medical errors; (7) develops and disseminates evidence-based guidelines and recommendations to prevent and control HAI, antimicrobial resistance, and related adverse events in healthcare settings; (8) collaborates with Federal, state, and local public health and private partners to promote nationwide implementation of CDC Guidelines and other evidence-based interventions to prevent HAI, antimicrobial resistance, and related adverse events or medical errors among patients and healthcare personnel; (9) evaluates the impact of evidence-based recommendations and interventions across the spectrum of healthcare delivery sites; (10) serves as the DFO for, provides technical support to, and manages the Healthcare Infection Control Practices Advisory Committee (HICPAC); (11) serves as the National Reference Laboratory for the identification and antimicrobial susceptibility testing of staphylococci, anaerobic bacteria, non-tuberculous mycobacteria, and gram-negative bacilli causing healthcare-associated and related community infections; (12) serves as the technical reference laboratory for detection and characterization of other pathogens related to healthcare, and for characterizing the contribution of the healthcare environment to HAI and antimicrobial resistant infections, and impacts on surrounding communities; (13) serves as a global resource for healthcare associated infections, antimicrobial resistance, and environmental hygiene; (14) coordinates guidance and research related to infection control and antimicrobial resistance across the agency and with national and international partners; (15) monitors vaccine safety and conducts research to evaluate the safety of available and new vaccines; (16) trains EIS Officers, Laboratory Leadership Fellows, and other trainees in national public health; (17) coordinates agency-wide antimicrobial resistance activities and investments; (18) works in a national leadership capacity with public and private organizations to enhance antimicrobial resistance prevention and control, surveillance and response, and applied research; (19) coordinates and provides expertise and investigative capacity for blood, organ, and other tissue safety issues at CDC; (20) provides expertise and assistance to HHS and other Federal agencies and global partners on efforts and activities related to safe healthcare; (21) leads international healthcare quality improvement and infection control efforts; (22) represents CDC in international convenings related to healthcare quality and antimicrobial resistance; (23) leads the partnerships between CDC and other HHS counterparts on healthcare quality topics and activities; (24) builds and supports HAI and antimicrobial resistance prevention and control efforts of state and local public health entities and laboratories; (25) delivers tailored consultation and training content to healthcare facilities and personnel across the spectrum of US healthcare; (26) assesses and improves safety of healthcare personnel related to HAI and related threats; (27) assesses and improves equity in healthcare delivery; (28) improves the effectiveness and safety of healthcare practices, protocols, systems, and equipment use related to infection prevention and control; (29) coordinates infection prevention and control content for non-pharmaceutical interventions across community settings; and (30) provides staffing and support for emergency responses at program, division, Center, and agency levels.

Office of the Director (CRD1). (1) manages, directs, and coordinates the activities of DHQP; (2) provides strategic direction and coordination of communication, policy, and partnership programs and activities; (3) provides leadership and guidance on policy impacting patient and healthcare safety; (4) leads targeted patient safety communication campaigns coordinated with release of CDC surveillance data, infection control guidelines, national and international healthcare related response activities, research and policy publications, and prevention tools; (5) fosters strategic partnerships with clinical professional organizations, academic entities, research institutes, healthcare systems, consumers and other partners to eliminate HAI and related adverse events, prevent sepsis, combat antimicrobial resistance, improve health system equity and resilience; (6) leads and ensures accuracy of DHQP content for communication/media outreach, crisis communications, CDC web content, and content for social media platforms; (7) works with Federal agencies, international organizations, and other partners on activities related to safe

healthcare; (8) monitors, supports, and connects state activities to track and prevent HAI and antimicrobial resistance; (9) identifies consensus goals and implements portfolio management across DHQP programs to meet those goals; (10) oversees the quality of DHQP research and scientific activities and identifies knowledge gaps; (11) provides leadership and strategic planning for program growth and development; (12) provides administrative and program services, managerial and operations support, and coordination with the appropriate CIOs and CDC staff offices on administrative and program matters including budget formulation and execution and human resource management; (13) oversees the coordination of Federal and state programs and new initiatives to prevent HAI, immunization safety, other healthcare adverse events, and antimicrobial resistance; (14) interprets general program and administrative policy directives for implications on management and execution of DHQP programs; (15) serves as lead and primary contact and liaison with relevant CDC staff offices for procurement requirements; (16) provides management and coordination for DHQP-occupied space and facilities including laboratory space and facilities; (17) provides oversight and management of the distribution, accountability, and maintenance of CDC property and equipment including laboratory property and equipment; (18) advises the Director, NCEZID, on science, policy and communication matters concerning DHQP activities and subject areas; (19) provides program and Federal advisory committee administrative support for HICPAC; (20) serves as a division and agency resource for systematic evidence review, analysis, and guideline production for infection prevention and control; and (21) coordinates infection prevention and control (IPC) content for non-pharmaceutical interventions across community settings.

Antimicrobial Resistance Coordination and Strategy Unit (HRD12). (1) oversees the coordination of antimicrobial resistance activities at CDC to meet national goals; (2) represents CDC in interagency activities on Antimicrobial Resistance including the President's Advisory Committee for Combatting Antibiotic Resistant Bacteria; (3) coordinates with other agencies, state and national governments, medical societies, and other public and private organizations to enhance domestic and international antimicrobial resistance prevention and control, surveillance and response, and applied research; (4) represents CDC at the Transatlantic Task Force on Antimicrobial Resistance (AR); (5) oversees CDC AR budget to implement AR activities as part of the Federal Action Plan to Combat Antibiotic Resistant Bacteria; (6) coordinates policies and communications of programs across CDC related to antimicrobial resistance; (7) ensures coordination with appropriate CIOs and CDC staff offices on AR program matters including budget formulation and execution; (8) provides updates and reports about CDC AR activities and progress to CDC Director, HHS, and the White House; (9) oversees coordination of CDC collaborations and new Federal initiatives to detect, respond and prevent antimicrobial resistance; and (10) oversees and coordinates activities of the Antimicrobial Regional Laboratory Network (ARLN), including the AR regional labs across CDC and with states and partners and the Global Antimicrobial Laboratory and Response Network with countries and international partners.

Immunization Safety Office (CRDB). Assesses the safety of new and currently available vaccines received by children, adolescents and adults using a variety of strategies: (1) conducts ongoing surveillance for the timely detection of possible adverse events following immunization (AEFI) in collaboration with the Food and Drug Administration, through implementation and management of the Vaccine Adverse Event Reporting System, the national reporting system that acts as an early-warning system to detect health conditions that might be associated with an immunization; (2) coordinates, further develops, maintains and directs activities of the Vaccine Safety Datalink (VSD), a collaborative effort with integrated healthcare organizations able to perform rapid epidemiologic research on potential causality for AEFI using the VSD and other data sources, provide national estimates of incidence of AEFI, and determine background rates of health conditions; (3) leads the nation in developing biostatistical methods for research of AEFI using large linked databases and other data sources, and shares methods for use by other agencies and public and private entities; (4) conducts clinical research to identify causes of adverse events after immunization, specific populations susceptible to specific adverse events, and prevention strategies through the DHQP supported Clinical Immunization Safety Assessment network, a national network of medical research centers, and through other research efforts; (5) applies findings from epidemiologic and clinical studies to develop strategies for prevention of AEFI; (6) provides global consultation and leadership for the development, use, and interpretation of vaccine safety surveillance systems, and for the development of shared definitions of specific health outcomes through participation in the Brighton Collaboration and other international organizations; (7) provides data for action to HHS, the Federal Advisory Committee on Immunization Practices (ACIP), the FDA's Vaccine and Related Biological Products Advisory Committee, Health Resources and Services Administration's Advisory Commission on Childhood Vaccines, and international collaborators including the WHO Global Advisory Committee on Vaccine Safety; and (8) provides timely, accurate communication and education to partners and the public on vaccine safety issues.

Clinical and Environmental Microbiology Branch (CRDC). (1) leads national laboratory characterization of HAI-related threats in partnership with state and regional laboratories; (2) provides comprehensive laboratory support and expertise for investigations of recognized and emerging pathogens in healthcare settings, such as methicillin-resistant S. aureus, carbapenem-resistant Enterobacteriaceae, and *Clostridium difficile;* (3) provides laboratory response to outbreaks and emerging threats associated with infections/antimicrobial resistance and related adverse events throughout the healthcare delivery system; (4) innovates methodologies determining environmental contribution to healthcare related outcomes, assesses environmental hygiene, and develops methods to assess contamination of environmental surfaces and medical devices; (5) investigates novel and emerging mechanisms of antimicrobial resistance among targeted pathogens found in healthcare settings; (6) conducts research in collaboration with partners to develop new, accurate methods of detecting antimicrobial resistance in bacteria for early detection of emerging resistance; (7) conducts laboratory research to identify new strategies to prevent infections/antimicrobial resistance, related adverse events, and medical errors, especially those associated with invasive medical devices, contaminated products, environmental surfaces, air-handling, dialysis, and water; (8) maintains capacity to evaluate commercial

microbial identification and antimicrobial susceptibility testing systems and products and facilitates their improvement to provide accurate patient test results; (9) investigates the role of biofilms, particularly those detected in indwelling medical devices and medical water systems, in medicine and public health, and identifies novel methods to eliminate colonization and biofilm formation, including on medical devices; (10) characterizes and investigates the role of microbiomes in the prevention of infections and antimicrobial resistance; (11) investigates the role of the water distribution systems in healthcare facilities in order to understand and prevent transmission of healthcare-associated infections due to water, and the impact of healthcare effluents on surrounding environments and communities; (12) provides expertise, research opportunities, training, and laboratory support for investigations of infections and related adverse events to other CDC centers and to partners in areas related to quality of clinical microbiology laboratory practices, the investigation of emerging pathogens, and environmental microbiology; (13) leads ARLN activities related to healthcare pathogens and provides assistance to state and regional labs participating in the network; (14) maintains and manages the Federal AR Isolate Bank, providing access to curated collections of AR pathogens to academic and industry partners, including those developing new assays and therapeutics to address AR threats; (15) integrates epidemiology of healthcare associated pathogens with molecular genetics and whole genome sequencing data and bioinformatics to identify, categorize and attribute pathogens and related genetic elements relevant to healthcare settings; and (16) assesses, supports and implements use of innovative technologies and approaches to more accurately and rapidly detect healthcare-related pathogens and initiate containment of spread.

Prevention and Response Branch (CRDD). Across the healthcare continuum, including acute, long-term, ambulatory, and chronic care settings: (1) develops, promotes, and monitors implementation of evidence-based practices, policies, strategies and related educational materials to prevent and control HAI and related adverse events affecting patients and healthcare personnel, associated with antibiotic resistance, device and procedure associated infections, lapses in adherence to quality standards and safety, and emerging resistance; (2) uses data from the NHSN and other sources to target and improve the prevention and control healthcare-associated infections and antimicrobial resistance in the United States in specific regions, settings and institutions; (3) supports local, state, and national efforts to prevent HAI, antimicrobial resistance, and related adverse events by providing leadership and technical expertise, including assessing effectiveness of CDC-recommended prevention practices; (4) provide leadership and epidemiologic support for the investigation, monitoring, and control of both recognized and emerging healthcare pathogens, including antimicrobial resistant bacteria; (5) leads response and control of outbreaks and emerging threats involving HAI and related adverse events, contaminated medical products and devices, and adverse drug events; (6) communicates the results of response activities with Federal and state agencies, healthcare providers, and the public, with recommendations to prevent similar adverse events in the future; (7) provides leadership, guidance, and technical support to and collaborates with other CDC CIOs, other HHS operating divisions, and extramural domestic partners, on the epidemiology and prevention and control of HAI, antimicrobial resistance and related adverse events; (8) manages and directs the national program supporting state and local public health agencies to assess and implement activities to prevent HAIs and antimicrobial resistance in their jurisdictions; and (9) coordinates production of interim infection control guidance for emerging infectious threats.

Surveillance Branch (CRDE). (1) monitors and evaluates the extent, distribution, and impact of healthcare-associated infections, antimicrobial use and resistance, adverse drug events, healthcare preparedness/resilience factors and healthcare worker safety events in the United States through the NHSN, providing data to prevent or control adverse exposures or outcomes in healthcare; (2) provides services, including leadership, consultation, and analytic support to investigators in the branch, division, and other organizations applying NHSN data to surveillance, research studies, and efforts targeting prevention and control of HAI and other healthcare-associated adverse events; (3) works with the Centers for Medicare and Medicaid Services (CMS) to support CMS payment processes that rely on NHSN data; (4) partners with CMS and others to develop new metrics and support maintenance of National Quality Forum-approved metrics; (5) collaborates with public and private sector partners to further standardize, integrate, and streamline systems by which healthcare organizations collect, manage, analyze, report, and respond to data on HAI, including transmission of multi-drug resistant organisms; (6) coordinates, further develops, enables wider use, and maintains NHSN to obtain scientifically valid clinical performance indices that promote healthcare quality and value at the facility, state, and national levels; (7) develops and implements new NHSN modules to track and prevent additional healthcare associated harms; (8) provides enrollment, security, and user support for over 37,000 NHSN enrolled facilities; (9) improves surveillance systems by utilizing new technology; and (10) generates and provides NHSN surveillance reports and analyses, which include collaborative analytic projects with partners.

Epidemiology Research and Innovations Branch (CRDG). (1) identifies and evaluates the efficacy and effectiveness of interventions to prevent HAI and related adverse events or medical errors across the spectrum of healthcare delivery sites including acute and long-term inpatient care, dialysis, and ambulatory settings; (2) identifies gaps in HAI-related knowledge and conducts prevention research through the Prevention Epicenters cooperative agreements program and Safety and Healthcare Epidemiology Prevention Research Development research contracts; (3) conducts and supports research and evaluates impact of public health practices to prevent HAIs, antimicrobial resistance, sepsis and related adverse events; (4) improves methods and enables wider use of clinical performance measurements by healthcare facilities and public health entities for specific interventions and prevention strategies designed to safeguard patients and healthcare workers from risk exposures and adverse outcomes through collaborations with extramural partners; (5) conducts applied research to identify and develop innovative methods, including modeling and economic analyses, to detect, characterize, monitor, and predict healthcare threats including HAI, sepsis and antimicrobial resistance; and (6) conducts special studies to identify and characterize emerging healthcare threats working with the Emerging Infections Program and other partners.

Division of High-Consequence Pathogens and Pathology (CRE). The Division of High-Consequence

Pathogens and Pathology (DHCPP) maximizes public health and safety nationally and internationally through the diagnosis, prevention, and control of disease, disability, and death caused by suspected and known viral, bacterial, prion, and related infections. In carrying out its mission, DHCPP: (1) conducts surveillance, investigations, and studies of viral and bacterial diseases, including bioterrorism agents, as well as of transmissible spongiform encephalopathies, or prion diseases, and severe diseases of unknown, but suspected infectious, etiology to define their etiology and epidemiology, and to develop effective methods for diagnosis, treatment, control, and prevention; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methods, materials, and therapeutic practices used for diagnosis, treatment, control, and prevention of viral, bacterial, and prion diseases, including bioterrorism agents; (3) conducts research on virus and bacterial transmission to develop effective control and prevention strategies and on vaccine effectiveness to assess prevention potential; (4) conducts laboratory, clinical, and epidemiologic studies of highly hazardous disease agents that require biosafety level 3 or biosafety level 4 security for their safe handling; (5) conducts ecological studies to develop and evaluate disease control and prevention measures; (6) provides epidemic aid, epidemiologic consultation, reference and diagnostic services, and technical assistance to state and local health departments, other Federal agencies, and national and international health organizations; (7) provides scientific and technical assistance to other CDC components when the work requires unique expertise or specialized equipment not available in other components; (8) provides routine and specialized laboratory training in the diagnosis, isolation, and characterization of viral and bacterial agents to personnel from state and local health departments and other national and international organizations; (9) provides training opportunities for EIS officers and others in CDC sponsored programs, including postgraduate students, postdoctoral fellows, and other public health and laboratory scientists; (10) provides expert pathological support for various infectious diseases to other groups at CDC, state and local health departments, and national and international organizations; (11) provides staffing and support for emergency responses at program, division, Center, and agency levels; and (12) serves as appropriately designated national and WHO Collaborating Centers for viral and bacterial diseases.

Division of Infectious Disease Readiness and Innovation (CRG). The Division of Infectious Disease Readiness and Innovation (DIDRI) works to build and strengthen public health capacity and readiness by enhancing the ability of CDC and its public health partners to prepare for, prevent, and respond to emerging and reemerging infectious diseases, including outbreaks, and other public health emergencies, through cross-cutting and innovative programs, technical expertise, and public health leadership. In carrying out these activities, DIDRI: (1) collaborates with state, tribal, local, and territorial (STLT) health departments, and other external groups for infectious disease programs and responses to enhance preparedness, and develop innovative responses to emerging and reemerging infectious diseases with a goal of increasing capacity of STLT health departments; (2) leads national wastewater surveillance to understand community-level data on infectious diseases and other emerging health issues, and facilitates exchange of data with frontline public health practitioners, clinicians, decision-makers, key partners, and the public; (3) conducts innovative surveillance and other public health practices to detect, control, prevent, and respond to emerging infectious diseases; (4) supports clinical and public health partners to address health equity and rapidly respond to infectious diseases and outbreaks; (5) works with infectious disease programs on processes for developing, awarding, managing, and evaluating infectious disease grants and cooperative agreements; (6) provides subject matter expertise for infectious disease and health informatics; (7) conducts analysis of infectious diseases using various analytic techniques in coordination with CDC infectious disease programs; (8) conducts, supports, and evaluates activities aimed at identifying and reducing risk factors for infectious diseases overall and among residents of the Arctic and Subarctic regions; (9) collaborates with public health partners to identify and eliminate health disparities among Alaska Natives, American Indians, and indigenous populations; (10) implements the Advanced Molecular Disease program by integrating advanced molecular technologies into the public health system to strengthen the prevention and response to significant public health threats and improve identification and characterization of various pathogens; (11) provides cross-cutting infectious disease support for evaluation and modeling to assess public health impact; (12) establishes integrated and sustainable laboratory data and systems that are accessible to all public health organizations; and (13) provides staffing and support for emergency responses at program, division, Center, and agency levels.

Office of the Director (CRG1). (1) manages, directs, and coordinates the activities of the division, and advises the NCEZID Director, NCEZID divisions, and CDC leadership on emerging infectious disease science, readiness, response, and innovation; (2) provides leadership and guidance on division policy, communication, program planning, program management, and operations; (3) provides division-wide administrative and program services and ensures coordination with the appropriate CIO or staff offices on administrative and programmatic matters; (4) partners with Federal agencies, STLT health departments, international organizations, academic institutions and other external groups on readiness and innovative responses to emerging and reemerging infectious diseases; (5) ensures coordination of cross-cutting division activities with NCEZID divisions, and CDC CIOs; (6) advances health equity through scientific and programmatic infectious disease activities; and (7) improves the understanding of factors involved in infectious disease emergence, prevention, and elimination.

Arctic Investigations Program (CRGB). (1) conducts, supports, and evaluates activities to improve the health of people of the Arctic and Subarctic regions, with special emphasis on reducing and preventing infectious diseases of high incidence and concern among Alaska Natives and American Indians; (2) collaborates with programs across CDC; local, state, and tribal partners; the Indian Health Service; and other national and international partners to reduce, prevent, and respond to infectious disease threats; (3) ensures public health preparedness and prevention of infectious diseases by conducting infectious diseases surveillance, providing and evaluating prevention services, and conducting targeted epidemiologic and laboratory research; (4) works with public health partners to identify and eliminate health disparities among American Indians, Alaska Natives, and other indigenous populations; and (5) provides leadership to improve health in the Circumpolar region.

Division of Core Laboratory Services and Response (CRH). The mission of the Division of Core Laboratory Services and Response (DCLSR) is to provide products, services, and specialized expertise to CDC programs in support of emergency response activities, laboratory research, and laboratory operations. To carry out its mission, DCLSR: (1) provides laboratory support to outbreak responses through specimen accessioning, pre-clinical processing of diagnostic specimens, surge testing capacity, and long-term sample management, including the CDC Biorepository; (2) provides laboratory supplies, glassware, mammalian tissue cultures, microbiological media, special reagents, and other laboratory materials in support of research and service activities to laboratories and CDC investigators; (3) promotes animal welfare and improves the quality and integrity of animal-based research by engaging in independent and collaborative research, providing state-of-the-art training to researchers and partners, and offering a broad range of fully integrated professional veterinary services; (4) works with CDC pathogen-specific programs in the evaluation of existing and in the design of innovative and novel diagnostic tests and assays (molecular, immunological, and sequence based) and evaluation of new instrument platforms and technologies to detect emerging and known pathogens; (5) develops and implements applied research programs to expand and enhance the use of animal models necessary to support research and diagnostic programs and to improve breeding and husbandry procedures; (6) conducts applied research in cell biology and in the expansion of tissue culture technology as a research and diagnostic tool for infectious disease activities; (7) provides services for laboratory investigators in protein and DNA synthesis and sequencing, genomic sequencing, microarrays, proteomics, and molecular modeling; (8) obtains and distributes experimental and orphaned vaccines, drugs, antisera, antitoxins, and immune globulins; (9) manages and distributes the inventory, maintains the computerized system database, and provides general technical service support for the dispensing, lyophilizing, capping, and labeling of CDC reference reagents; (10) receives, triages, processes, and distributes specimens to CDC laboratories for reference diagnostic testing, research studies, and epidemics and reports diagnostic test results to submitting organizations; (11) manages all CDC exports and ensures compliance with regulations and serves as CDC liaison with the Department of Commerce for export-related issues; (12) produces and distributes specialized reagents and diagnostic kits for research and development, surveillance, preparedness activities, outbreak and emergency response; (13) provides services and expertise in development of quality systems to support compliance with FDA regulations on production, distribution, and use of laboratory diagnostic reagents; (14) provides liaison activities, resources, and expertise for inquiries related to animals and zoonotic diseases; (15) provides a centralized activity for tracking requests for and distributing select agents to investigators outside of CDC in compliance with Federal regulations; and (16) provides staffing and support for emergency responses at the program, division, Center, and agency levels.

Office of the Director (CRH1). (1) manages, directs, and coordinates the activities of DCLSR; (2) provides leadership and guidance on the development of strategic goals, objectives, and milestones to advance the vision and mission of DCLSR; (3) distributes investigational and licensed drugs and unique biologicals (antitoxins) to approved physicians for the treatment of rare, tropical, or exceptional diseases; (4) develops administrative policies, processes, and operations for the division; (5) ensures that health equity principles are applied in all DCLSR activities; (6) works to ensure that spending plans and budgets are executed and aligned with the strategic priorities of the division; (7) works with NCEZID Office of the Director to establish and maintain a diverse, equitable, inclusive, and accessible workplace; (8) provides scientific, business, and policy oversight and guidance for all programs and activities housed in the division; and (9) works closely with other CIOs during outbreak investigations and on an ongoing basis, providing support, guidance, collaboration, and expertise.

Division of Vector-Borne Diseases (CRJ). (1) conducts surveillance, investigations, and studies of vector-borne viral, rickettsial, and bacterial diseases to define disease etiology and to develop effective methods and strategies for diagnosis, prevention, and control; (2) conducts investigations on the biology, ecology, and control of arthropod vectors of viral, rickettsial, and bacterial diseases as a basis for development of new and/or modification of existing measures for more effective prevention and control; (3) conducts or participates in clinical, field, and laboratory studies to develop, evaluate, and improve laboratory methods, materials, and therapeutic practices used for diagnosis, prevention, and treatment of vector-borne infectious diseases; (4) provides epidemic aid and epidemiologic consultation, upon request, to state and local health departments, other Federal agencies, and national and international health organizations; (5) provides reference/diagnostic services for vector-borne viral, rickettsial, and bacterial diseases to state and local health departments, other Federal agencies, and national and international health organizations; (6) conducts research and collaborates on development and evaluation of vaccines; (7) provides scientific and technical assistance to other CDC components when the work requires unique expertise or specialized equipment not available in other components; (8) provides intramural and extramural technical expertise and assistance in professional training activities; (9) serves as designated national and international reference centers for vector-borne viral, rickettsial, and bacterial diseases; and (10) provides staffing and support for emergency responses at program, division, Center, and agency levels.

IV. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

Travel Risk Assessment and Mitigation Branch (CRCB). (1) supports and evaluates public health preparedness activities for response to communicable diseases at airports, seaports, and land crossings in the United States including establishing accords with hospitals to ensure adequate isolation and care of persons with certain communicable diseases; (2) reviews operations to innovate and use scientific methods to inform more effective surveillance and response activities to prevent the importation and spread of quarantinable and other communicable diseases linked to travel from posing a threat to the U.S. population; (3) establishes partnerships and provides technical assistance to Federal, state/territorial, industry and international partners on domestic and international border health issues; (4) enforces public health authorities and collaborates with state and local health departments to prevent disease transmission associated with travel and offers local officials consultation on isolation, quarantine, and other public health interventions in collaboration with the Port of Entry Operations Branch; (5) contributes border health expertise to the transportation sector in the United States, abroad, and to

multilateral bodies, including sharing recommendations on public health risk assessment and management practices, and conducts communications, media, and training for the Travel Risk Assessment and Mitigation and the Port of Entry Operations team members; (6) develops content for websites, videos, and maps to support airport partners and the public at POE regarding public health threats and Federal regulations delegated to CDC, including providing guidance to partners that implement CDC's delegated regulatory authorities at U.S. borders; (7) provides epidemiological support for activities related to border health and globally mobile populations including implementation of analytical projects to build scientific evidence for travel-related mitigation measures and dissemination of results for public health action; (8) provides technical consultation and develops public health training to border health staff and other agencies carrying out Federal inspections services at POE to enforce HHS/CDC regulations on quarantine; (9) serves as an identified point of contact with Federal security agencies when health, travel, and security intersect; and; (10) provides medical and veterinary-support to Port of Entry Operations Branch team members to respond to illnesses or HHS/CDC-regulated animals and other importations at POE.

Immigrant and Refugee Health Branch (CRCC). (1) recommends appropriate, effective intervention and prevention strategies to decrease morbidity and mortality among globally mobile populations and to prevent entry of disease into the United States; (2) implements enhanced public health interventions for refugees such as vaccination and presumptive treatment programs for intestinal parasites and malaria; (3) responds to refugee resettlement health emergencies overseas and domestically; (4) oversees, evaluates, and monitors the required overseas and domestic medical examinations of immigrants and refugees (and others for whom a medical exam is required), and prepares, publishes, updates, and distributes Technical Instructions for examining physicians; (5) works cooperatively with state health departments to form multi-state networks for health surveillance of refugees and to develop health guidance for health professionals who care for newly arrived refugees; (6) establishes, maintains, and evaluates notification procedures regarding immigrants and refugees, providing coordination and liaison with local and state health departments on the follow-up of those with serious diseases of public health significance, in particular notifiable diseases such as tuberculosis; (7) conducts continuing review, technical guidance, and evaluation of required immigration medical screening procedures to ensure the most effective application of current medical practices; (8) develops and administers training curricula for examining physicians to support rigorous adherence to the CDC Technical Instructions; (9) works cooperatively and in concert with other Federal and international agencies, voluntary agencies, and foreign governments, both in the United States and abroad, in administering required medical screening programs for immigrants, refugees, parolees, and non-immigrant visa applicants; (10) performs epidemiologic investigations and scientific research projects related to health issues for immigrant, refugee, and migrant populations; (11) establishes and maintains procedures to process requests for waivers for applicants with inadmissible medical conditions; (12) works with foreign governments and partners to establish or strengthen public health conditions for U.S.-bound populations, and other globally mobile populations for the prevention, detection, and response to infectious diseases; (13) provides support to international government and public health partners to strengthen global public health capacity to help prevent the spread of infectious diseases; (14) determines and strategically tracks factors that affect the health of U.S.-bound or recently arrived refugees, immigrants, and migrants through research, evaluation, and high-quality data sources and systems; and (15) educates Federal, state, and private agencies about health aspects of international child adoption procedures.

Travelers' Health Branch (CRCD). (1) improves the health of all global travelers, including underserved populations, and prevents the importation of communicable disease to the United States, the Travelers' Health Branch (THB) produces travelers' health recommendations for international travelers, healthcare providers, employers, and policymakers, (2) produces Travel Health Notices to inform travelers and other audiences about global health risks during outbreaks, special events or gatherings, and natural disasters, and provide advice on protective actions travelers can take to prevent infection and other adverse health effects; (3) conduct mapping and spatial representation of outbreak areas and areas where diseases are endemic; (4) produces the print and online premiere medical textbook on travel health medicine used by clinicians and other partners; (5) produces and maintains CDC Travelers' Health website, an online compendium of travel medicine information and recommendations; (6) supports surveillance systems for travel-related illness trends and pathogens through collaborations with national and international travel clinic networks and the development and evaluation of traveler and travel conveyance surveillance sampling and testing strategies for pathogen detection and characterization, (7) translates travel medicine science into actionable health information recommendations, including online educational products, and mobile tools; (8) manages a registry of national providers and yellow fever stamp owners, provides guidance regarding yellow fever vaccine requirements and recommendations for international travelers, and conducts ongoing surveillance for serious adverse events following yellow fever vaccination; (9) participates in ACIP workgroups regarding vaccines used for travelers and works with vaccine producers to ensure availability of travel vaccines; (10) collaborates with private partners to analyze global data on disease incidence and risk factors among travelers; (11) partners with international organizations such as the WHO to establish consensus on travel medicine evidence base, disease-specific data repositories, and definitions of diseases of relevance to travelers' health; (12) participates in emergency responses to provide support for traveler issues including surveillance, traveler health prevention and treatment recommendations; and (13) performs rapid assessments of available epidemiological information to develop public health risk assessment and guidance for travelers.

Port Health Protection Branch (CRCE). As CDC's representative at U.S. POE for mitigating biosecurity and emerging infections, (1) protects the public's health at U.S. borders and POE by working with state and local health departments, ministries of health, the WHO, and intergovernmental organizations in collaboration with the Travel Risk Assessment and Mitigation Branch; (2) responds to travel-related communicable disease threats and develops and implements strategies to prevent introduction and spread of diseases of public health concern arriving in persons, animals, cargo, and conveyances at U.S. POE; (3) documents those activities to provide surveillance

of public health events occurring at sea, air, and land POE to the United States and its possessions; (4) provides public health training to field staff and other on-site agencies carrying out Federal inspection services at POE to enforce CDC regulations on quarantine, apply public health best practices, augment CDC's geographic reach at POE, and ensure appropriate occupational safety and health protection for their staff; (5) stores and rapidly distributes emergency and lifesaving medications not otherwise available for patients in the United States and its possessions from designated POE locations; (6) provides logistics support to other CDC programs and other partners and expedites the movement of persons, clinical specimens, and other materials through Federal security and the rest of the Federal inspection apparatus; and (7) provides in-person or telephone consultative response to public health threats at U.S. POE 24 hours a day and seven days a week with support of Quarantine Medical Officer(s) and Quarantine Veterinary Officer(s) from the Travel Risk Assessment and Mitigation Branch for reports of ill travelers, or problems with animals, biological materials, and other CDC regulated importations.

Southern Border Health and Migration Branch (CRCG). (1) provides scientific and technical support to the division and agency's operational and public health regulatory and emergency response responsibilities concerning infectious diseases among the U.S.-Mexico and other Latino binational populations and other globally mobile populations traversing the U.S. southern border, the busiest land border in the world; (2) focuses on the prevention and control of infectious diseases and expanding the health evidence base among the dynamic and globally mobile populations that reside in and travel through the southern U.S. land border region through activities including surveillance, illness response, epidemiologic investigations and analyses, and leveraging strategic partnerships and scientific collaborations (*e.g.,* other Federal agencies, state and local health authorities, international and regional organizations, non-governmental organizations, and health authorities from Mexico and other key migrant stream countries); (3) supports the division's regulatory activities at southern U.S. land points of entry including illness response, animal, biologic and etiologic importations that have infectious disease implications for human health; (4) expands evidence base and intervention support for infectious diseases and health disparities among the populations that reside, work, and travel through the southern U.S. land border region and other Latino binational populations in the United States, including Spanish speaking migrants and farmworkers, through targeted education, linguistically appropriate health communications, outreach activities, and partnerships; (5) supports transnational continuity of care and travel restriction decisions for persons with active tuberculosis moving in or out of the United States; (6) helps facilitate CDC projects with Mexico (Mexico Country Office) and the Central American Region (Panama Office) to address priority health issues of mutual interest that will advance scientific knowledge, protect binational, regional and migratory populations, and facilitate coordinated disease response and health security between the public health officials in the United States, Mexico, and Central America; and (7) supports binational working groups, collaborations, and data systems that support surveillance, information sharing, expand evidence base on health disparities and control of binational/border communicable diseases of importance, and support partnerships with key organizations and governmental agencies to enhance service provision to mobile border/binational populations.

Healthcare Systems Strengthening, Resilience, and Training Branch (CRDH). (1) leads, in collaboration with the other appropriate division components, development and delivery of training related to the prevention of HAIs, antimicrobial resistance, adverse events, and medical errors, and improving environmental hygiene, use of personal protective equipment, disinfection, sterilization, and other related topics with a focus on remote, rural, and underserved areas; (2) builds and supports partnerships with organizations that increase reach and impact for DHQP training content; (3) identifies and addresses gaps in information needed to successfully implement and optimize training and IPC in healthcare settings; (4) supports state, local, and Federal efforts to establish and improve infection prevention and control through training and implementation programs, and policies that support IPC resilience; (5) assists partners in improving infection prevention and control, HAI surveillance, and environmental hygiene capacities through tailored long-term consultative support; (6) provides technical assistance for development of organization-specific infection control policies and action plans to prevent HAIs and reduce antimicrobial resistance; (7) leads healthcare preparedness and resilience planning and implementation to enable healthcare facilities to respond to infectious disease threats at local, regional and national levels, including monitoring and reporting related to acute surges in staffing and resource needs, impacts on healthcare personnel, bed and equipment availability, and coordination within local jurisdictions; (8) coordinates DHQP activities and collaborates with other CIOs and Federal agencies to prepare healthcare to respond to emerging threats; (9) represents and coordinates DHQP activities for agency-wide responses and collaborates with CDC Emergency Operations Center for emergency response to emerging infections involving healthcare (*e.g.,* Ebola); and (10) provides expert consultation, guidance, and technical support to and collaborates with other CDC CIOs, other HHS operating divisions.

International Infection Control Branch (CRDJ). (1) leads, in collaboration with the appropriate CDC CIO and other components, global health activities related to the prevention of HAIs, antimicrobial resistance, and related adverse events or medical errors; (2) coordinates international efforts to establish and improve infection prevention and control policies, programs, and collaborations; (3) assists countries to improve infection prevention and control capacity toward prevention and control of endemic and outbreak-related HAIs outbreaks; (4) produces tailored implementation and training content to support countries and international partners working to improve healthcare safety and quality; (5) in collaboration with ministries of health, CDC country offices, and implementing partners, develops country-specific national policies and action plans to improve healthcare safety and reduce the global burden of antimicrobial resistance associated with healthcare delivery; (6) provides technical assistance to international partners in building diagnostic laboratory capacities and surveillance systems; and (7) leads development of global networks to detect and contain infectious disease threats related to healthcare.

Medical Product Safety Branch (CRDK). (1) leads CDC's activities on blood, organ, and other tissue safety; (2) represents CDC on the Advisory Committee on Blood Safety and Availability and the Advisory

Committee on Organ Transplantation; (3) works with other Federal agencies, state governments, and other public and private organizations to enhance blood, organ, and other tissue safety through coordination of investigation, prevention, response, surveillance, applied research, health communication, and public policy; (4) leads CDC's national adverse drug events surveillance activities and seeks to translate population-based ADE surveillance data into evidence-based policies and targeted, innovative and collaborative interventions; and (5) develops, promotes, and monitors implementation of and adherence to evidence-based practices, policies, strategies, and related educational materials to increase adherence to optimal antimicrobial use and stewardship across all healthcare settings.

Epidemiology Laboratory Capacity (ELC) and Informatics Branch (CRGC). (1) builds the capacity of state, local, and territorial public health agencies to prevent and respond to infectious diseases through the ELC cooperative agreement; (2) provides scientific and programmatic guidance, as well as management, administrative, and technical support for broad infectious disease cooperative agreements such as the ELC program; (3) serves as a liaison/point of contact to assist recipients in identifying appropriate technical assistance; (4) provides program expertise, innovation, and linkages for infectious disease and health informatics; (5) increases adoption of electronic exchange of public health data between CDC and frontline public health agencies; and (6) analyzes the effectiveness and impact of infectious disease activities in collaboration with other CDC programs with various analytic techniques.

Rapid Response Research and Surveillance Branch (CRGD). (1) responds to emerging infectious disease outbreaks and emergencies through innovation and by collaborating and partnering with STLT public health agencies and providing scientific technical assistance; (2) implements wastewater surveillance to provide an early warning for emerging infections or public health concerns by coordinating and building wastewater surveillance capacity, and providing real-time, community-level data to clinicians, decision-makers, key partners, and the public; (3) leads and supports infectious disease fellowship and training programs; (4) supports health departments and other clinical and public health partners on issues related to improving health equity and infectious disease rapid response activities and resources; (5) conducts surveillance and other novel and innovative public health practice activities to detect, control, and prevent emerging infectious diseases; and (6) creates study activities and related publications that support public health science and response activities and interventions.

Office of Advanced Molecular Detection (CRGE). (1) integrates advanced molecular technologies into the public health system, both domestically and globally, to enhance the prevention and response to significant public health threats and improve the identification and characterization of various pathogens; (2) develops innovative tools for the detection, characterization, prediction, modeling, and early recognition of emerging infectious diseases; (3) establishes enhanced, sustainable, and integrated laboratory data and systems that are accessible for all public health organizations; (4) builds workforce capacity in genomic sequencing, bioinformatics, and molecular epidemiology within public health organizations and in partnership with the private sector and academia, both domestically and globally; and (5) leads ongoing quality initiatives for genomic surveillance throughout CDC, including the infectious disease review board and quality validation framework.

Advanced Diagnostics and Biotechnologies Branch (CRHB). (1) provides state-of-the-art next-generation genomic sequencing and metagenomics analysis of infectious and biothreat agents; (2) provides optical mapping to produce high resolution whole- genome maps for strain typing, molecular epidemiology, comparative genomics, and quality control for whole genome sequence assembly; (3) provides computational analysis of genomics sequencing data, bioinformatics, and biological computing; (4) provides qualitative and quantitative proteomic analyses (identification of expressed proteins by mass spectrometry); analysis of functionally-relevant post-translational modifications of proteins; (5) provides mass spectrometry-based positive identification of bacteria and fungi; (6) provides synthetic oligonucleotide chemistry in support of development of rapid diagnostic tests and characterization of pathogens and their hosts; (7) provides synthetic peptide chemistry in support of studies of immune response and antigen-antibody interactions; (8) provides biotechnology seminars and methods evaluation; (9) works with CDC pathogen-specific programs in the evaluation of new instrument platforms and technologies to detect emerging and known pathogens and in the evaluation of existing and in the design of innovative and novel diagnostic tests and assays (sequence based); (10) provides laboratory equipment design and repair services to all CDC; and (11) assesses and supports advanced analytical methodologies for the CDC scientific community.

Preparedness, Response, and Outbreak Services Branch (CRHD). (1) provides centralized specimen management services for diagnostic, reference, and outbreak investigations; maintains a bank of biological specimens of epidemiological significance to CDC's research and diagnostic activities; manages and tracks systems of specimen collections; (2) receives, triages, processes, stores, and distributes specimens to CDC laboratories for reference diagnostic testing, research studies, and reports diagnostic and surveillance test results to submitting organizations; (3) provides extracted nucleic acids under a Clinical Laboratory Improvement Amendments approved workflow that can be used for sequencing and molecular diagnostics; (4) maintains and manages the biological laboratory component of the Laboratory Response Network (LRN); (5) provides LRN strategic guidance, leadership, and operations support; (6) provides technical input for assay development for federally managed environmental monitoring systems and guidelines developed through U.S. government collaborations for the validation and use of environmental detection devices; (7) develops LRN protocols for specimen handling and testing for bioterrorism agents; (8) produces and manages inventory of high-quality reagents available to LRN laboratories and expedites shipping of products to support emergency response needs; (9) collaborates with CDC and external partners to assist in administering proficiency testing programs for critical agents for LRN member laboratories; (10) evaluates and validates advanced technology for the identification and characterization of agents of bioterrorism and other emerging infectious diseases; (11) works with CDC pathogen-specific programs in the evaluation of existing and in the design of innovative and novel diagnostic tests and assays (molecular and immunological); (12) provides laboratory triage capability at CDC for unknown biological and chemical agents; (13) produces hybridomas, monoclonal and polycolonal antibodies, and in vitro diagnostic products for

diagnostic research purposes, proficiency testing, pandemic preparedness, outbreak response and surveillance activities; (14) collaborates with subject matter experts in regulatory compliant development, production, packaging, storing and distribution of Biosafety Level 2 (BSL2)/Biosafety Level 3 (BSL3) reagents, select agents, novel immuno-chemical reagents and reference diagnostic reagents; (15) provides dispensing, lyophilizing, label production, and device assembly services; (16) improves the process of bench-top development and in-house pilot scale production providing immediate availability for distribution, preventing backorders and streamlining commercialization; (17) packages and ships infectious substances and other materials, ensuring compliance with regulations for shipping clinical specimens, infectious substances, and other materials; (18) operates the CDC Biorepository as a centralized resource to preserve CDC's valuable samples and provide ongoing support to CDC programs; (19) manages sample collections, along with associated information and data obtained from CDC's public health surveillance, research, and outbreak responses; (20) serves as the administrator issuing CDC's required standardized identifiers: the CDC Sample Identifier and CDC Unique Identified; and (21) provides consultation in all of the above technical services.

Laboratory Products and Services Branch (CRHE). (1) maintains laboratory water treatment systems to ensure quality of CDC reagent grade laboratory water; (2) produces, develops, evaluates, and distributes custom microbiological and cell culture media, buffers, and chemical reagent, mammalian, and insect cell cultures; (3) maintains CDC's Biological Reference Reagent Inventory, mammalian cell line repository and a serviceable inventory at the DCLSR Continuity of Operations storage facility; (4) packages and ships infectious substances and other materials, ensuring compliance with regulations for shipping clinical specimens, infectious substances, and other materials; (5) manages all CDC exports and ensures compliance with regulations and serves as CDC liaison with Department of Commerce for export-related issues; (6) oversees laboratory waste management; (7) coordinates laboratory glassware and stockroom operations, consumables; and (8) provides consultation in all of the above technical services.

Division of Parasitic Diseases and Malaria (CRK). The Division of Parasitic Diseases and Malaria (DPDM) prevents and controls parasitic diseases in the United States and throughout the world by providing diagnostic, consultative, epidemiologic services, and training. In carrying out its mission, DPDM: (1) conducts surveillance, investigations, and studies of parasitic diseases to define disease etiology, mode of transmission, and populations at risk, and to develop effective methods for diagnosis, prevention, control, and elimination; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodologies, materials and therapeutic practices used for rapid and accurate diagnosis and treatment of parasitic diseases; (3) provides epidemic aid, epidemiologic consultation, and reference diagnostic services to state and local health departments, other Federal agencies, and national and international health organizations; (4) conducts a program of laboratory and field research in the biology, ecology, and host-parasitic relationships to develop better methods for diagnosis, prevention, and control of parasitic diseases; (5) coordinates with the U.S. Agency for International Development to address neglected tropical diseases and to achieve the goals of the President's Malaria Initiative; (6) provides scientific and technical assistance to other components within CDC when the work requires unique expertise or specialized equipment not available in other CDC components; (7) serves as WHO Collaborating Centers for Cysticercosis, Research Training and Eradication of Dracunculiasis, Control and Elimination of Lymphatic Filariasis, Evaluating and Testing New Insecticides, Insecticide Resistance, Insect Vectors; Malaria Control in Africa, Human African Trypanosomiasis, Production and Distribution of Malaria Sporozoite enzyme-linked immunosorbent assay; (8) maintains field-based research and program activities in numerous developing countries; (9) provides communications support for responsive, evidence-based information targeted to the public, local and state health officials, international partners, and private organizations to inform health decisions, to prevent, and control parasitic diseases in the United States and abroad; and (10) provides staffing and support for emergency responses at program, division, Center, and agency levels.

Office of the Director (CRK1). (1) works with NCEZID Office of the Director to ensure spending plans and budget are in line with the overall infectious disease strategies and priorities; (2) ensures that the NCEZID strategy is executed by the division and aligned with overall CDC goals; (3) co-develops execution strategies for the division with the branch chiefs; (4) provides program and science quality oversight; (5) builds leadership at the division and branch levels; (6) evaluates the strategies, focus, and prioritization of the division research, program, and budget activities; (7) identifies and coordinates synergies between the division and relevant partners; (8) ensures that policy development is consistent and appropriate; (9) facilitates research and program activities by providing leadership support; (10) proposes resource priorities throughout the budget cycle; (11) ensures scientific quality, ethics, and regulatory compliance; (12) fosters an integrated approach to research, program, and policy activities; and (13) liaises with HHS and partners.

Malaria Branch (CRKB). (1) conducts malaria surveillance, prevention, and control in U.S. residents and visitors by monitoring the frequency and distribution of malaria cases that occur in U.S. residents and visitors and the efficacy and safety of antimalarial drugs for chemoprophylaxis and chemotherapy; (2) provides clinical advice and epidemiologic assistance on the treatment, control, and prevention of malaria in the United States and in malaria-endemic countries; (3) provides information to the U.S. public and to appropriate agencies and groups on appropriate measures to prevent and control malaria; (4) provides consultation, technical assistance, and training to malaria-endemic countries and to international and U.S. agencies and organizations on issues of malaria prevention and control; (5) conducts epidemiologic, and field-based research projects, including laboratory and field studies on parasitic diseases to define, transmission dynamics, populations at risk, and determinants of morbidity and mortality; (6) conducts field studies of malaria prevention and control tools and strategies; and (7) conducts assessments of malaria monitoring and evaluation methods and program use of these methods.

Parasitic Diseases Branch (CRKC). (1) investigates outbreaks and unusual occurrences of parasitic diseases in concert with states, ministries of health, WHO, and other agencies and organizations; (2) conducts surveillance of parasitic diseases in the United States, including foodborne parasitic disease outbreaks; (3) provides consultation on the prevention, treatment, and management of parasitic diseases to clinicians, laboratorians,

departments of health, and other agencies; and provides otherwise unavailable anti-parasitic drugs to healthcare providers and ensures compliance with FDA's regulations; (4) supports the agency's overall emergency response mandate; (5) conducts field and laboratory investigations and research on the etiology, epidemiology, chemotherapy and other aspects of parasitic diseases to develop new tools for identifying and controlling parasitic diseases; (6) carries out and evaluates operational research to evaluate current strategies and develops new strategies to support programmatic activities for the control and elimination of parasitic diseases, and provides technical assistance to ministries of health, WHO, and other agencies and organizations for these programs; (7) provides training to EIS officers, Preventive Medicine Residents, public health prevention specialists, and other fellows and students; and (8) prepares and disseminates health communication materials on the prevention and treatment of parasitic diseases.

Entomology Branch (CRKD). (1) conducts global surveillance, field investigations, and laboratory studies on the vectors of parasitic diseases of humans, with a focus on malaria, Chagas' disease, lymphatic filariasis, onchocerciasis, and leishmaniasis, with a particular emphasis on the anopheline vectors of malaria; (2) serves as WHO Collaborating Centers for pesticides resistance, anopheline vector identification, antimalarial drug evaluation, and vector control; (3) develops methods supporting the global use of pesticides for control of vector-borne diseases, the management of insecticide resistance, and the monitoring of anti-parasitic drugs; (4) serves as an international reference reagent and anopheline vector repository, providing materials, training, and information related to malaria vectors; and (5) provides entomological consultation, epidemic aid, and training to local, state, Federal and foreign agencies and international health organizations on surveillance and control of malaria and parasitic vector-borne diseases.

Laboratory Science and Diagnostics Branch (CRKE). (1) provides reference and laboratory diagnostic services to physicians and laboratories; (2) transfers technologies and expertise in laboratory diagnosis of parasitic infections to public health laboratories; (3) supports the agency's overall emergency response mandate; (4) conducts field and laboratory investigations and research on the biology, ecology, pathogenesis, immunology, genetics, host-parasite relationships, and other aspects of parasitic diseases to develop new tools for identifying and controlling parasitic diseases; (5) develops and tests new laboratory methods and tools for improved diagnosis, control, and prevention of parasitic diseases, and conducts laboratory training courses for public health laboratories; (6) conducts laboratory, and field-based research projects, including laboratory and field studies on parasitic diseases to define biology, ecology, parasite species differences, host-parasite relationships, diagnostics, host immune responses; (7) conducts laboratory studies of malaria parasites utilizing animal models and in vitro systems for parasitic relationships, chemotherapy, and vaccine evaluation studies; efficacy and safety of antimalarial drugs for chemoprophylaxis and chemotherapy; and training to malaria-endemic countries; conducts assessments of malaria monitoring and evaluation methods; and (8) provides training to Emerging Infectious Disease fellows, American Society of Microbiology/ Postdoctoral Fellows, and other fellows and students.

V. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Food Safety Office (CVLB13)
- Quarantine and Border Health Services Branch (CVLCB)
- Immigrant, Refugee, and Migrant Health Branch (CVLCC)
- Geographic Medicine and Health Promotion Branch (CVLCD)
- International Infection Control Activity (CVLD14)
- One Health Office (CVLE13)
- Scientific Programs and Development Branch (CVLGC)
- Emergency Preparedness and Response Branch (CVLGD)
- Laboratory Preparedness and Response Branch (CVLGG)
- Biotechnology Core Facility Branch (CVLHD)
- Reagent and Diagnostic Services Branch (CVLHG)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of Communications

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of Communications (OC). OC has established the Office of Emergency Risk Communications by realigning the Emergency Risk Communications Branch formerly of the Center for Preparedness and Response, Division of Emergency Operations. Additionally, OC retitled and updated mission and functional statements updates to some organizational entities.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: D'Artonya Graham, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329; Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the Office of Communications, Immediate Office of the Director, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

Office of Emergency Risk Communications (CAU17). (1) prepares for and coordinates CDC's communication response to public Incident Management System (IMS)

health threats and emergencies, serving as the agency's primary communication liaison with Federal (including through Emergency Support Function #15, External Affairs), state, tribal, local, and territorial, and international partners; (2) identifies, develops, coordinates, and monitors strategies for translation and delivery of CDC's emergency risk communication messages and information to specific audiences for maximum health impact; (3) coordinates and integrates emergency and risk communication activities within CDC to respond to public health emergencies; (4) co-leads the Joint Information Center (JIC) within an IMS during CDC emergency responses; (5) develops emergency risk communication recommended practices and curriculum, and supports emergency risk communication capacity building through technical assistance and training; (6) ensures that CDC's emergency risk communication messages are available, timely, accessible, understandable, culturally appropriate, and actionable; (7) develops and manages channels and partner engagement mechanisms to distribute emergency risk communication messages before, during, and after public health emergencies; (8) creates and manages systems, procedures, processes, and platforms (including CDC's Emergency Preparedness and Response internet site) for CDC's emergency communication activities; (9) manages and implements protocols to clear public health emergency information; (10) conducts research, monitoring, and evaluation to assess awareness, knowledge, attitudes, reactions, and behaviors related to urgent health threats and refine preparedness, readiness, and emergency risk communication strategies and tactics; and (11) supports the development, maintenance, and implementation of policies related to public health emergency risk communication activities.

II. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Office of External Engagement (CAU15) to the Office the CDC Museum (CAU15)

III. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

Office of Communications (CAU). The mission of the Office of the Communications (OC) is to enhance CDC's communication impact, manage the high visibility of the agency and its senior leaders, and guide public health messaging through support to programs. The office: (1) provides leadership, direction, support, and assistance to CDC's Centers, Institute and Offices (CIOs) to implement communication strategies; (2) promotes clear, accessible, and inclusive communication; (3) conducts and promotes health communication science practices to address agency priorities; (4) oversees and manages CDC interactions with news media; (5) develops strategy and oversees communication response for crisis and agency priorities; (6) strategically protects and advances CDC's reputation, credibility and interests; (7) coordinates CDC partnerships to advance communication-related relationships; (8) develops, guides, and implements internal and external public affairs strategies and activities; (9) provides leadership on all aspects of digital communications; (10) provides leadership for emergency and risk communications and CDC's communication response to public IMS health threats and emergencies; and (11) supports or provides communication services, including but not limited to broadcast, multimedia, public information, graphics and design elements, translation, printing, and photography.

Office of the Director (CAU1). (1) manages, directs, and evaluates activities of the OC; (2) makes sure CDC communication activities comply with HHS-established policies; (3) communicates the value and benefits of CDC programs; (4) leads strategic communication activities addressing agency-wide priorities; (5) provides strategic communication support for CDC's emergency responses and JIC; (6) provides reputation-management expertise and counsel; (7) provides leadership and guidance to communicate decisions made by CDC's leadership in an efficient and clear manner; (8) coordinates with CIOs on communication activities; (9) serves as the central point of contact for Office of the Director executive communication, including enterprise communication, speaking engagements, announcements, and speeches; (10) provides communication leadership on equity, healthy equity, diversity, inclusion, and accessibility initiatives; (11) provides leadership and guidance to manage and operate OC's programs, including the areas of fiscal management, human capital, travel, and other administrative services; (12) develops and tracks annual budget and spend plan to fulfill CDC's communication priorities; (13) serves as OC's primary point of contact with CDC's Office of Financial Resources on contracts and budget matters; (14) ensures communication products authored by CDC staff members or published by CDC are released for public use in a timely manner, are of the highest quality, and are scientifically sound, inclusive, and understandable; (15) provides leadership and strategic direction for emergency and risk communication activities; and (16) prepares for and coordinates CDC's communication response to IMS health threats and emergencies, serving as the agency's primary communication liaison with Federal state, tribal, local, and territorial, and international partners.

Office of the CDC Museum (CAU15). (1) manages CDC's scientific museum and learning center, the David J. Sencer CDC Museum; and (2) implements strategies to educate visitors about the value of public health through museum exhibitions, CDC's historical collection, student programs, tours, and other engagement strategies.

Division of Communication Sciences and Services (CAUE). (1) promotes the scientific practice of health communication and disseminates evidence-based knowledge to practitioners of health communication, marketing, and media; (2) provides agency-wide support for communication services including photography, translation, printing, conference materials, and communication consultation/analysis leadership and support; (3) guides CIOs on applying measures of effectiveness for public health communication efforts; and (4) leads CDC's health literacy improvement work and Plain Writing Act implementation.

Communication Support and Services Branch (CAUEC). (1) provides communication consultation and support services (*e.g.,* photography, multi-lingual translation, writing, and editing); (2) manages multi-year, multi-vendor CDC-wide communication contracts for CIOs; (3) oversees agency-wide print management program; and (4) coordinates the materials for use at public health conferences.

IV. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Emergency and Risk Communications Branch (CBCDB) within the Division of Emergency Operations (CBCD), Center for Preparedness and Response (CBC)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of Public Health Data, Surveillance, and Technology

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of Public Health Data, Surveillance, and Technology (OPHDST).

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: D'Artonya Graham, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329; Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the Office of Public Health Data, Surveillance, and Technology, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

- Office of Public Health Data, Surveillance, and Technology (CAK)
- Office of the Director (CAK1)
- Office of the Deputy Director for Technology and Products (CAK12)
- Technology Strategy Office (CAK122)
- Technology Implementation Office (CAK123)
- Office of the Deputy Director of Management and Operations (CAK13)
- Office of Communications (CAK132)
- Management and Operations Office (CAK133)
- Customer Success and Engagement Unit (CAK14)
- Policy, Legislative Affairs, and Partnerships Unit (CAK15)
- Detect and Monitor Division (CAKB)
- Office of the Director (CAKB1)
- Public Health Data Transmission Branch (CAKBB)
- Integrated Monitoring Branch (CAKBC)
- Investigate and Respond Division (CAKC)
- Office of the Director (CAKC1)
- Public Health Investigation Tools Branch (CAKCB)
- Analytics and Operations Tools Branch (CAKCC)
- Inform and Disseminate Division (CAKD)
- Office of the Director (CAKD1)
- Actionable Data Branch (CAKDB)
- Dissemination Technology and Services Branch (CAKDC)
- Data Policy and Standards Division (CAKE)
- Office of the Director (CAKE1)
- Data Standards Branch (CAKEB)
- Data Policy Branch (CAKEC)
- Platforms Division (CAKG)
- Office of the Director (CAKG1)
- Shared Technology Platform Branch (CAKGB)
- Shared Data Platform Branch (CAKGC)

II. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

Office of Public Health Data, Surveillance, and Technology (CAK). The mission of the Office of Public Health Data, Surveillance, and Technology (OPHDST) is to optimize timely access, exchange, and integration of public health data while driving efficiency and consolidation of data and technology systems supported by CDC across all levels of public health and advancing open data and dissemination to inform decision making and action. In summary, the Office ensures the right data, at the right time, is in the right hands so people can make informed decisions. To carry out this mission, OPHDST: (1) serves as the principal advisor to the CDC Director and Immediate Office of the Director (IOD) on public health data, surveillance, and technology; (2) advises the CDC Director and IOD in formulating and communicating data, surveillance, and technology strategic initiatives and policies, including the formulation of the Agency's Public Health Data Strategy; (3) informs and represents the CDC Director and IOD on key public health data, surveillance, and technology issues; (4) provides overall strategic leadership and direction for the Public Health Data Strategy, public health data assets, products, platforms, governance, and policy, as well as statistics, surveillance, advanced analytics, informatics and epidemiology; (5) identifies, facilitates, promotes, leads, and drives cross-center and interagency collaboration, innovation, and new initiatives related to public health data assets, products, platforms, governance, statistics, advanced analytics, surveillance, informatics and epidemiology; (6) coordinates with CDC leaders and public health partners to develop and implement public health data, surveillance, and technology goals and objectives to meet public health core mission needs; (7) identifies public health data, surveillance, advanced analytics, and technology issues of importance and executes strategic initiatives to address them, including developing shared goals and monitoring progress and accomplishments; (8) leads policy, communications, partner engagement, management, and operations for the office; (9) leads the establishment, evaluation, monitoring, and reporting of accountability and measurable outcomes for the Office, including implementation of the Public Health Data Strategy; (10) provides leadership and support to OPHDST components on information resources policy, information security, and shared, collaborative services; (11) integrates security, local governance, and project management across each of OPHDST's investment's life cycle; (12) coordinates technical assistance, support, communication, guidance, and engagement for public health data, surveillance, and technology to ensure alignment with the Public Health Data Strategy with CDC programs; state, tribal, local, and territorial (STLT) agencies, and other external partners or organizations; (13) leads Information Technology and Data Governance coordination to ensure data assets and investments are aligned with the Public Health Data Strategy and priorities, the Data Modernization Initiative (DMI) and Federal requirements; and (14) provides supervision and oversight to the National Center for Health Statistics.

Office of the Director (CAK1). (1) provides strategic direction regarding the Public Health Data Strategy and priorities for public health data, surveillance, analytics, and technology, with the goal to support core public health missions equitably; (2) oversees execution and coordination of priority and strategic activities in areas of public health data, surveillance, advanced analytics, and technology across OPHDST; (3) guides coordination and engagement across Federal and STLT agencies, public health partners, and healthcare entities for public health data, surveillance, and technology; (4) manages, directs, coordinates, and evaluates the activities of the Office; (5) defines goals and objectives for policy formation, scientific oversight, and guidance in program planning and development; (6) provides oversight for the evaluation of the programmatic performance of all OPHDST activities, including DMI; (7) manages intergovernmental and external affairs and cultivates strategic partnerships; (8) ensures scientific quality, integrity, and clearance across the Office; (9) collaborates and consults with other Centers, Institute and Offices (CIOs); STLT health agencies, other Federal agencies, international partners, and other private and public sector partners; (10) represents OPHDST and CDC at professional and scientific meetings, and with private and public partners; (11) administratively hosts and supports CDC's Chief Data Officer and provides leadership, coordination, and consultative services in enterprise analytics, data discovery, data science, data management, and data governance; and (12) engages in HHS data strategy and governance, the Evidence Act and Federal Data Strategy Implementation through agency-wide initiatives including DMI.

Office of the Deputy Director for Technology and Products (CAK12). (1) oversees the execution of the Public Health Data Strategy activities, including the data, technology, platforms, and product strategy for OPHDST and the activities of OPHDST's divisions; (2) provides strategic input and direction, and coordinates the services, tools and products that OPHDST offers to STLT agencies, CDC programs, partners, and the public; (3) leads the establishment, evaluation, monitoring, and reporting of accountability and measurable outcomes for the Office, including implementation of the Public Health Data Strategy; (4) identifies public health data, surveillance, advanced analytics, and technology issues of importance and executes strategic initiatives to address them, including developing shared goals and monitoring progress and accomplishments; (5) provides strategic direction regarding the Public Health Data Strategy; (6) coordinates and oversees product design for OPHDST; (7) provides direct supervision to technology leads and division leads as specified by the CDC Director; (8) provides technical and leadership consultation to technical and product leads to support efforts to meet priority goals and activities; (9) provides technical and subject matter knowledge to inform resource and budget prioritization and decisions; (10) represents Agency and OPHDST with external partners, particularly private industry, and at relevant meetings and conferences; (11) contributes to the hiring of technical leadership for OPHDST; and (12) leads strategic design initiatives that span the OPHDST portfolio.

Technology Strategy Office (CAK122). (1) coordinates and oversees office-wide software architecture and data governance for OPHDST; (2) provides strategic direction for data management for public health data; (3) provides strategic input and technical expertise into the development and execution of the Public Health Data Strategy; (4) leads efforts to strategically improve technology and systems, including health information technology strategy, in coordination with other Federal agencies; (5) coordinates information security policies and procedures with the Office of Chief Information Security Officer; (6) provides information security consultation and guidance to support OPHDST offices and divisions; (7) leads information security certification and accreditation of OPHDST systems and technology; and (8) provides review and approval for third party website and Level III software requests for OPHDST offices and divisions.

Technology Implementation Office (CAK123). (1) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (2) maintains and provides visibility on the integrated technology roadmap across OPHDST products, technology, and tools, and ensures alignment with overall CDC and OPHDST priorities; (3) coordinates technology releases across divisions when necessary; (4) tracks progress against the Public Health Data Strategy or other milestones and goals across OPHDST technology and products; (5) tracks and evaluates progress towards achieving overall strategic vision and metrics to ensure meaningful and timely implementation; (6) coordinates Agency information technology governance strategy via the Information Technology and Data Governance Committee; (7) develops and implement governance frameworks, aligned with the CDC's goals, policies, standards and with clear structure, roles and responsibilities, policies, and procedures, and performance metrics; (8) provides guidance and training to employees and partners on governance policies, procedures, and best practices and facilitate communication and collaboration across the agency; (9) facilitates decision-making by providing partners with relevant information and analysis, and helping to align decisions with the organization's goals and priorities; and (10) ensures that governance processes are transparent and accountable by developing and implementing performance metrics and reporting mechanisms, as well as fostering a culture of integrity and ethical behavior.

Office of the Deputy Director of Management and Operations (CAK13). (1) provides leadership and guidance in the development and implementation of goals, objectives, priorities, policies, program planning, management, and operations of all general activities within the Office; (2) oversees, manages, directs, coordinates, and evaluates all Office management and operations activities; (3) coordinates with all Office units and divisions in determining and interpreting operating policy and in ensuring their respective management input for specific program activity plans are included; (4) provides leadership for implementing statutory and compliance responsibilities across the Office; (5) oversees STLT funding, monitoring, and management and operations units; (6) provides and directs overall internal and external communication strategies for the Office; (7) provides leadership for and assessment of all administrative management activities to assure coordination for all management and program matters, such as coordinating risk management and emergency response activities; (8) provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and general administrative support; (9) directs and coordinates activities in support of the Department's Equal Employment Opportunity program, diversity, equity, inclusion and belonging enhancement and employee professional development opportunities; (10) reviews the effectiveness and efficiency of all administration and operations of OPHDST programs; (11) develops and directs employee

engagement programs for the Office, such as employee recognition programs; (12) analyzes OPHDST workforce, succession, strategic planning systems, and resources on an ongoing basis; (13) provides scientific leadership for the Office, and informs and guides staff on scientific matters; (14) ensures OPHDST produces the highest quality, most useful, and most relevant science possible; (15) manages scientific clearance for OPHDST and assures scientists follow CDC's policies on data release and sharing; (16) oversees and directs Institutional Review Board, Office of Management Budget (OMB) Paperwork Reduction Act, and Confidentiality activities for the Office; and (17) conducts peer review of scientific programs.

Office of Communications (CAK132). (1) coordinates and leads the implementation of CDC-wide communication initiatives and policies, including health literacy, plain language, and CDC branding; (2) executes web development for the OPHDST intranet and SharePoint sites and provides technical assistance and training in accessing and using these resources for internal communication and information sharing; (3) facilitates cross-division and cross-office coordination of health communication activities, sharing of lessons learned, and development of best practices; (4) develops and manages relationships with a wide range of partners and customers, including other government agencies, Federal and STLT departments and agencies, national partners, and private organizations; (5) leads and oversees news media strategy and evaluation, including news response, media monitoring, proactive media engagement, media training, and long lead pitching; (6) leads digital communication and marketing strategies and manages digital channels; (7) leads strategic planning for communications and branding programs and projects for OPHDST and data, surveillance, and technology issues; (8) manages and coordinates clearance of OPHDST print and non-print materials, ensuring adherence to and consistency with CDC and HHS information and publication policies and guidelines; (9) oversees, manages, and executes CDC web and digital governance through matrix management and workgroup structures; (10) provides communication support and technical assistance and training in accessing centralized communication systems available through OPHDST, CDC's Office of Communications (OC), and other offices; (11) provides ongoing communication leadership and support to Office leadership in furthering the Office's mission; (12) provides oversight and approval for CDC logo licensing requests from external partner organizations and involving OPHDST divisions and programs; (13) represents OPHDST on cross-CIOs and external committees, workgroups, and at conferences relating to health communication activities; (14) serves as primary liaison between OPHDST and CDC's OC; and (15) provides strategic communication direction and technical assistance across OPHDST to ensure all health communication activities are evidence-based and demonstrate impact.

Office of Management and Operations (CAK133). (1) coordinates and oversees OPHDST-wide program, administrative, and management support services in the areas of fiscal management, budget planning and execution, personnel, travel, performance, Freedom of Information Act (FOIA), workforce planning, diversity, equity, inclusion, accessibility, and belonging, space, and other administrative services; (2) coordinates OPHDST requirements relating to contracts, grants, cooperative agreements, Inter-Agency Agreements/ Intra-Departmental Delegation of Authorities, and reimbursable agreements; (3) manages annual budget formulation, planning, and budget oversight; (4) develops and implements financial, human capital, facility, and administrative policies, procedures, and operations, as appropriate and prepares special reports and studies, as required; (5) maintains liaison with related Office and CIO staff and other officials of CDC, STLT, national partners, and Federal agencies; (6) plans, coordinates, and provides overall management, operations, and administrative support, advice, and guidance to OPHDST; (7) employs effective evaluation techniques that assess the progress, impact, and success of STLT modernization activities; (8) provides fiscal stewardship to support STLT modernization; (9) coordinates with Public Health Infrastructure Center, Epidemiology and Laboratory Capacity, and other funding mechanisms to ensure guidance, requirements, and metrics align with the Public Health Data Strategy and DMI goals and priorities, as well as other data related standards; and (10) provides learning and development programs and opportunities to OPHDST staff.

Customer Success and Engagement Unit (CAK13). (1) leads engagement and coordination for OPHDST focused on customer success management to include CDC, Federal, STLT public health agencies, and private partners with an emphasis on diversity, equity, inclusion and belonging; (2) leads transformation and change management strategies to implement Public Health Data Strategy Goals and DMI; (3) collects and synthesize customer perspectives including needs, pain points, and goals for decision-making processes including OPHDST strategic planning and product development processes; (4) ensures customer needs are addressed through established regular feedback processes to collect and analyze satisfaction levels, identify areas for improvement, develop action plans in collaboration with product teams; (5) manages customer relationships and ensure that customers are successful in achieving their desired outcomes through the use of products and services by providing customer service, training, resources, and technical assistance to support the journey from onboarding, ongoing support, and retention; (6) builds and maintain strong customer relationships to fully understand needs, goals, and challenges; (7) tracks and report on key performance indicators or metrics related to customer success and satisfaction; (8) facilitates and leverages insights from user panels consisting of representative users to provide insights and feedback on the usability, functionality, and overall user experience of products to the OPHDST product teams; (9) collaborates across CDC and STLT partners to facilitate a coordinated, streamlined approach to data modernization activities aligned to the Public Health Data Strategy; and (10) develops strategies that promote a health equity lens to advance modernization efforts across all customers.

Policy, Legislative Affairs, and Partnerships Unit (CAK14). (1) manages policy and legislative affairs for OPHDST; (2) leads Office-wide partnership efforts, including maintaining current partnerships and fostering new partnership opportunities, including private partnerships; (3) provides technical assistance on legislation; (4) leads and coordinates issues management for OPHDST across CIOs and with the CDC IOD, including management of the special assistants for the OPHDST director; (5) manages all oversight requests from Congress, the Government Accountability Office and Office of Inspector General; (6) leads Office-wide policy and legislative affairs efforts including leading the budget justifications for HHS, OMB and Congress, all Congressional briefings, requests, and correspondence, FOIA; (7) leads strategic legislative affairs for the

Office with a focus on securing long-term sustained funding and the authorities necessary for CDC to achieve its mission; and (8) leads the development of all policy materials and policy coordination across CDC, including with the CDC IOD and other CIOs.

Detect and Monitor Division (CAKB). (1) enables transmission of core data sources for monitoring and rapid detection of public health events at the Federal, state, and local levels; (2) conducts integrated surveillance to track diseases and conditions nationally; and (3) improves surveillance capabilities of STLTs, Federal and global partners, and internal CDC programs, innovating as needed.

Office of Director (CAKB1). (1) provides consultation, strategic guidance, and subject matter expertise to the OPHDST director and deputy directors to execute OPHDST priorities; (2) represents Agency and OPHDST with external partners, including STLT partners; (3) provides leadership to and supervision of the division's branches; (4) works with OPHDST/Office of Director (OD) to ensure hiring, spending plans and budgets are in line with OPHDST and division strategies and priorities; (5) responsible for the execution of OPHDST strategy goals and milestones that align with the Detect and Monitor Division and supports priority goals of other divisions within OPHDST; (6) develops and oversees execution strategy for meeting the Public Health Data Strategy goals, and improving surveillance capabilities; (7) proposes resource priorities throughout the budget cycle; (8) ensures scientific quality, integrity, and clearance coordination across the division; (9) identifies dependencies and coordinates synergies between Detect and Monitor Division and OPHDST offices and divisions; (10) ensures close collaboration and coordination of surveillance activities with other partners, including STLTs, CDC programs, and others as indicated; and (11) ensures communications are aligned with OPHDST/OD and shared across the Detect and Monitor Division.

Public Health Data Transmission Branch (CAKBB). (1) supports the onboarding and transmission of core data sources needed for surveillance of public health events, including case and lab data from STLTs to CDC; (2) supports development, onboarding and use of electronic case reporting data; (3) develops robust data engineering and mapping efforts to maximize use of public health data available within jurisdictions by OPHDST and CDC programs, including for core and program-specific case data; (4) modernizes approaches and tools for public health core data ingestion and to improve data quality, completeness, and timeliness; (5) provides notifiable case data to partners within OPHDST, CDC programs, response, and STLT partners in near real-time; (6) onboards and improves quality of lab data and other data sources to support situational awareness in CDC and across STLTs; (7) takes a human-centered design approach, engaging with customers and end-users; (8) incorporates advanced analytics, machine learning and other innovative approaches to enable automated and robust use of data; (9) coordinates with divisions and OPHDST leadership to identify priority needs and implement plans; and (10) identifies new and novel data sources to promote the core public health missions to detect and monitor public health missions to detect and monitor.

Integrated Monitoring Branch (CAKBC). (1) conducts and enables integrated surveillance across data sources; (2) identifies and experiments with new data sources for integrated surveillance; (3) develops and refines tools and approaches used for national surveillance; (4) engages with STLTs, CDC programs and global partners to support integrated monitoring for routine and emergent public health needs; (5) provides training in surveillance capabilities for STLTs, Federal partners, and CDC programs and offices; (6) takes a human-centered design approach to engage with customers and end-users; (7) incorporates advanced analytics, machine learning and other innovative approaches to enable automated and robust use of data; and (8) coordinates with divisions and OPHDST leadership to identify priority needs and implement plans.

Investigate and Respond Division (CAKC). (1) empowers STLTs and other public health actors with the tools and insights to investigate, prevent, and minimize public health risks; and (2) innovates to bolster future responses and public health's ability to investigate cases, outbreaks, and public health threats.

Office of Director (CAKC1). (1) provides consultation, strategic guidance, and subject matter expertise to the OPHDST director and deputy directors to execute on OPHDST priorities; (2) represents Agency and OPHDST with external partners, including STLT partners; (3) provides leadership to and supervision of the division's branches; (4) works with OPHDST/OD to ensure hiring, spending plans and budgets are in line with overall division strategies and priorities; (5) ensures the OPHDST strategy is executed in the Investigation and Respond Division and aligned with overall CDC and the Public Health Data Strategy goals; (6) develops execution strategy for improving surveillance capabilities; (7) proposes resource priorities throughout the budget cycle; (8) ensures scientific quality, integrity, and clearance across the division; (9) identifies dependencies and coordinates synergies between Investigate and Respond and OPHDST offices and divisions; and (10) ensures communications are aligned OPHDST/OD and shared across the Investigate and Respond Division.

Public Health Investigation Tools Branch (CAKCB). (1) develops technology that enables jurisdictions to ingest and harmonize data across data sources; (2) develops technology and tools that enable and make it easier for STLTs, CDC programs, and other partners to identify and conduct case, disease, and public health surveillance as well as conduct public health investigations; (3) takes a human-centered design approach, engaging with end users to understand priority needs and continually develop and test solutions; (4) facilitates evaluation of solutions to assess impact of new or enhanced tools and solutions; (5) works with private partners to identify and develop innovation and new tools and solutions; (6) develops technology and tools to automate processes to reduce the burden of day to day STLT functions to investigate and respond to public health threats; (7) develops technology and tools that promote and advance the ability to ensure cases and public health threats can be reported, investigated and responded to in vulnerable settings and populations; and (8) develops and implement a strategy to prioritize, identify, test, and develop innovative tools and solutions that support case and public health threat investigations, particularly at the jurisdictional level and in vulnerable and under-resourced areas and settings.

Analytics and Operations Tools Branch (CAKCC). (1) develops technology and tools that enable jurisdictions to easily implement countermeasures, track impact, and operationalize response activities (*e.g.,* planning of testing, vaccines, education initiatives) to promote public health and advance health equity; (2) develops and implement a strategy to prioritize, identify, test, and develop advanced analytic and other automated solutions that empower and support jurisdictional needs to access, use, analyze, link, and integrate data; (3) takes a human-

centered design approach, engaging with end users to understand needs and continually test solutions; and (4) works with private partners to identify and develop innovation and new tools and solutions.

Inform and Disseminate Division (CAKD). (1) provides the public and public health decision makers timely and actionable data, analytics, and insights to guide decisions; (2) engages with CDC programs and other end users to ensure the agency maintains a relevant and accessible data portfolio and analytic capabilities that can be leveraged to address key public health questions; and (3) provides data and data products in multiple ways to meet users' needs and align with their data management and analytic capabilities, including providing access to self-service data, derived analytic products and data visualizations.

Office of Director (CAKD1). (1) provides consultation, strategic guidance, and subject matter expertise to the OPHDST director and deputy directors to execute on OPHDST priorities; (2) represents Agency and OPHDST with external partners, including STLT partners; (3) provides leadership to and supervision of the division's branches; (4) works with OPHDST/OD to ensure hiring, spending plans and budgets are in line with overall division strategies and priorities; (5) ensures the OPHDST strategy is executed in the Inform and Disseminate Division and aligned with overall CDC and Public Health Data Strategy goals; (6) develops execution strategy for improving surveillance capabilities; (7) proposes resource priorities throughout the budget cycle; (8) ensures scientific quality, integrity, and clearance across the division; (9) identifies dependencies and coordinates synergies between Inform and Disseminate, OPHDST offices and divisions and other CDC programs; and (10) ensures communications are aligned with OPHDST/OD and shared across the Inform and Disseminate Division.

Actionable Data Branch (CAKDB). (1) acquires and manages high-value data assets that have wide applicability for use by CDC programs and other users; (2) works with Data Policy and Standards Division to use best practices for data acquisition and governance that maximizes use of the data by the agency and partners and ensures data security and alignment with acquisition agreements; (3) continually evaluates overall data portfolio to ensure data assets are of sufficient quality, address key public health use cases and support health equity-related analyses and aims; (4) works with OPHDST divisions, the CDC Office of the Chief Information Officer and other partners to ensure access to effective and state-of-the-art analytic tools and methods; (5) maintains and leverages expertise in data science, data analytics, and epidemiology to provide a continuum of analytic and scientific services that address major public health surveillance and research questions; (6) transforms data into useful data products and visualizations that serve end-users; (7) provides training on using self-serve data for customers; and (8) ensures customers' needs are timely and effectively addressed through the use of standardized processes and customer relationship management tools.

Dissemination Technology and Services Branch (CAKDC). (1) identifies and implements best practices for sharing data, data products, and resultant information with the public and other partners to inform action; (2) takes a human-centered design approach to develop and maintain technology and tools that make self-serve data easily accessible to the public and other partners; (3) works with CDC programs to develop integrated data products that leverage diverse data sources to showcase findings across disease types and can be used to support public health emergency response activities; and (4) develops, implements, and evaluates comprehensive communication strategies to enhance interpretation of data to inform action.

Data Policy and Standards Division (CAKE). (1) sets and interprets data and technology policy and standards to ensure data transmitted across the public health ecosystem is robust, interoperable, and nimble; (2) enables agency-wide decision-making reflecting actionable data governance; (3) engages external partners in developing and updating data policy and standards to address evolving needs and opportunities in public health; and (4) leads CDC's interoperability and data policy strategies.

Office of Director (CAKE1). (1) provides consultation, strategic guidance, and subject matter expertise to the OPHDST director and deputy directors to execute on OPHDST priorities; (2) represents Agency and OPHDST with external partners, including STLT partners; (3) provides leadership to and supervision of the division's branches; (4) works with OPHDST/OD to ensure hiring, spending plans, and budgets are in line with overall division strategies and priorities; (5) ensures the OPHDST strategy is executed in the Data Policy and Standards Division and aligned with overall CDC and Public Health Data Strategy goals; (6) develops execution strategy for improving policy capabilities in coordination with OPHDST Policy, Legislative Affairs, and Partnerships unit; (7) proposes resource priorities throughout the budget cycle; (8) ensures scientific quality, integrity, and clearance across the division; (9) identifies dependencies and coordinates synergies between the Data Policy and Standards Division and OPHDST offices and divisions; and (10) ensures communications are aligned OPHDST/OD and shared across the Data Policy and Standards Division.

Data Standards Branch (CAKEB). (1) works with internal and external partners to define, improve, and update standards for the public health community; (2) develops new vocabulary standards for public health exchange and promotes the adoption of HL7 standards and best practices; (3) defines minimum data elements for case and laboratory data collection efforts within CDC; (4) promotes the adoption of and compliance with internal agency policies for minimum data elements for notifiable and non-notifiable disease collections; and (5) collaborates with the Technology Strategy and Standards Office to develop and adopt interoperability standards for systems and health information technology functional services.

Data Policy Branch (CAKEC). (1) develops, implements, and monitors CDC data sharing policies, including modular data use agreements, data access agreements, funding requirements, and open data policies to promote rapid data access and use; (2) directs the Office's data access policy to ensure open data (3) engages with STLT lawyers to ensure maximal data exchange between public health partners; (4) applies data policies to the formal procurement of data on behalf of the agency and to the acquisition of non-purchased data sets at CDC; (5) improves interoperability between public health, healthcare, laboratories, and other data exchange partners by developing and maintaining a CDC interoperability strategy that leverages regulatory frameworks and cross-agency program incentives; (6) ensures data is acquired, shared, and used in an ethical manner that promotes health equity; and (7) builds data policy into systems to make it easy to understand and operationalize policy frameworks for technical and scientific solutions.

Platforms Division (CAKG). (1) procures and develops tools, services, machine learning models, and infrastructure that accelerates the execution of the other OPHDST

division's work; (2) adds new capabilities to products and services that the OPHDST divisions deliver; (3) in coordination with the OD, develops a cross-division technical strategy as required by the Public Health Data Strategy and in anticipation future public health needs; (4) builds tools and services to ensure data quality and integrity across the division; and (5) leads, promotes, and supports the Data Engineering and Data Science community of practices within the division.

Office of Director (CAKG1). (1) provides consultation, strategic guidance, and subject matter expertise to the OPHDST director and deputy directors to execute on OPHDST priorities; (2) represents CDC and OPHDST with external partners, including STLT partners; (3) provides leadership to and supervision of the division's branches; (4) works with OPHDST/OD to ensure hiring, spending plans, and budgets are in line with overall division strategies and priorities; (5) ensures the OPHDST strategy is executed in the Platforms Division and aligned with overall CDC and Public Health Data Strategy goals; (6) proposes resource priorities throughout the budget cycle; (7) ensures data quality and integrity across the division; (8) identifies dependencies and coordinates synergies between Platforms and OPHDST offices and divisions; (9) ensures communications are aligned OPHDST/OD and shared across the Platforms Division; and (10) leads, promotes, and supports the Data Engineering and Data Science community of practices within the division.

Shared Technology Platform Branch (CAKGB). (1) builds and procures tools, services, and infrastructure that are used across divisions and that support the Public Health Data Strategy; (2) in coordination with the OPHDST/OD, add new capabilities to products and services that the divisions deliver; (3) take a human-centered design approach, engaging with customers and end users; (4) in coordination with the OD and other OPHDST divisions, works on core technology that promotes and assists interoperability between healthcare and public health as well as between public health agencies; and (5) develops tools to observe data quality and integrity across OPHDST.

Shared Data Platform Branch (CAKGC). (1) builds and procures data terminology and models that are used across divisions and to support the Public Health Data Strategy; (2) innovates the use of statistical and machine learning techniques for public health purposes; (3) in coordination with the OD, add new capabilities to products and services that the OPHDST divisions deliver; (4) develops approaches to measure data quality and integrity across OPHDST; and (5) leads, promotes, and supports the Data Engineering and Data Science community of practices within the division.

V. Under Part C, Section C–B, Organization and Functions, the following organizational units are deleted in their entirety:

- Enterprise Data Office (CAJR17) within the Office of the Director, Office of the Chief Operating Officer.
- Division of Health Informatics and Surveillance Systems (CPNE) within the Center for Surveillance, Epidemiology and Laboratory Services (CPN), Deputy Director for Public Health Science and Surveillance.
- Information Systems Branch (CPNEB) within the Center for Surveillance, Epidemiology and Laboratory Services (CPN), Deputy Director for Public Health Science and Surveillance.
- Surveillance and Data Branch (CPNEC) within the Center for Surveillance, Epidemiology and Laboratory Services (CPN), Deputy Director for Public Health Science and Surveillance.
- Partnerships and Evaluation Branch (CPNED) within the Center for Surveillance, Epidemiology and Laboratory Services (CPN), Deputy Director for Public Health Science and Surveillance.

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce, henceforth referred to as the Public Health Infrastructure Center (PHIC). PHIC reorganized to enhance and enable coordination for partners collectively working to bolster the Nation's public health infrastructure.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: D'Artonya Graham, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

- National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce (CH)
- Office of the Director (CH1)
- Office of Tribal Affairs and Strategic Alliances (CH12)
- Office of Rural Health (CH13)
- Division of Jurisdictional Support (CHB)
- Office of the Director (CHB1)
- Capacity Building and Strategic Resource Management Branch (CHBB)

- Public Health Infrastructure Capacity Building and Implementation Branch (CHBC)
- Program Services and Innovation Branch (CHBD)
- Division of Partnership Support (CHC)
- Office of the Director (CHC1)
- Partnership Resources Management Branch (CHCB)
- Partnerships and Performance Improvement Branch (CHCC)
- Division of Workforce Development (CHD)
- Office of the Director (CHD1)
- Education and Training Services Branch (CHDB)
- Epidemiology and Laboratory Workforce Branch (CHDC)
- Field Services Workforce Branch (CHDD)
- Public Health Workforce Branch (CHDE

II. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce (CH). The National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce, henceforth referred to as the Public Health Infrastructure Center (PHIC), strengthens the Nation's public health infrastructure by providing underlying systems, processes, and expertise across critical cross-cutting functional areas and bolstering the agency's core capabilities. In carrying out its mission, PHIC: (1) engages and coordinates relationships with jurisdictions and CDC's public health partners to provide enterprise management of programs that build and maintain the Nation's public health infrastructure (PHI); (2) enhances experiences for funded partners and state, tribal, local, and territorial (STLT) jurisdictions; (3) develops strategic goals and objectives, provides leadership, scientific oversight, and guidance for PHI; (4) proactively engages and collaborates with Centers, Institute, and Offices (CIOs) across the agency to support jurisdictions, external partnerships, and CDC's internal workforce; (5) streamlines and coordinates cross-cutting funding mechanisms in support of PHI; (6) provides support through specific workforce development programming, guidance, technical assistance (TA), and funding for jurisdictions; (7) invests in internal workforce development programs that directly reinforce CDC's capacity to support jurisdictions; (8) identifies and supports implementation of cross-cutting evidence-based approaches to improve public health agency and system performance; (9) establishes and maintains effective strategic relationships, partnerships, and alliances with organizational elements of the public health system; and (10) leads evaluation and reporting activities on the effectiveness of partnership engagement and performance of funding mechanisms.

Office of the Director (CH1). (1) provides the overarching vision and strategic direction for PHIC; (2) collaborates and consults with other Centers, working groups, state and local health departments, other Federal agencies, and other partners, to accomplish the mission of the center; (3) manages, directs, and coordinates the policy, strategy, operations, and fiscal activities of PHIC; (4) works with CDC leadership to ensure spend plans, budget planning, and budget execution are in line with the overall public health infrastructure strategies and priorities; (5) provides and coordinates Center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; (6) manages the coordination of workforce development and succession planning activities, and provides human capital management, planning, and training consultation services; (7) co-develops execution strategies for PHIC with the division directors; (8) ensures that the PHIC strategy is executed by the divisions and aligned with overall CDC goals; (9) evaluates the strategies, focus, and prioritization of the division research, program, and corresponding budget activities; (10) defines goals and objectives for policy formation, scientific oversight, and guidance in program planning and development, ensuring that policy development is consistent and appropriate; (11) reviews, prepares, coordinates, and develops congressional testimony and briefing materials; (12) establishes and implements a communications strategy in support of PHIC overarching goals and priorities, ensuring that communication distributed by the Center is timely, accurate, clear and relevant to intended audiences; (13) leads infusion of health equity principles into the planning, implementation, and evaluation of activities and engagement in all parts of PHIC; (14) provides oversight on scientific clearance and ensures quality of scientific work through setting a scientific agenda; (15) represents PHIC and at times CDC at professional and scientific meetings, within and outside CDC; (16) sets the strategy for funding through grants and cooperative agreements (CoAgs) and track accountability measures across PHIC and CDC while reducing administrative burden to recipients; (17) promotes and advances Diversity, Equity, Inclusion, Accessibility, and Belonging; and (18) establishes a menu of common measures and indicators for evaluation of PHI-related programs to measure success and gaps for building foundational capabilities.

Office of Tribal Affairs and Strategic Alliances (CH12). (1) serves as CDC's principal point of contact for tribes and tribal serving organizations; (2) provides CDC-wide leadership for CDCs tribal related partnerships and activities; (3) affirms the government-to-government relationship between CDC and American Indian/Alaska Native (AI/AN) tribes; (4) connects tribal nations and tribal-serving organizations to CDC programs by advancing connections, providing expertise, and increasing resources to improve cross-cutting tribal public health infrastructure helping to ensure AI/AN communities receive public health services that keep them safe and healthy; (5) serves as CDC's lead office and liaison on tribal public health issues and policies; (6) collaborates and coordinates with Office of Science/HHS and other agency tribal liaisons on HHS-wide tribal activities; (7) develops and disseminates tribal public health strategies, policies, programs, and systems improvements; (8) establishes partnerships and provides subject matter expertise and technical assistance to CDC programs and external partners; (9) enhances government-to-government relationships through policy and consultation with tribal nations; and (10) supports implementation of culturally responsive and traditional practices through evidence- and practice-based models.

Office of Rural Health (CH13). (1) provides rural public health strategic direction for CDC; (2) coordinates rural-focused public health activities across CDC with a special emphasis on identifying and addressing rural health disparities; (3) builds CDC capacity to address rurality in scientific, programmatic, policy, and communications activities; (4) identifies rural public health best practices, lessons learned, innovative, and successful programs for dissemination; (5) engages with governmental and non-governmental partners and rural-serving organizations to improve rural public health services and infrastructure; (6) provides technical assistance to CDC programs to ensure integration of rural

considerations into CDC grants, CoAgs, and contracts; and (7) works with CDC workforce development initiatives to expand the pool of practitioners with rural public health training and expertise.

Division of Jurisdictional Support (CHB). The Division of Jurisdictional Support (DJS) ensures coordinated support so public health agencies at all levels across the United States have the necessary infrastructure to deliver timely public health services. The Division will support STLT and freely associated state health department jurisdictions to build and maintain their public health infrastructure by managing and providing large non-categorial grants and CoAgs, TA, and excellent customer service. The division will: (1) improve interagency coordination of non-categorial funding mechanisms focused on the Foundational Public Health Services; (2) reduce administrative barriers and improve customer service; and (3) streamline and enhance programmatic reporting.

Office of the Director (CHB1). (1) develops an efficient process for initiating, awarding, and managing non-categorial public health infrastructure funding to STLT jurisdictional health departments; (2) manages and implements grants management functions (monitoring, compliance, and administration) for CDC's cross-cutting/non-categorial grants and CoAgs; (3) coordinates with relevant cross-agency and public health infrastructure subject matter experts to inform notice of funding opportunity development and award processing; (4) provides TA specific to the congressional intent of the division grants and CoAgs assigned to DJS; (5) oversees and manages DJS clearance process for scientific, technical, and programmatic documents; (6) manages DJS communication activities, including communication product development, promotion and dissemination strategies, media relations coordination, and DJS websites; (7) reviews, prepares, coordinates, and develops congressional testimony and briefing materials; (8) coordinates DJS budget formulation/negotiation related to program initiatives and goals management; (9) plans, coordinates, and provides administrative management support, advice, and guidance to DJS in the areas of fiscal management, procurement, property management, personnel, travel, and other administrative services; and (10) provides fiscal management and stewardship of grants, contracts, and CoAgs; and materiel management, and interagency agreements.

Capacity Building & Strategic Resource Management Branch (CHBB). (1) complies with congressional requirements for reporting and performance measures; (2) interacts with grantees and recipients to support basic functions of the grants or CoAgs managed and overseen by the Branch; (3) provides data analytics for jurisdictional trends and conducts evaluation activities for branch grants and CoAgs; and (4) provides performance management, evaluation, and review of the grantee performance and capacity to enhance the utilization of resources.

Public Health Infrastructure Capacity Building and Implementation Branch (CHBC). (1) complies with congressional requirements for reporting and performance measures; (2) interacts with grantees and recipients to support basic functions of the grants or CoAgs managed and overseen by the Branch; and (3) provides data analytics for jurisdictional trends and conducts evaluation activities to improve program operations and implementation.

Program Services and Innovation Branch (CHBD). (1) complies with congressional requirements for reporting and performance measures; (2) interacts with grantees and recipients to support basic functions of the grants or CoAgs managed and overseen by the Branch; (3) provides data analytics for jurisdictional trends and conducts evaluation activities for branch grants and CoAgs; and (4) promotes continuous improvement of program services by serving as an incubator for new tools and solutions.

Division of Partnership Support (CHC). The Division of Partnership Support (DPS) leverages partnerships to support CDC in developing the capacity of the public health system and STLT territorial departments of health (and ministries) to sustain and strengthen public health foundational, infrastructure, and workforce capabilities. In addition, DPS: (1) provides capacity-building assistance to the field to improve public health performance; and (2) develops capacity through delivery mechanisms that include TA (consultation and services), training (skills building), technology and information transfer, and funding.

Office of the Director (CHC1). (1) provides oversight and guidance of its branches, offices, and units; (2) works closely with divisions and other CIOs to offer support, guidance, collaboration, and expertise on partnership development and improvement; (3) facilitates TA, training, information, funding, and technology transfer for U.S. territories and freely associated states; (4) provides legal TA in STLT jurisdictions; (5) oversees and manages DPS clearance process for scientific, technical, and programmatic documents; (6) manages DPS communication activities, including communication product development, promotion and dissemination strategies, media relations coordination, and DPS websites; (7) reviews, prepares, coordinates, and develops congressional testimony and briefing materials; (8) coordinates DPS budget formulation/negotiation related to program initiatives and goals management; (9) plans, coordinates, and provides administrative management support, advice, and guidance to DPS in the areas of fiscal management, procurement, property management, personnel, travel, and other administrative services; and (10) provides fiscal management and stewardship of grants, contracts, and CoAgs; and materiel management, and interagency agreements.

Partnership Resources Management Branch (CHCB). (1) coordinates CDC-wide funding for regional and national non-governmental public health partner organizations; (2) monitors programmatic activities of funded partner organizations to assure program objectives and key performance indicators are achieved; (3) develops, designs, and deploys TA related to compliance and monitoring for programs and funding mechanisms with STLTs; (4) implements process improvements and lessons learned for partner programs, mechanisms, and relationships; (5) supports and manages partner CoAgs and other mechanisms for fiscal support and monitoring of expenditures; (6) provides leadership in evaluating and improving the performance of funded partnerships; (7) supports and provides oversight for funding mechanisms with academic partner organizations to enhance development of public health and health professionals skilled in improving the health of populations; (8) coordinates the development of Notices of Funding Opportunity, Interim Progress Report Guidance, and Continuation Applications for partner organizations; (9) develops materials to support partners and collaborates in documenting partnership tools and resources; (10) assesses TA needs of recipients and develops strategies to address those needs; (11) complies with Federal requirements for awarding, monitoring, and reporting activities under Federal funding mechanisms; and (12) interacts with grantees, recipients, and Federal staff to provide guidance

and support of the grants and CoAgs managed and overseen by the Branch.

Partnerships and Performance Improvement Branch (CHCC). (1) proactively explores, engages, and leverages partnerships with external agencies and organizations to support current and emerging priorities, including emergency response activations, health equity, social determinants of health, and other public health priorities; (2) provides leadership and subject matter expertise on public health practice and performance for CDC, external agencies and organizations, and the field to explore innovations and advance efficiencies and effectiveness of public health programs, services, and business processes; (3) advances the professional development and capabilities of the public health workforce through training and the support of frameworks and tools that are used by STLT public health agencies; (4) promotes practices and foster cross-sector relationships (*e.g.,* healthcare, social services, transportation, housing, behavioral health) to better address equity, the social and structural determinants of health, and population health outcomes; (5) provides support, guidance, and tools within CDC and for use in STLT jurisdictions that strengthen collaborations and leverage partnerships that will improve the public health system; (6) serves as a lead and subject matter expert for CDC support of the national accreditation program for health departments and advance STLT agency readiness to meet national standards and achieve and sustain accreditation; (7) conducts or leverages assessments and uses data to identify opportunities to improve public health systems and public health agency structure, operations, and performance; and (8) develops and disseminates evidence of successful public health agency and system improvement strategies and partnership and collaboration practices

Division of Workforce Development (CHD). The Division of Workforce Development (DWD) aims to improve health outcomes through a diverse, flexible, and highly trained public health workforce. In carrying out its mission, DWD: (1) plans, directs, and manages programs that develop the current and future public health workforce; (2) provides leadership in scientific workforce education and development, including quality assurance, technical consultation, and evaluation; and (3) provides leadership to facilitate or coordinate CDC and partner strategic workforce initiatives to increase the capability of the current workforce, expand pipeline programs to recruit new talent, strengthen systems to support the workforce, and leverage partnerships to maximally achieve goals.

Office of the Director (CHD1). (1) provides executive-level scientific leadership, managerial oversight, and strategic direction for DWD; (2) develops goals and objectives that promote principles of diversity and health equity, and provides leadership, policy formation, scientific oversight, and guidance in scientific education and professional development program planning and development; (3) plans, coordinates, and develops workforce-related research for DWD; (4) ensures adherence and provides training to DWD on CDC and HHS science-related policies; (5) oversees and manages DWD clearance process for scientific, technical, and programmatic documents; (6) manages DWD communication activities, including communication product development, promotion and dissemination strategies, media relations coordination, and DWD websites; (7) responds to Freedom of Information Act requests and controlled correspondence; (8) coordinates all DWD program reviews; (9) reviews, prepares, coordinates, and develops congressional testimony and briefing materials; (10) leads division programmatic evaluation activities, assists DWD programs in establishing performance metrics, and coordinates regular reviews with programs to ascertain status on meeting of the metrics; (11) coordinates DWD budget formulation/negotiation related to program initiatives and goals management; (12) ensures/promotes the use of best practices in scientific education and professional development processes, services, and products; (13) provides leadership and guidance on new developments and national trends for public health workforce education and training; (14) establishes policies and standards for public health education and training activities/initiatives, including but not limited to, competency development, quality assurance, and evaluation, and works collaboratively within DWD and other components of CDC to ensure their implementation and adoption; (15) develops and implements a crosscutting framework for planning, implementing, and evaluating fellowship training programs that provide service to the organizations where fellows are assigned and the communities they serve, and are responsive to the needs of CDC's internal workforce and to the needs of DWD's external partners; (16) manages pilot fellowship programs in early stages of development, as needed; (17) develops and manages unified DWD-wide administrative systems and supports the commitment of resources for application development; (18) plans, coordinates, and provides administrative management support, advice, and guidance to DWD in the areas of fiscal management, procurement, property management, personnel, travel, and other administrative services; (19) provides fiscal management and stewardship of grants, contracts, and CoAgs; and materiel management, and interagency agreements; (20) coordinates management information systems and analyses of data for improved utilization of DWD resources; (21) directs systems analysis and design, programming, and systems training as it relates to implementation of new and existing administrative, management, and executive information systems; (22) provides leadership to coordinate CDC and partner strategic workforce initiatives to increase capability of existing workforce, expand pipeline programs to recruit new talent, and strengthen systems to support the workforce; (23) provides strategic coordination of fellowship recruitment activities, marketing and materials development, and engagement with potential fellowship applicants; and (24) provides equitable opportunities for staff professional development (*e.g.,* training, coaching, and mentoring).

Education and Training Services Branch (CHDB). (1) plans, directs, and manages training design, development, consultation, and delivery, and accredits educational activities for entry level public health professionals and the existing public health workforce; (2) identifies and implements best practices and methods for developing the public health workforce; (3) develops evidence-based policies and standards for public health education and training activities and initiatives, including but not limited to, competency development, quality assurance, and evaluation, and provides TA within DWD and other components of CDC to ensure their implementation and adoption; (4) develops and maintains appropriate liaisons with all fellowship programs in DWD and provides TA to other programs across the agency to ensure the development of rigorous educational programs based on the science of adult learning and instructional technology; (5) facilitates a cross-cutting approach and sharing of educational/evaluation lessons learned and tools across DWD programs, as well as other programs

across the agency; (6) provides guidance in planning and implementation of the educational components of complex learning systems and processes to support the public health workforce to ensure data requirements are consistent with the evaluation framework and capture educational outcomes of learners; (7) maintains knowledge of continuing education standards and applies quality assurance practices required to uphold national accreditations; (8) assesses need and demand for additional accreditations to support professional license and certification needs of technical and professional staff within the public health workforce; (9) develops and maintains internal and external partnerships to foster best practices in the design and delivery of educational activities and training; (10) maintains knowledge of information technology and learning standards as they apply to education and training to demonstrate and promote compliance and best practices by CDC programs; (11) applies the principles of instructional systems design and learning theory to design, develop, deliver, and evaluate informational and instructional products; (12) implements and maintains technology-based systems to support learners; (13) curates and promotes quality educational opportunities and resources for learners across public health and healthcare; (14) adapts information systems and processes to reflect current best practices and adherence to accreditation requirements; and (15) provides TA and guidance to learners, course providers, and learning group administrators for DWD learning systems.

Epidemiology and Laboratory Workforce Branch (CHC). (1) plans, directs, and manages CDC-wide training and service programs for teaching and training future public health professionals, and supports the existing workforce; (2) plans, directs, and evaluates middle school and high school student program pipeline activities intended to increase the number of individuals aware of and choosing a career in public health; (3) sponsors complementary activities to train teachers to develop lesson plans of public health significance for middle and high school students; (4) develops and implements a formal plan to evaluate the effectiveness of all fellowship program activities; (5) conducts site visits and maintains liaison with supervisors of Epidemic Intelligence Service Officer (EISOs) and Laboratory Leadership Service (LLS) fellows within CDC and in field assignments; (6) coordinates the assignment and deployment of EISOs and LLS fellows in response to natural disasters, terrorist events, and other large scale public health emergencies; (7) provides TA, consultation, resources, and training for DWD, other components of CDC, and the broader health workforce (*e.g.,* state and local workers), including, but not limited to the development and dissemination of standard curricula, training, and related materials, in epidemiology; (8) maintains liaison with alumni within and outside CDC to assist with training, recruitment, and promotional activities; (9) responds to domestic and international requests for assistance and consultation (*e.g.,* Epi-Aids, Lab-Aids); (10) maintains liaison with other governmental agencies, academic institutions and organizations, state and local health agencies, private health organizations, professional organizations, and other outside groups; (11) assumes an active national and international leadership role in applied epidemiology training; and (12) collaborates, as appropriate, with the CDC Immediate Office of the Director (CDC IOD), other CIOs, and domestic and international agencies to carry out the functions of the branch

Field Services Workforce Branch (CHDD). (1) leads and manages the Public Health Associate Program; (2) coordinates across CDC, STLT health agencies, and other non-governmental public health entities to support the temporary and ongoing placement of CDC field staff within STLT and non-governmental public health agencies; (3) conducts site visits with CDC field staff and maintains liaison with field site placement reporting supervisors; (4) tracks, assesses, and reports on the demographics and needs of CDC field staff; and (5) develops and disseminates information and tools to support CDC field staff.

Public Health Workforce Branch (CHDE). (1) plans, directs, and manages CDC-wide training and service programs for teaching and training future public health professionals, and supports the existing workforce with a focus on data science and leadership; (2) operates and maintains an accredited preventive medicine residency program for physicians in CDC through the Accreditation Council for Graduate Medical Education and a complementary fellowship program for public health veterinarians; (3) establishes and implements overall branch policies, plans, and procedures; (4) develops and implements a formal plan to evaluate the effectiveness of all fellowship program activities, including the completion of program activities by fellows and residents, the quality of field and headquarters assignments, performance of fellows/residents, and effectiveness of educational activities; (5) conducts site visits and maintains liaison with supervisors of fellows/residents within CDC and in field assignments; (6) coordinates the assignment and deployment of fellows/residents in response to natural disasters, terrorist events, and other large scale public health emergencies; (7) provides TA, consultation, resources, and training for DWD, other components of CDC, and the broader health workforce (*e.g.,* state and local workers), including, but not limited to the development and dissemination of standard curricula, training, and related materials, in preventive medicine, informatics, prevention effectiveness and leadership/management and policy; (8) maintains liaison with alumni within and outside CDC to assist with training, recruitment, and promotional activities; (9) responds to domestic and international requests for assistance and consultation (*e.g.,* Info-Aids, Econ-Aids); (10) maintains liaison with other governmental agencies, academic institutions and organizations, state and local health agencies, private health organizations, professional organizations, and other outside groups; (11) assumes an active national and international leadership role in applied public health sciences training in preventive medicine, public health informatics, prevention effectiveness, and leadership and management, and policy; (12) collaborates, as relevant, with the CDC IOD, other CIOs, and domestic and international agencies to carry out the functions of the branch; (13) fosters closer linkages between academia and public health practice; (14) supports and provides oversight for CoAgs with academic partner organizations to enhance development of public health and health professionals skilled in improving the health of populations; (15) provides technical consultation to academic associations regarding improvements in curriculum and experiential learning opportunities; and (16) works with partners in academia, state and local health agencies, public health and health professional organizations to address public health educational needs, including developing population health competencies for academia to improve health professional education (*e.g.,* schools of medicine, nursing, and public health).

III. Under Part C, Section C–B, Organization and Functions, the

following organizational unit is deleted in its entirety:

- Center for State, Tribal, Local, and Territorial Support (CBD)
- Office of the Director (CBD1)
- Office of Public Health Law Services (CBD12)
- Office of Tribal Affairs and Strategic Alliances (CBD13)
- Office of Insular Affairs (CBD14)
- Division of Performance Improvement and Field Services (CBDB)
- Office of the Director (CBDB1)
- Performance Development, Evaluation and Training Branch (CBDBB)
- Field Services Branch (CBDBC)
- Division of Program and Partnership Services (CBDC)
- Office of the Director (CBDC1)
- Health Department Program Branch (CBDCB)
- National Partnership Branch (CBDCC)
- Center for Surveillance, Epidemiology, and Laboratory Services (CPN)
- Office of the Director (CPN1)
- Division of Scientific Education and Professional Development (CPND)
- Office of the Director (CPND1)
- Education and Training Services Branch (CPNDB)
- Epidemiology Workforce Branch (CPNDC)
- Population Health Workforce Branch (CPNDD)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–14705 Filed 7–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the National Center on Birth Defects and Developmental Disabilities

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the National Center on Birth Defects and Developmental Disabilities (NCBDDD). NCBDDD realigned the Office of Genomics and Precision Public Health from the Office of Science to the NCBDDD, retitled and made mission and functional statements updates to some organizational entities.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

- National Center on Birth Defects and Developmental Disabilities (CF)
- Office of the Director (CF1)
- Resource Management Office (CF12)
- Division of Birth Defects and Infant Disorders (CFB)
- Office of the Director (CFB1)
- Birth Defects Monitoring and Research Branch (CFBB)
- Infant Outcomes Monitoring, Research and Prevention Branch (CFBC)
- Division of Human Development and Disability (CFC)
- Office of the Director (CFC1)
- Child Development and Disability Branch (CFCB)
- Disability and Health Promotion Branch (CFCC)
- Division of Blood Disorders (CFD)
- Office of the Director (CFD1)
- Epidemiology and Surveillance Branch (CFBD)
- Hemostasis Laboratory Branch (CFDC)
- Public Health Genomics Branch (CFDD)

II. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Division of Blood Disorders (CFD) to the Division of Blood Disorders and Public Health Genomics (CFD)
- Epidemiology and Surveillance Branch (CFBD) to the Blood Disorders Surveillance and Epidemiology Branch (CFBD)

III. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

National Center on Birth Defects and Developmental Disabilities (CF). The mission of the National Center on Birth Defects and Developmental Disabilities (NCBDDD) is to improve the health of children and adults by preventing birth defects and developmental disabilities, and complications of heredity blood disorders; promoting optimal child development, and the health and wellness among children and adults living with disabilities and those living with or at risk of genetic disorder across the lifespan. NCBDDD strives to prevent disease save healthcare costs and reduce health disparities in the United States. In carrying out this mission, this organization: (1) conducts public health research, epidemiological investigations, genomic research, laboratory research, demonstration projects and public health programs; (2) plans, develops, establishes, and maintains systems of surveillance and monitoring the population for these conditions; (3) operates regional centers for the conduct of applied epidemiological research on these conditions; (4) provides information and education to healthcare providers, public health professionals, and the public on these conditions; (5) provides technical assistance, consultation, capacity building through technology transfer, grants, cooperative agreements, contracts, and other means to state, local, international, and nonprofit organizations to prevent and control these conditions; (6) provides training in the epidemiology of these conditions for healthcare professionals within and outside the United States; (7) translates scientific findings into intervention, prevention, and health promotion strategies; (8) conducts evaluations of programs to determine effectiveness; and (9) coordinates activities with other CDC organizations and Federal and non-Federal health agencies, as appropriate.

After item 4 of the Office of the Director (CF1) functional statement, insert the following:

Office of the Director (CF1). (5) coordinates with medical, scientific, and other professional organizations interested in birth defects prevention, genetics, developmental disabilities prevention, and disabilities and health, and prevention of complications of hereditary blood disorders.

After item 4 of the Division of Birth Defects and Infant Disorders (CFB1) functional statement, insert the following:

Division of Birth Defects and Infant Disorders (CFB1). (5) provides assistance to state and local health departments on community exposures to teratogenic, mutagenic, embryotoxic, other environmental agents, and genetic influences adversely interfering with normal growth and development.

Office of the Director (CFD1). (1) provides leadership and guidance on strategic planning and implementation, program priority setting, and policy development, to advance the mission of the division, NCBDDD, and CDC; (2) develops goals, objectives, and the budget; monitors progress and allocation of resources, and reports accomplishments, future directions, and resource requirements, (3) facilitates scientific, policy and program collaboration among divisions and centers, and between CDC and other Federal/non-Federal partners; (4) promotes the advancement of science throughout the division, supports program evaluation, and ensures that research meets the highest standards in the field; (5) provides medical expertise and consultation to planning, projects, policies and program activities; (6) advises the NCBDDD Office of the Director on matters relating to blood disorders and genomics and coordinates division responses to requests for technical assistance or information on activities supported by the division; (7) develops and produces communications tools and public affairs strategies to meet the needs of division programs and mission; and (8) represents the division at official professional and scientific meetings, both within and outside of CDC.

IV. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

Public Health Genomics Branch (CFDD). (1) identifies and evaluates emerging genomic, family health history, and precision health applications with the potential to impact population health by preventing disease, saving healthcare costs, and reducing health disparities in the United States; (2) integrates advances in human genomics, machine learning, data science, and predictive analytics responsibly and effectively into public health programs and healthcare; (3) provides technical assistance and advice to CDC leadership and programs, other Federal agencies, state health departments, and other external partners by identifying, evaluating, and implementing evidence-based genomics and precision health practices to prevent and control the country's leading genetic diseases; (4) supports policy, education, and surveillance frameworks to promote effective implementation of evidence-based recommendations for genomic tests, family health history, and precision health applications, as well as those applications that will emerge in the future; and (5) conducts genomics and epidemiologic studies and analyses to improve public health.

V. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Office of Public Health Genomics and Precision Public Health (CPPE) within the Office of Science (CPP)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–14703 Filed 7–11–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of Readiness and Response

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of Readiness and Response (ORR). ORR reorganized to improve rapid response to disease outbreaks and public health emergencies within the United States and around the world. It is critical for CDC's internal emergency response structure and readiness capabilities align with the changing public health landscape in order to best protect populations that are at increased risk of death, disability, and disease before, during, and after responses.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the Office of Readiness and Response, Centers for Disease Control and Prevention.

Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

Office of Readiness and Response (CAD)
Office of the Director (CAD1)
Information Resources Office (CAD12)
Office of Policy, Planning, and Communications (CAD13)
Office of Science and Laboratory Readiness (CAD14)
Management Resources Office (CAD15)
Division of State and Local Readiness (CADB)
Office of the Director (CADB1)
Field Assignments Branch (CADBB)
Grants Management and Fiscal Strategy Branch (CADBC)
Jurisdictional Readiness and Response Support Branch (CADBD)
Capacity Building and Technical Assistance Development Branch (CADBE)
Division of Regulatory Science and Compliance (CADC)
Office of the Director (CADC1)
Federal Select Agent Program Operations Branch (CADCB)
Import Permit Program Operations Branch (CADCC)
Innovation and Information Technology Branch (CADCD)
Biosafety, Science, Training and Expertise Branch (CADCE)
Division of Emergency Operations (CADD)
Office of the Director (CADD1)
Resource Support Branch (CADDB)
Operations Branch (CADDC)
Plans, Exercise, and Evaluation Branch (CADDD)
Emergency Management Training and Capacity Development Branch (CADDE)
Division of Readiness and Response Science (CADE)
Office of the Director (CADE1)

Community-Based Solutions and Health Equity Branch (CADEB)
Response Analytics, Decision Support, and Surveillance Branch (CADEC)
Public Health Readiness and Response Evaluation Branch (CADED)
Center for Forecasting and Outbreak Analytics (CADL)
Office of the Director (CADL1)
Office of Policy and Communications (CADL12)
Office of Management Services (CADL13)
Inform Division (CADLB)
Office of the Director (CADLB1)
Predict Division (CADLC)
Office of the Director (CADLC1)
Real Time Monitoring Branch (CADLCB)
Analytics Response Branch (CADLCC)
Technology and Innovation Division (CADLD)
Office of the Director (CADLD1)
Technology Branch (CADLDB)
Innovate Branch (CADLDC)

II. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

Office of Science and Public Health Practice (CAD14) to Office of Science and Laboratory Readiness (CAD14)
Division of Select Agents and Toxins (CADC) to Division of Regulatory Science and Compliance (CADC)
Field Select Agent Branch (CADCB) to the Federal Select Agent Program Operations Branch (CADCB)

III. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

Office of Readiness and Response (CAD). The mission of the Office of Readiness and Response (ORR) is to lead, promote, and integrate programs, science, data, communications, and policies that enable CDC to respond to public health threats at home and abroad. The ORR Director is accountable and vested with authority for positioning CDC to successfully respond to all public health threats, including through preparedness activities that maintain a constant readiness to respond. ORR supports the following functions: (1) serves as the principal source of advice and expertise for the CDC Director on issues related to emergency readiness and response domestically and globally; (2) assists the CDC Director in formulating and communicating readiness and response strategic initiatives and policies; (3) informs and represents the CDC Director on key emergency readiness and response issues; (4) develops overall strategic direction, provides leadership, and supports implementation of emergency readiness and response priorities across the agency's workforce, data and laboratory systems, science, policies, and programs; (5) leverages cross-agency expertise to inform U.S. Government readiness and response plans and aligns agency emergency readiness and response strategies to these plans; (6) advises CDC senior leadership on resource allocation decisions that have readiness and response implications; (7) identifies emergency readiness and response issues of public health importance and facilitates and promotes cross-agency, cross-United States Government interagency collaboration, innovation, and initiatives to address them, including developing shared goals and monitoring progress and accomplishments; (8) enhances robust connections, cooperation, and collaboration through partnerships across multiple emergency readiness and response sectors (*e.g.,* government, professional organizations, industry, academia), domestically and globally; (9) upholds integrity, transparency, and excellence in public health science and practice related to emergency readiness and response; (10) continually evaluates agency-wide emergency readiness and response effectiveness and efficiency, and recommends and implements adjustments based on findings; (11) promotes an environment that increases synergies and efficiencies and reduces duplication within CDC's emergency readiness and response programs; (12) provides overall strategic direction and leadership for emergency operations, forecasting, and outbreak analytics (*e.g.,* surveillance, modeling, analytics); (13) coordinates strategic direction and leadership for partner funding and technical assistance for readiness and response; (14) leads cross-agency readiness and medical countermeasure (MCM) efforts, in coordination with other HHS operating and staff divisions and their constituent agencies; (15) maintains an Office of the Director (OD) to provide oversight and support for crosscutting functions, including but not limited to management and operations, policy, communication, health equity, and science, (16) guides and supports public health emergency readiness and response activities both within the Emergency Operations Center (EOC) and, as appropriate, CDC Centers, Institute, and Offices (CIOs); and (17) provides staff and scientific expertise, including through the EOC, for public health emergency responses and exercises.

Office of the Director (CAD1). (1) provides overall leadership, oversight, and guidance for all ORR programs; (2) oversees the development of ORR policy, communication, long-range plans, and programs, (3) leads the implementation and enforcement of overarching statutory and regulatory compliance responsibilities, policies and guidelines developed by Federal agencies, HHS, and CDC Staff Offices, as they relate to public health; emergency preparedness, readiness, and response; select agents and toxins; and poliovirus (PV) containment; (4) manages ORR preparedness, readiness, and response activities; (5) coordinates program activities with other CDC components, other Federal, state, and local government agencies, and private sector groups; (6) provides leadership for the coordination of technical assistance to other countries and international organizations in establishing and implementing preparedness, readiness, and response programs; (7) provides leadership, direction, coordination and evaluation of science and health-related activities for priority programs and preparedness, readiness, and emergency response agenda(s); (8) provides executive coordination for ORR research programs and science policies; (9) leads cross-agency readiness and MCM efforts and coordination; (10) maintains liaisons with other Federal, state, and local agencies, institutions, and organizations; (11) coordinates ORR public health science efforts to protect the public's health; (12) develops capacity within the states to integrate new and existing emergency preparedness, readiness, and response principles into their operational and programmatic activities; (13) utilizes best practices to collect, analyze, and interpret data and disseminate scientific information to enable internal and external partners to make actionable decisions; (14) integrates science, data analytics, and visualization into science products; (15) coordinates ORR involvement in CDC public health ethics activities; (16) represents ORR on various CDC scientific committees, work groups, and taskforces; (17) provides leadership and guidance in the development and implementation of goals, objectives, priorities, policies, program planning, management and operations of all general activities within ORR; (18) oversees, manages, directs, coordinates, and evaluates all ORR management and operations activities including human resources, intramural and extramural funding, space, budgeting and other related activities; (19) coordinates with all ORR offices and divisions in determining and interpreting operating policy and in

ensuring their respective management input is included in specific program activity plans (20) provides overall issues management, health policy and partnership development direction to the ORR offices and divisions; (21) provides and directs overall internal and external communication strategies for the ORR; (22) directs and coordinates ORR activities in support of the Department's Equal Employment Opportunity program, diversity enhancement and employee professional development opportunities; and (23) reviews the effectiveness and efficiency of all administration and operations of ORR programs.

Information Resources Office (CAD12). (1) provides expert consultation in application development, information science, and technology to efficiently use resources; (2) provides information technology (IT) application development for ORR OD, center, and divisions; (3) reports all IT project costs, schedules, performances, and risks; (4) performs technical evaluation and integrated baseline reviews of all information systems' products and services prior to procurement to ensure software purchases align with ORR strategy; (5) coordinates all enterprise-wide IT security policies and procedures with the Office of the Chief Information Officer; (6) ensures operations are in accordance with CDC Capital Planning and Investment Control guidelines; (7) ensures adherence to CDC enterprise architecture policies, guidelines, and standards; (8) ensures coordination of data harmonization and systems interoperability within ORR and facilitates linkage to related CDC-wide strategies; (9) coordinates with ORR offices, center, and divisions to determine IT needs and to develop strategic and action plans; and (10) provides leadership in ORR's Information Resource Governance Committee and coordination with CDC's IT and Data Governance.

Office of Policy, Planning, and Communications (CAD13). (1) serves as liaison with CDC/Immediate Office of the Director (IOD) Offices and other CIO policy offices, other government agencies, and external partners on policy, program, communications, legislative, and budgetary issues related to ORR offices, center, and divisions; (2) provides consultation, support and service to ORR's offices, center, and divisions for policy, planning, evaluation, and communications; (3) leads annual ORR budget formulation and development of appropriations materials; (4) provides expertise, guidance, coordination, and guidance for strategic planning, performance measurement and communications, including health literacy, communications clearance, plain language implementation, 508 compliance, and social marketing programs, in collaboration with CDC/IOD and ORR OD, center, and division staff; (5) oversees and coordinates ORR accountability activities, including Government Accountability Office and Office of the Inspector General engagements and Freedom of Information Act audits and reviews; (6) develops and manages policy, program, and communication materials for stakeholders and partnership activities, including with governmental, non-governmental and private sector organizations; (7) serves as ORR communications clearance office for health communication campaigns and products; (8) maintains liaison with CDC/Washington and the Office of Appropriations concerning congressional matters including appropriations, legislative bill tracking, legislative requests for technical assistance, testimony for hearings, congressional inquiries, etc.; (9) oversees the preparation and routing of controlled correspondence, reviews clearance processes, and other issues management related materials; (10) assists divisions in the development and clearance of **Federal Register** Notices, rulemaking, and other documents for public comment; (11) develops and implements all proactive media outreach and reactive media responses for ORR; (12) serves as liaison to key offices for obtaining CDC and HHS traditional and social media clearance on products/activities; (13) coordinates CDC and ORR brand management, policy guidance, and governance of ORR content on digital channels and websites per HHS and CDC policy for the use of communication platforms; (14) leads, coordinates and provides strategic oversight of ORR's health communication and marketing practice, research, evaluation, and science; and (15) collects/analyzes/evaluates user data/metrics from communication channels and technologies to assess system performance, usability, accessibility, usefulness and impact of key messages.

Office of Science and Laboratory Readiness (CAD14). (1) engages and collaborates with ORR office, center, and division Associate Directors for Science and staff and other CDC CIOs to develop and maintain cross-cutting scientific partnerships that advance science, ensure mutual awareness of activities, and promote scientific capability, capacity and quality within ORR; (2) fosters opportunities to support CDC's mission in science and laboratory readiness through partnerships across government, non-profit organizations, and businesses; (3) fosters innovation and strategic foresight in science and laboratory readiness to mitigate risks, address current and future gaps, and inform partnerships and investments; (4) collaborates on and supports the creation of knowledge to advance public health emergency preparedness, readiness, and response, and recovery policy and practice; (5) provides technical assistance and scientific clearance for products submitted to ORR; (6) provides oversight and direction for the Board of Scientific Counselors by ensuring Federal Advisory Committee Act compliance and assuring the Board provides advice and guidance on preparedness, readiness, and response activities conducted by CDC and ORR; (7) monitors and maintains ORR compliance with the statutes, regulations, and policies governing the conduct of science by the Federal Government, including but not limited to, protecting the rights and welfare of humans in research, ensuring compliance with Paperwork Reduction Act, and providing guidance to protect individuals' privacy and confidentiality; and (8) develops and maintains the ORR clearance policy and performs scientific review and clearance of ORR products to ensure the quality of publications.

Management Resources Office (CAD15). (1) provides leadership and guidance for ORR's management of business operations; (2) oversees, manages, directs, coordinates, and evaluates all ORR management and operations activities; (3) coordinates and provides oversight to ORR's overall extramural strategy for contracts, grants, cooperative agreements, and reimbursable agreements; (4) develops and implements all ORR-wide administrative policies, procedures, and operations; (5) conducts management and organizational analyses to review the effectiveness and efficiency of all management and administrative operations of ORR programs and translates these into quality controls for improvement; (6) provides leadership for and assessment of all administrative management activities to assure coordination for all management and program matters, such as coordinating risk management and continuity of operations activities (COOP); (7) provides overall programmatic direction for planning and management oversight of allocated resources, human resource

management and general administrative support; (8) provides and coordinates ORR-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; (9) develops and directs employee engagement programs; (10) analyzes workforce, succession, strategic planning systems, and resources on an ongoing basis; and (11) directs and coordinates activities in support of the diversity, equity, inclusion and accessibility integration into ORR activities and employee training and professional development opportunities.

Division of State and Local Readiness (CADB). (1) provides program support, funding, technical assistance, guidance, technical integration, and capacity building of preparedness planning across public health, healthcare, and emergency management sectors; (2) provides fiscal oversight to state, tribal, local, and territorial (STLT) public health department Cooperative Agreement recipients for the development, monitoring, and evaluation of public health capabilities, plans, infrastructure, and systems to prepare for and respond to terrorism, outbreaks of disease, natural disasters, and other public health emergencies; and (3) provides staff and scientific expertise, including through the EOC, for public health emergency responses and exercises.

Office of the Director (CADB1). (1) provides national leadership, strategic direction, and guidance that supports and advances the work of STLT public health emergency preparedness and response programs; (2) coordinates the development of guidelines and standards for programmatic materials within the division to provide technical assistance and program planning at the STLT level; (3) represents and communicates the interests and needs of the STLT jurisdictions on state and local preparedness and response issues; (4) develops and ensures effective partnerships with national stakeholders and preparedness and response partners; (5) provides oversight and management of division budgets, including contracts and awards; (6) manages the IT strategy and infrastructure to support division and recipient programmatic, evaluation, and fiscal activities; (7) addresses key internal and external policy and communications issues related to STLT public health preparedness and response; and (8) supports and advances the science and data analysis work of the division.

Field Assignments Branch (CADBB). (1) advances nationwide preparedness efforts through strategic placement of CDC field staff to support STLT public health agencies; (2) provides input to the development and implementation of field-based science initiatives and strategies; (3) provides situational awareness to CDC leadership when activated for public health responses; (4) provides consultation and technical assistance to STLT health departments in developing, implementing and evaluating activities in support of CDC recommendations and the host site; (5) provides direct support for public health preparedness and epidemiologic capacity at the STLT levels; (6) participates in the development of national preparedness and response policies and guidelines for public health emergencies and facilitates the transfer of guidelines into clinical and public health practice; (7) serves as liaisons to CDC to assist STLT partners in linking with proper resources, contacts and obtaining technical assistance; (8) provides technical supervision and support for the CDC field staff and trainees as appropriate; (9) provides input into the development of branch and division policy, priorities, and operational procedures; (10) analyzes technical and epidemiologic information to present at national and international scientific meetings; (11) publishes programmatic, surveillance, and epidemiologic information in collaboration with host agencies; (12) develops and implements a comprehensive training and field placement program for entry-level public health preparedness and response professionals (Preparedness Field Assignee Program); and (13) serves as a response resource for local, regional, national, and international public health emergencies.

Office of the Director (CADC1). (1) manages day-to-day operations of the division; (2) provides scientific leadership and consultation in laboratory biosafety and biosecurity involving select agents and toxins and other infectious agents; (3) supports the functional teams in the Office of the Director; (4) plans for and implements sound communications efforts in order to effectively and strategically inform and influence key internal and external partners regarding the program; (5) provides strategic planning, facilitating oversight studies of Division of Regulatory Science and Compliance (DRSC), regulatory and policy matters related to select agent and import permit programs, and executes compliance actions; including, notification of some matters to the HHSOffice of Inspector General; (6) develops and maintains professional relationships and collaborates with internal (CDC CIOs) and external partners (interagency partners, World Health Organization (WHO) on matters involving laboratory biosafety and biosecurity of select agents and toxins and other infectious agents (*e.g.,* PV); (7) manages personnel actions, travel, purchases as well as budget planning and execution, contracts, and interagency agreement support for the division; (8) minimizes the risk of PV release through effective implementation and oversight of the global PV containment plan in the United States; (9) provides leadership in developing and executing a national PV containment program; (10) plans, establishes, and launches the national survey and maintains the national inventory of PV materials; (11) prepares and contributes to the annual national reports on PV containment and eradication; (12) ensures U.S. facilities transfer, inactivate or destroy PV materials appropriately, as needed; (13) ensures containment measures are implemented for facilities retaining PV, according to WHO's Global Action Plan; (14) develops and publishes PV containment guidance and policies to U.S. containment requirements; (15) works with internal and external partners to establish science-based recommendations for PV containment; (16) audits and certifies facilities as a PV-essential facility (PEF) according to the WHO Containment Certification Scheme; (17) seeks WHO endorsement for U.S. PEF certification applications; (18) provides annual training and assists U.S. facilities working with PV materials to develop containment programs; (19) supports the dissemination of PV-containment information to Federal, state, and local agencies, private organizations, and other national and international agencies; (20) develops and distributes informational products for educational and promotional activities related to PV containment; (21) provides technical assistance and consultations to other countries in establishing and implementing PV containment and national inventory programs; (22) plans, directs, and supports research focused on PV containment-related issues; (23) investigates exposures and root cause analysis of a containment breach; and (24) collaborates with other CDC entities, HHS agencies, academic institutions, private organizations, Ministries of Health, WHO Headquarters and regional WHO offices, as appropriate.

Federal Select Agent Program Operations Branch (CADCB). (1) processes entity applications for registration, awarding entities certification, processing entity amendments to their registration, performing inspections at regulated entities; (2) prepares reports of inspections and conducts follow-up on noted deficiencies; (3) receives reports of the theft, loss, or release of select agents or toxins; (4) processes requests for transfers of select agents and toxins; (5) processes reports of select agents or toxins identified through diagnosis, verification or proficiency testing; (6) provides expert advice to entities on compliance with the select agent regulations; (7) serves as a liaison with the United States Department of Agriculture Animal and Plant Health Inspection Service Select Agent Regulatory Program on operational issues; and (8) performs assessment of foreign select agent laboratories in accordance with inter-agency agreements.

Import Permit Program Operations Branch (CADCC). (1) processes applications for permits to import infectious biological agents that could cause disease in humans to prevent their introduction and spread into the United States; (2) performs inspections to ensure facilities receiving permits have appropriate biosafety measures in place to work safely with the imported materials; (3) prepares reports of inspections and conducts follow-up on noted deficiencies; (4) provides guidance and support to assist the regulated community in meeting the requirements of the import permit regulations; (5) collaborates with Innovation and Information Technology Branch on the development and revisions for improvement with the electronic Import Permit Program information system; and (6) collaborates with CDC's Division of Global Migration Health (which is charged with preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the United States) and the U.S. Customs and Border Protection.

Biosafety, Science, Training and Expertise Branch (CADCE). (1) provides scientific, biosafety, biosecurity, and facilities consultation to the division and regulated community; (2) coordinates and supports the CDC Intragovernmental Select Agent and Toxin Technical Advisory Committee; (3) develops and implements training programs for the division and conducts trainings and outreach to increase knowledge of and compliance with the regulations and increase staff's ability to conduct scientific research, writing and publishing and improve the scientific basis for regulation; (4) develops, coordinates, and implements the DRSC research agenda and for the clearing of DRSC scientific manuscripts; (5) manages security risk assessment process with the Federal Bureau of Investigations (FBI) to provide authorization for individuals to access select agents and toxins; (6) assists the FBI with criminal investigations; (7) coordinates division emergency response activities; and (8) provides expert advice to entities on compliance with the select agent regulations.

Delete item 6 in the Division of Emergency Operations (CADD) functional statement and insert the following:

(6) coordinates logistics, staffing, and other emergency management functions support for cross-CIO responses.

Delete item 2 in the Resource Support Branch (CADDB) functional statement and insert the following:

(2) directs the Resource Support Section within the EOC during CDC emergency responses.

Delete items 3 and 8 in the Operations Branch (CADDC) functional statement and insert the following:

(3) directs the Operations Section within the EOC during CDC emergency responses.

(8) manages the EOC facility, including its processes and components (*e.g.,* audiovisual equipment and communications tools) to maintain its operational capability, including when COOP plans are implemented.

Delete items 2 and 3 in the Plans, Exercise, and Evaluation Branch (CADDD) functional statement and insert the following:

(2) directs the Planning Section within the EOC during CDC emergency responses. (3) develops, publishes, and maintains contingency plans, incident action plans, transition plans, situation reports, and evaluation products, including through the Planning Section.

Delete item 3 in the functional statement Emergency Management Training and Capacity Development Branch (CADDE) and insert the following:

(3) develops and delivers training curricula for emergency responders and response leadership within CDC.

IV. Under Part C, Section C–B, Organization and functions, add the following functional statements:

After the Field Assignments Branch (CADBB) within the Division of State and Local Readiness (CADB), insert the following:

Grants Management and Fiscal Strategy Branch (CADBC). (1) administers the pre-award, award, post-award, and closeout phases of the Public Health Emergency Preparedness (PHEP) and Crisis Response Cooperative Agreement (CRCA), in coordination with relevant stakeholders; (2) monitors state, tribal, local, and territorial (STLT) progress on programmatic activities of the PHEP and CRCA, as applicable, to assure requirements are achieved; (3) provides technical assistance related to grants management functions and fiscal strategy to STLT partners; (4) provides grants management and fiscal strategy expertise to agency stakeholders related to public health emergency preparedness and response; (5) identifies, develops/coordinates the development and implementation (as applicable) of innovative operational solutions for agency and STLT administrative and fiscal challenges related to preparedness and response activities; and (6) maintains and operationalizes the CRCA to rapidly deliver response funding to STLTs.

Jurisdictional Readiness and Response Support Branch (CADBD). (1) provides direct consultation, technical assistance, and training to STLT health departments in management and operation of activities to support public health preparedness, response, and recovery; (2) provides assistance to STLT governments and public health agencies to prepare for effective responses to large scale public health events; (3) serves as a primary conduit for STLT engagements with CDC during public health emergency responses via the Health Department Liaison Officers; (4) serves as the primary cadre of emergency responders from the division, supporting various components of program, center, and agency-led activations as a critical link with STLT partners; (5) provides subject matter expertise related to STLT coordination for preparedness and response planning; and (6) collaborates within the agency, interagency, and jurisdictional partners during exercises and responses.

Capacity Building and Technical Assistance Development Branch (CADBE). (1) ensures high-quality technical assistance is available to STLT jurisdictions on preparedness capabilities and the Response Readiness Framework, in collaboration with other partners; (2) develops or coordinates the development of tools and facilitates plans to address identified gaps in jurisdictional operational readiness; (3) improves the delivery of technical assistance to public health in coordination with other branches of the division; (4) maintains a training program organized around the Response

Readiness Framework to improve internal and STLT readiness and response performance; (5) develops and implements various communities of practice across critical readiness and response-related topics, and (6) maintains an information sharing platform to post resources and facilitate the sharing of readiness and response-related best practices across CDC and jurisdictions.

After item 9 of the Division of Regulatory Science and Compliance (CADC) functional statement, insert the following: (10) leads in developing and executing a national poliovirus (PV) containment program and minimizes the risk of PV release through effective implementation and oversight of the global PV containment plan in the United States and (11) provides staff and operational and scientific expertise, including through the EOC, for public health emergency responses and exercises.

After the Division of Emergency Operations (CADD), insert the following:

Division of Readiness and Response Science (CADE). (1) develops and implements the science of readiness and response, builds scientific expertise to address health disparities and community mitigation, evaluates the STLT readiness and response, and informs a broader framework for evaluating CDC's and partners' readiness state; (2) advances and coordinates CDC's readiness and response science agenda in partnership with CDC CIOs and partners (STLTs, non-governmental organizations (NGOs), healthcare providers, academia, etc.); (3) fosters innovation and advances and coordinates CDC readiness and response to public health emergencies by building and enhancing epidemiology, surveillance, health equity science, social and behavioral science, community mitigation, and utilization, safety and effectiveness of countermeasures in partnership with CDC CIOs; (4) engages with various CDC leadership and partners to develop and maintain partnerships, conduct research projects, maintain mutual awareness of activities, and advocate for evidence-informed response practices that works toward health equity; (5) provides subject matter expertise, recommendations and guidelines, and a scientific basis for CDC and national epidemiologic response protocols and surveillance methods; (6) evaluates the effectiveness of public health interventions as a key readiness activity to shorten the timeline for implementation of a response during an emergency; (7) utilizes best practices to collect, analyze, and interpret data and disseminate scientific information for internal and external partners to make actionable decisions; (8) socializes, implements, and reinforces established health equity principles and strategies, in partnership with CDC's Office of Health Equity; (9) establishes an agency-wide strategy and coordinates activities across CDC CIOs on CDC's role in community mitigation and social and behavioral science; (10) leads management and maintenance of public health emergency preparedness, readiness, and response information gathering, analysis, and sharing to support response decision making; (11) supports and coordinates special projects ; and (12) provides staff and scientific expertise, including through the EOC, for public health emergency responses and exercises.

Office of the Director (CADE1). (1) provides leadership and guidance that supports, advances, and creates the development, research, and implementation infrastructure of readiness and response science; (2) coordinates the development of policy and guidelines for scientific readiness and response research and publication as well as for evaluation of emergency preparedness programs; (3) creates standards for implementation of readiness and response science to improve emergency identification, response, and mitigation; (4) provides agency-wide communication pertaining to evolving scientific readiness and response research and publications; (5) communicates and coordinates with STLT jurisdictions on state and local preparedness and response issues to advance readiness and response research; (6) develops and maintains effective partnerships with national partners and preparedness and response partners to communicate scientific evidence; (7) develops and maintains effective partnerships and engagements with ORR staff and other CDC CIOs to establish and maintain mutual awareness of activities and promote scientific capability, capacity and quality; (8) develops and maintains effective partnerships and engagements with ORR staff, other CDC CIOs, the academic community, Federal agencies, and non-government research and practitioner organizations to establish and maintain mutual awareness of activities and advocate for evidence-informed practice related to populations with access and functional needs and activities; (9) provides management and information resources direction and support to Division of Readiness and Response Science branches; (10) establishes and maintains Centers for Public Health Preparedness and Response that may include institutions of higher education, including accredited schools of public health, or other nonprofit private entities to identify, translate, and disseminate promising research findings or strategies into evidence-informed or evidence-based practices; (11) evaluates readiness and response of CDC, intramural funding recipients (*e.g.,* Strategic Capacity Building and Innovation Program and external funding recipients including STLT partners/jurisdictions, and NGO partners by developing strategies, developing performance metrics on readiness and response efforts, assessing performance, and specifically holding grantees accountable to meet metrics; (12) develops draft protocols, data collection instruments, and standards for rapid data collection in collaboration with STLT partners to inform guidance and critical public health action; (13) provides project management, IT, and other wrap around support for special projects such as the Response Ready Enterprise Data Integration (RREDI) platform; (14) fosters innovation to advance science, mitigate risks, address current and future gaps, and inform partnerships and investments; (15) provides development, implementation, support and technical assistance regarding policies and procedures for research funding proposals and announcements, technical review, award selections, and award administration/management to sponsoring divisions, applicants, and awardees; and (16) assists in the development and maintenance of investigational new drug protocols and emergency use authorizations for vaccinations, treatments, and prophylaxis of selected bioterrorist agents.

Community-Based Solutions and Health Equity Branch (CADEB). (1) addresses health equity readiness and leads agency-wide social and behavioral science efforts (*e.g.,* data, analytics, scientific guidance), community-based readiness, and response mitigation activities and engagements (*e.g.,* in school settings, in correctional facilities, for populations experiencing homelessness and housing insecurity); (2) proposes, develops, conducts research projects, and addresses the access- and functional-needs of populations at higher risk for adverse effects (*e.g.,* youth, populations experiencing incarceration, and populations experiencing homelessness and housing insecurity) including

death, disability, and disease during emergency settings/responses through ORR funded research solicitations; (3) maintains a network of population-specific subject matter experts across CDC, fostering a culture that addresses health equity issues for readiness and response in domestic and international settings; (4) coordinates and supports readiness and response efforts and health equity principles and strategy with CDC's Office of Health Equity; (5) provides staff and scientific expertise, including through the EOC, for public health emergency responses and exercises, and supports the stand up and coordination of the Chief Health Equity Officer structure and functions during such activities; (6) provides technical assistance and expertise in surveillance, epidemiology, and behavioral research to inform guidelines and recommendations for schools, correctional and detention facilities, people experiencing homelessness, and other populations that are disproportionately affected in a response; (7) oversees and coordinates the translation of scientific findings for healthcare providers, public health professionals, and the public, on pediatric preparedness and response matters; (8) develops and disseminates guidelines and tools to help schools and other societal institutions apply research synthesis findings to reduce priority health risks among youth; (9) plans, implements, provides technical assistance, and evaluates public health readiness and response efforts in emergency and post-emergency settings; and (10) coordinates efforts with appropriate Federal advisory committees as necessary.

Response Analytics, Decision Support, and Surveillance Branch (CADEC). (1) provides CDC (and partners, as appropriate) reliable, comprehensive, and high-quality information (*e.g.,* event-based surveillance) on international disease outbreaks and other health threats as they emerge and evolve; (2) leads, in partnership with Center for Forecasting and Outbreak Analytics, the management and maintenance of public health emergency preparedness, readiness, and response information gathering, analysis, and sharing through knowledge management and scalable processes that support response decision making; (3) provides readiness and response technical assistance to international partners via deployments, data calls, etc.; (4) establishes public health emergency preparedness vocabulary and information exchange standards to meet the reporting and information sharing requirements of cross-jurisdictional partners; (5) compiles, correlates, supports response and CDC leadership decision-making; (6) provides coordination, planning, and development support for data collection, management, and production of analytics and geospatial data, including GIS/mapping; (7) provides informatics, data management, event-based surveillance and reporting technical assistance and support to external Federal, STLT, and international partners; (8) conducts and supports data management, information exchange, and risk communication among Federal, STLT and international partners; (9) supports the development, maintenance, and implementation of policies related to public health emergency situational awareness, data analytics and visualization, and knowledge management activities; and (10) leads special projects such as the RREDI platform.

Public Health Readiness and Response Evaluation Branch (CADED). (1) informs and supports the development and execution of an agency process to evaluate CDC's performance in reaching readiness and response goals; (2) integrates evaluation approaches with ongoing, routine practices that involve engaging all partners, not just evaluation experts; (3) develops strategy to evaluate achievement of readiness and response objectives across relevant STLT funding mechanisms; (4) coordinates and communicates with STLT units to efficiently evaluate readiness and response effectiveness across programs; (5) assesses the effectiveness of the Public Health Emergency Preparedness Cooperative Agreement via performance measurement and evaluation; (6) develops and coordinates a strategy to measure and report on jurisdictional operational readiness, in consultation with Division of State and Local Readiness; (7) provides analytic support and evaluation expertise to ORR offices, center, and divisions; and (8) fosters innovation and efficiency in evaluation and research through collaboration with partners.

V. Under Part C, Section C–B, Organization and Functions, the following organizational unit is deleted in its entirety:

- Office of Communications (CBC14)
- Office of Policy, Planning, and Evaluation (CBC16)
- US National Authority for Containment of Poliovirus (CBC19)
- Program Implementation Office (CBCBB)
- Evaluation and Analysis Branch (CBCBC)
- Emergency Risk Communication Branch (CBCDB)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Human Resources Office

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the former Human Resources Office. In addition to functional realignments and new functional entities, the Human Resources Office was retitled to the Office of Human Resources.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of Human Resources Office within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

Under Part C, Section C–B, Organization and Functions, delete and/or update functional statements for Human Resources Office (CAJQ) in their entirety and replace with the following:

Office of Human Resources (CAJQ). (1) provides leadership, policy formation, oversight, guidance, service,

and advisory support and assistance to the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR); (2) collaborates as appropriate, with the CDC Immediate Office of the Director (IOD), CDC components domestic and international agencies and organizations; and provides a focus for short- and long-term planning within the Office of Human Resources (OHR); (3) develops and administers human capital and human resource management policies; (4) serves as the business steward for all CDC developed human capital and human resources (HR) management systems and applications; (5) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses of personnel and staffing to management and employees; (6) conducts and coordinates human resources management for civil service and Commissioned Corps personnel; (7) manages the administration of fellowship programs; (8) conducts recruitment, special emphasis, staffing, position classification, position management, pay and leave administration, work-life programs, performance management, employee training and development, and employee and labor relations programs; (9) maintains personnel records and reports, and processes personnel actions and documents; (10) administers the Federal life and health insurance programs; (11) administers employee recognition and incentive awards programs; (12) furnishes advice and assistance in the processing of workers compensation claims; (13) interprets standards of conduct regulations, reviews financial disclosure reports, and offers ethics training and counseling services to employees; (14) liaise with the Department of Health and Human Services (HHS) and the Office of Personnel Management (OPM) on human resources management, policy, compliance and execution of the Human Capital Assessment and Accountability Framework; (15) conducts organizational assessments to determine compliance with human capital policies, guidance, regulatory and statutory requirements of Federal human capital and resource management programs and initiatives; (16) plans, directs, and manages training programs, monitors compliance with mandatory training requirements, and maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives to assist employees in achieving required competencies; (17) assists in the definition and analysis of training needs and develops and evaluates instructional products designed to meet those needs; (18) develops, designs, and implements a comprehensive leadership and career management program for all occupational series; (19) provides technical assistance in organizational development, career management, employee development, and training; (20) collaborates and works with partners, internally and externally, to develop workforce goals and a strategic vision for the public health workforce; (21) provides support for succession planning, forecasting services, and environmental scanning to ascertain both current and future public health workforce needs; (22) administers and maintains the customer service help desk; (23) in-processes full-time equivalents (FTEs) and non-FTEs requiring access to CDC facilities and systems; and (24) processes FTE and non-FTE separation and out-processing requests.

Office of the Director (CAJQ1). (1) provides leadership and overall direction for OHR; (2) develops overall organizational goals and objectives; (3) provides policy formation and guidance in program planning and development; (4) plans, coordinates, and develops strategic plans for OHR; (5) develops and administers human capital and human resource management policies and procedures; (6) coordinates all program reviews; (7) provides technical assistance and consultation in the development of proposed legislation, Congressional testimony, and briefing materials; (8) establishes performance metrics and coordinates quarterly reviews to ascertain status on meeting of the metrics; (9) oversees budget formulation and execution; (10) identifies relevant scanning/benchmarking on workforce and career development processes, services and products; (11) provides leadership and guidance on new developments and national trends for the public health workforce; (12) establishes and oversees policies governing human capital and human resources management, and works collaboratively within CDC components in planning, developing and implementing policies; (13) develops strategic plans for information technology and information systems required to support human capital and human resources management information requirements; (14) serves as the business steward for human capital and human resources administrative systems and advocates and supports the commitment of resources to application development; (15) coordinates HR information resource management activities with the Office of the Chief Information Office (OCIO) and related governance groups; (16) oversees the management and development of information systems and analyses of data for improved utilization of resources; (17) serves as a liaison with HHS on the utilization and deployment of centralized HHS human capital and human resource management systems and applications; (18) applies standards of conduct regulations and review financial disclosure reports; and (19) conducts demographic analysis of the workforce and publishes results in management reports.

In and Out-Processing Activity (CAJQ19). (1) serves as the central point of integration for employees, non-employees and affiliates (referred to in their entirety as ''customer or staff'') requiring access to facilities and use of systems and resources; (2) coordinates with the support of CDC components to retrieve customer information needed for in- or out-processing (IOP) services; (3) provides clarity about expectations for in- or out-processing; (4) coordinates with applicable business service offices (BSOs) to assure the appropriate requirements have been obtained for the clearance of staff; (5) initiates feedback and follows-up to determine customer information is prepared for final processing; (6) provides technical assistance, guidance, and consultation regarding IOP activities to customers and stakeholders; (7) establishes, maintains, and distributes records associated with the completion of the mandatory training requirements to gain physical access to CDC facilities and information technology systems; (8) coordinates with CDC components about the issuance and activation of smart cards and automation assets; (9) processes customer separation requests; (10) administers and maintains exit interview survey data; (11) serves as a point of contact for BSOs and programs to integrate customer requirements upon exiting the physical facility; and (12) maintains customer records in accordance with applicable disposition requirements.

Transformation Activity (CAJQ1B). (1) leads and directs all transformation initiatives for OHR; (2) serves as an advocate on behalf of CDC to ensure the delivery of high-quality and timely human resources services; (3) manages the strategic planning program that provides a central focus for the management of HR programs; (4) supports the accomplishment of program goals and objectives by integrating them into long-range

business plans and workforce requirements; (5) provides administrative and technical assistance needed for accomplishing the work of OHR; (6) develops and assists with the implementation of OHR improvement plans; (7) provides advice and counsel related to improvement plans and transformation initiative; (8) monitors and oversees HR management programs in alignment with the human capital service delivery model; (9) develops methods of measurement to provide accurate assessments of the program against benchmarks and established short and long-range objectives; (10) collaborates with senior managers to integrate human resources management and development tools and strategies into the overall strategic objectives for the agency; (11) coordinates and integrates strategic planning initiatives with management, HR specialists, and other analysts, providing program guidance, oversight, and evaluation; (12) leads the efforts in the origination of new HR strategic planning techniques and/or new criteria or approaches and methods for program implementation and evaluation; and (13) develops recommendations on the modifications and corrections needed to bring proposed or existing agency human resources management directives into compliance with legal or precedent guidelines.

Career Ready Program Activity (CAJQ1C). (1) facilitates career management in the development of highly competent enterprise-wide leaders and subject matter experts; (2) utilizes career community concepts for renewal, development, and sustainment of the CDC workforce; (3) establishes policy to evaluate workforce requirements and career community health; (4) manages and monitors the career communities; (5) analyzes, synthesizes and processes workforce data; (6) pursues competitive opportunities for workforce development to enhance the CDC's mission; (7) establishes metrics to monitor program(s)'s long and short-term goals, objectives and milestones and to determine program effectiveness; (8) applies cutting edge business practices and technology to enhance program(s) needed to successfully achieve goals and objectives; (9) provides advisory services on career development support programs; and (10) develops a world-class workforce at all levels built on growth, opportunity, and achievement within a culture of diversity, equity, inclusion, accessibility, and belonging,

Human Capital Workforce Solutions Office (CAJQB). (1) provides a broad array of strategic programs, workforce support, and developmental services; (2) develops and implements methodologies to measure, evaluate, and improve human capital results to ensure mission alignment; (3) assesses and evaluates the overall effectiveness and compliance of human resources programs and policies related to merit-based decision-making and compliance with laws and regulations; (4) works with OPM, HHS, and CDC Governance Boards and agency managers to carry out human capital management planning and development activities; and (5) establishes, coordinates, develops, and monitors implementation of human capital initiatives and the agency Strategic Human Capital Management Plan.

Office of the Director (CAJQB1). (1) provides leadership and overall direction for the HR Strategy and Advisory Services Office (HRSAS); (2) develops goals/objectives, and provides leadership, policy formation, oversight, and guidance in program planning and development; (3) plans, coordinates, and develops strategic plans for the HRSAS; (4) develops and administers human capital and human resource management policies and procedures; (5) coordinates all program reviews; (6) provides technical assistance and consultation to the activities within the HRSAS; (7) establishes performance metrics and coordinates reviews to ascertain status on meeting of the metrics; and (8) coordinates, develops, and monitors implementation of human capital initiatives and the agency Strategic Human Capital Management Plan.

Human Resources Strategic Business Support Activity (CAJQB3). (1) advises and facilitates strategic workforce planning and development; (2) supports OHR and CDC components officials in the development, implementation and evaluation of workforce plans, policies, and initiatives; (3) serves as a liaison with HHS and entities within and outside the agency to develop human capital management direction and strategies; (4) coordinates the development and implementation of an agency-wide strategic human capital plan; (5) identifies mission-critical occupations and associated competencies to assess potential gaps in occupations and competencies that are essential to achieving strategic goals; (6) reports on the progress in meeting human capital management improvement objectives associated with HHS-wide and government-wide human capital management improvement; (7) develops and executes a strategic hiring plan to facilitate the recruitment and retention of members of under-represented groups and for closing occupational series and/or competency gaps in the workforce; (8) provides recruitment, retention, consultation and support to customers; and (9) supports Centers, Institute, and Office (CIO)-specific, mission-critical work by managing various training programs designed to provide students, postgraduates, and university faculty with opportunities to participate in projects and assignments in support of the agency's mission.

Human Capital Strategy Activity (CAJQB5). (1) advises and facilitates short-and long-range strategic recruitment; (2) supports OHR and CIO program officials in evaluating its workforce and developing strategies to enhance diversity and inclusion practices that sources talent from all segments of society; (3) serves as a liaison with HHS and entities within and outside the agency to develop human capital management direction and strategies; (4) coordinates the development and implementation of an agency-wide strategic human capital recruitment plan; (5) develops and executes a strategic hiring plan to facilitate the recruitment and retention of members of under-represented groups and for closing occupational series and/or competency gaps in the workforce; (6) provides recruitment, retention, consultation and support to customers; (7) supports CIO-specific, mission-critical work by managing various training programs designed to provide students, postgraduates, and university faculty with opportunities to participate in projects and assignments in support of the agency's mission; and (8) develops strategies that foster inclusion, support, and advancement of a diverse CDC workforce.

CDC University Office (CAJQC). (1) provides agency-wide leadership and guidance in all functional areas related to training and career development; (2) designs, develops, implements and evaluates a comprehensive strategic human resource leadership and career training and development program for all occupational series throughout CDC; (3) develops and implements training strategies and activities that contribute to the agency's mission, goals and objectives; (4) maximizes economies of scale through systematic planning, administration, delivery, and evaluation of agency-wide training initiatives to assist CDC employees in achieving required competencies; (5) develops retraining activities for CDC managers/employees affected by organizational changes (*e.g.* major reorganizations, outsourcing initiatives, etc.); (6)

maintains employee training records; (7) develops and validates occupational and functional competencies and develops related training plans and career maps; (8) develops and administers professional development programs; (9) administers and monitors the Training and Learning Management System for compliance with the Government Employees Training Act; (10) conducts training needs assessment of employees, provides analysis and data to correlate individual training with strategic plans; (11) develops and maintains assessment tools to identify core competency requirements for each occupational series throughout the agency; (12) provides consultation, guidance, and technical assistance to managers and employees in organizational development, career management, employee development, and training; (13) develops and delivers education and training programs to meet the identified needs of the workforce; (14) promotes, develops, and implements training needs assessment methodology to establish priorities for training interventions; (15) collaborates, as appropriate, with agencies and organizations; and (16) develops and implements policies related to employee training.

Office of the Director (CAJQC1). (1) provides assistance with travel orders and conference requests; (2) manages in processing, out processing and personnel actions; (3) liaises with the Enterprise Integration and Tiers Management Office and the Office of Strategic Business Initiatives regarding policy development/revision, manage implementation of policy at CDC University (CDCU), consult with CIOs regarding policy tracking/reporting policy compliance; (4) manages website/liaise with IT group; (5) develops/revises standard operating procedures, job aids, and manages mandatory training processes; (6) manages budget, distribution, monitoring, staffing/workforce plans, physical space planning/management, equipment/other resources; (7) develops and communicates vision/mission, strategic plans, and goals/priorities; (8) sets office-wide processes and guidelines (telework, workflow, approval chains); (9) monitors work processes and products; and (10) establishes key performance indicators/metrics, monitoring/analyzing/interpreting/reporting activity's performance data.

Developmental Assessment, Design, and Evaluation Activity (CAJQC2). (1) develops and validates competency models; (2) develops and validates career paths for all competency models; (3) advises CDC components and individuals on use of electronic individual development plans; (4) designs, administers, scores/analyzes, and interprets/reports competency assessments for CDC components, individuals, and enterprise-wide; (5) advises CDC components and individuals on best practices for assessing/identifying competency gaps/strengths and training needs; (6) designs, implements, scores/analyzes and interprets/reports developmental program evaluation methodologies within CDCU; (7) advises CDC components on the design and implementation of developmental programs; (8) advises CDC components on the design and implementation of developmental program evaluation; and (9) collects, analyzes and interprets/reports of organizational-level data, certification eligibility/compliance, quarterly/annual report).

Training Administration Activity (CAJQC3). (1) manages room reservation/specification details (for CDCU and CDC components), visitor access, room setup, room signs, makes/posts schedules, receives/manages/distributes training materials; (2) processes training orders through the Vendor Supplied Training System and SharePoint entry; (3) manages Learning Portal, roster management, course communications; and (4) supports customers with phone calls, emails, training request process consultation, and processes coaching requests/tracking.

Program Development Activity (CAJQC4). (1) manages classroom/web-based/blended program design and development, vendor/internal facilitator selections, programs curriculum planning/scheduling program administration process development; (2) markets and manages participant application/enrollment process, participant selection/notification, program communications, and monitors participant attendance/participation; (3) develops/distributes program information/materials to participants, coordinates with vendors/internal facilitators regarding program requirements, and opens/facilitates the program; (4) coordinates with the Developmental Assessment, Design, and Evaluation (DAD–E) to establish evaluation methodology, auditing program courses, collection of evaluation data, reviews performance of program elements to inform revisions; (5) establishes memorandums of understanding/agreements with local universities and other learning institutions; (6) recruits and consults with potential participants of external continuous learning programs; and (7) manages long term education process, New Employee Orientation, and mentoring and coaching programs.

Training Delivery Activity (CAJQC5). (1) manages classroom/web-based/blended curriculum, vendor/internal facilitator selections, curriculum/planning scheduling, program administration processes, determines courses that meet mandatory requirements, utilizes processes and requirements to provide continuing education credits to applicable courses; (2) manages all aspects of the biennial request for quote (RFQ) process to meet CDC training requirements, to include solicitation of proposals, vendor selection, and RFQ database maintenance, conducts market research to identify vendors that supply training via traditional and alternative platforms that meet CDC needs; (3) markets and manages participant enrollment process, determines audience types, program communications, and monitors participant attendance/participation; (4) develops/distributes course information/materials to participants, coordinates with vendors/internal facilitators to ensure facility access, opening/facilitating courses; (5) coordinates with DAD–E to establish evaluation methodology, auditing courses, collection of evaluation data, reviews performance of courses to curriculum revisions; (6) forms and manages advisory councils to support curricula development; and (7) provides consultation and assistance in selecting vendor-supplied training to meet identified training needs.

Workforce Relations Office (CAJQD). (1) provides leadership, technical assistance, guidance, and consultation on employee and labor relations, employee services and assistance, work-life programs, performance management, and incentive awards; (2) develops and administers labor-management and employee relations program including: disciplinary actions, grievances and appeals, labor negotiations, collective bargaining, management representation before third parties, and partnership activities; (3) serves as liaison with the Office of Safety, Security and Asset Management (OSSAM) and other staff for personnel matters relating to substance abuse and other employee assistance programs; (4) plans, directs, coordinates, and conducts contract negotiations on behalf of agency management with labor organizations holding exclusive recognition; (5) represents management in third party proceedings involving labor and employee relations issues; (6) serves as the authority to ensure validity, consistency, and legality of

employee relations matters concerning grievances (both negotiated and agency procedures), disciplinary actions, adverse actions, and resultant third party hearings; (7) plans and coordinates all programmatic activities to include preparation of disciplinary and adverse action letters and all final agency decisions in grievances and appeals; (8) provides technical advice, consultation, and training on matters of employee conduct and performance; (9) facilitates the development and implementation of an agency-wide strategic approach to monitoring, evaluating, aligning, and improving performance management policies and practices for all CDC performance management systems (Title 5, Title 38 Hybrid, Title 42, Senior Executive Service (SES), Senior Biomedical Research Service (SBRS), and the Commissioned Officer Effectiveness Report (COER); and (10) coordinates performance management, strategic rewards and recognition programs and systems.

Office of the Director (CAJQD1). (1) provides leadership and overall direction for the Workforce Relations Office (WRO); (2) develops goals and objectives, and provides leadership, policy formation, oversight, and guidance in program planning and development; (3) plans, coordinates, and develops strategic plans for the WRO; (4) coordinates all program reviews; (5) provides technical assistance and consultation to the activities within the WRO; (6) coordinates, develops, and monitors implementation of program initiatives; (7) develops and administers labor-management program including: labor negotiations, collective bargaining, management representation before third parties, and partnership activities; (8) plans, directs, coordinates, and conducts contract negotiations on behalf of agency management with labor organizations holding exclusive recognition; and (9) represents management in third party proceedings involving labor relations issues.

Employee and Labor Relations Activity (CAJQD2). (1) provides leadership, technical assistance, guidance, and consultation on employee relations; (2) develops and administers the employee relations program including: disciplinary actions and grievances and appeals; (3) serves as liaison with OSSAM and other staff for personnel matters relating to substance abuse and other employee assistance programs; (4) serves as the authority to ensure validity, consistency, and legality of employee relations matters concerning grievances (both negotiated and agency procedures), disciplinary actions, adverse actions, and resultant third party hearings; (5) plans and coordinates all programmatic activities to include preparation of disciplinary and adverse action letters and all final agency decisions in grievances and appeals; (6) provides technical advice, consultation, and training on matters of employee conduct and performance; (7) provides consultation, guidance, and technical advice to human resources specialists, managers, and employees on employee relations matters; (8) provides human resources services and assistance on advance leave; (9) manages and provides advice and assistance in the processing of the Voluntary Leave Donation Program; and (10) provides guidance on the Family Medical Leave Act (FMLA).

Performance Management, Strategic Rewards, Recognitions, and Worklife Activity (CAJQD4). (1) facilitates the development and implementation of an agency-wide strategic approach to monitoring, evaluating, aligning, and improving performance management policies and practices for all performance management systems (Title 5, Title 38 Hybrid, Title 42, SES, SBRS, and the COER); (2) coordinates performance management, strategic rewards and recognition programs and systems; (3) administers and manages the Worklife Program, lactation support, transportation subsidy, child care centers; and (4) administers the telework programs to include medical telework.

Client Services Office (CAJQE). (1) serves as the primary contact for management and employees in obtaining the full range of personnel assistance and management services for civil service personnel; (2) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration, recruitment, staffing, placement, reorganizations, program evaluation, and personnel records and files management; (3) liaises with HHS and OPM in the area of human resources management; (4) provides leadership in identifying the recruiting needs, and assesses, analyzes, and assists programs in developing and executing short- and long-range hiring plans to meet these needs; (5) provides guidance to organizations in the development of staffing plans and job analyses, evaluating/classifying position descriptions, conducting position management studies, and responding to desk audit requests; (6) processes personnel actions by determining position classification, issuing vacancy announcements, assisting in development of selection criteria, conducting examining under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (7) codes and finalizes all personnel actions in the automated personnel data system, personnel action processing, data quality control/assessment, and files/records management; (8) plans, develops, implements, and evaluates systems to ensure consistently high-quality human resources services; (9) establishes objectives, standards, and internal controls; (10) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (11) manages various staffing programs such as the CDC summer program, Priority Placement Program, Priority Consideration Program, the Interagency Career Transition Assistance Program, and the Career Transition Assistance Program and other special emphasis programs; (12) provides consultation, guidance, and technical advice on recruitment and special emphasis policies, practices, and procedures, including search committees, strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (13) establishes and maintains personnel records, files, and controls; (14) establishes and maintains the official personnel files system and administers personnel records storage and disposal program; (15) collaborates with Personnel Security in initiating suitability background checks and fingerprints for all personnel; (16) responds to employment verification inquiries; and (17) administers the Special Emphasis Programs and Student Intern/Fellowship Programs.

Office of the Director (CAJQE1). (1) provides leadership and overall direction for the Client Services Office (CSO); (2) develops goals and objectives, and provides leadership, policy formation, oversight, and guidance in program planning and development; (3) plans, coordinates, and develops strategic plans for CSO; (4) coordinates all program reviews; (5) provides technical assistance and consultation to the Activities within CSO; and (6) coordinates, develops, and monitors implementation of program initiatives.

Customer Staffing Activity 1 (CAJQE2). (1) provides leadership in identifying recruiting needs, and

assesses, analyzes, and assists CDC programs in developing and executing short- and long-range hiring plans to meet these needs; (2) provides guidance in the development of staffing plans and job analyses; (3) processes personnel actions by issuing vacancy announcements, assisting in development of selection criteria, conducting examinations under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (4) plans, develops, implements, and evaluates systems to ensure consistently high quality human resources services; (5) establishes objectives, standards, and internal controls; (6) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (7) provides consultation, guidance, and technical advice on recruitment policies, practices, and procedures, including search committees, strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (8) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration; and (9) codes and finalizes all personnel actions in the automated personnel data system and ensures data quality control/assessment, and files/records management.

Customer Staffing Activity 2 (CAJQE3). (1) provides leadership in identifying recruiting needs, and assesses, analyzes, and assists programs in developing and executing short- and long-range hiring plans to meet these needs; (2) provides guidance to organizations in the development of staffing plans and job analyses; (3) processes personnel actions by issuing vacancy announcements, assisting in development of selection criteria, conducting examinations under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (4) plans, develops, implements, and evaluates systems to ensure consistently high-quality human resources services; (5) establishes objectives, standards, and internal controls; (6) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (7) provides consultation, guidance, and technical advice on recruitment policies, practices, and procedures, including search committees; strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (8) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration; and (9) codes and finalizes all personnel actions in the automated personnel data system and ensures data quality control/assessment, and files/records management.

Classification and Advisory Activity (CAJQE5). (1) provides guidance to organizations in the development of staffing plans and job analyses, evaluating/classifying position descriptions, conducting position management studies, and responding to desk audit requests; (2) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration; (3) provides leadership in identifying classification and position management needs; (4) provides guidance to CDC organizations in the development, evaluation/classification of position descriptions; (5) conducts position management studies and responds to desk audit requests; (6) reviews reorganization proposals and provides advice on proposed staffing plans and organizational structures; (7) plans, develops, implements, and evaluates systems to ensure consistently high-quality human resources services; (8) establishes objectives, standards, and internal controls; and (9) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures.

Technical Services Activity (CAJQE6). (1) processes personnel actions by determining pay, conducting reductions-in-force, effecting appointments, and processing other actions; (2) codes and finalizes all personnel actions in the automated personnel data system, personnel action processing, data quality control/assessment, and files/records management; (3) establishes objectives, standards, and internal controls; (4) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (5) establishes and maintains personnel records, files, and controls; (6) establishes and maintains the official personnel files system and administers personnel records storage and disposal program; (7) collaborates with Personnel Security in initiating suitability background checks and fingerprints for all personnel; and (8) responds to employment verification inquiries.

Customer Staffing Activity 4 (CAJQE7). (1) provides leadership in identifying the international workforce recruiting needs, and assesses, analyzes, and assists programs in developing and executing short- and long-range hiring plans to meet these needs; (2) provides guidance in the development of staffing plans and job analyses; (3) processes personnel actions by issuing vacancy announcements, assisting in development of selection criteria, conducting examinations under delegated examining authority, conducting candidate rating and ranking under CDC Merit Promotion Plan, making qualification determinations, determining pay, conducting reductions-in-force, effecting appointments and processing other actions; (4) plans, develops, implements, and evaluates systems to ensure consistently high-quality human resources services; (5) establishes objectives, standards, and internal controls; (6) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; (7) provides consultation, guidance, and technical advice on recruitment policies, practices, and procedures, including search committees; strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (8) provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration; and (9) codes and finalizes all personnel actions in the automated personnel data system and ensures data quality control/assessment, and files/records management.

Special Hiring Programs Activity (CAJQEB). (1) serves as the primary contact for management and employees in obtaining the full range of personnel assistance and management services for excepted service personnel; (2) manages various staffing programs such as the CDC summer program, Priority Placement Program, Priority Consideration Program, the Interagency Career Transition Assistance Program, and the Career Transition Assistance Program, Pathways Program, Public Health Associates Program, and other special emphasis programs; (3) provides consultation, guidance, and technical

advice on recruitment and special emphasis policies, practices, and procedures, including search committees, strategizes on the best approach to recruitment at specific events, and designs and develops recruitment materials for events; (4) establishes and maintains personnel records, files, and controls; (5) administers the Special Emphasis Program and Student Intern/Fellowship Program; (6) plans, develops, implements, and evaluates systems to ensure consistently high quality human resources services; (7) establishes objectives, standards, and internal controls; (8) evaluates, analyzes, and makes recommendations to improve personnel authorities, policies, systems, operations, and procedures; and (9) process the agency's Intergovernmental Personnel Act Employees.

Hiring Policy and Quality Review Activity (CAJQEC). (1) provides oversight, guidance and support for policy and human resources accountability activities; provides leadership, technical assistance, guidance, and consultation in human resource utilization, position management, classification and pay administration, recruitment, staffing, placement, reorganizations, program evaluation, and personnel records and files management; (2) revises, updates, and monitors the implementation of human resources management policies and operational procedures as directed by OPM, HHS, CDC to ensure consistent application; (3) provides issues management and resolution support to OHR including internal and external customers; (4) provides leadership, oversight, guidance and support for policy activities supporting OHR; (5) serves as the focal point for the analysis, technical review of non-scientific policy documents that require approval/signature from the OHR Director; (6) responds to and coordinates requests for issues management information to ensure efficient responses to the OHR director; (7) operates as an internal audit function to maintain the accountability of HR areas and safeguards legal and regulatory requirements; (8) ensures HR goals and programs are aligned with and support the agency's mission; (9) ensures HR management office is guided by a data driven, and results-oriented processes; (10) ensures managers and HR practitioners are held accountable for their HR decisions; (11) assesses the effectiveness and efficiency of the HR function; (12) ensures HR programs and policies adhere to merit system principles and other pertinent laws and regulations; (13) conducts recurring delegated examining audits and periodic HR management reviews to verify and validate the level of compliance and performance; and (14) implements a plan for addressing issues or problems identified during accountability audits and related activities.

Executive and Scientific Resources Office (CAJQG). (1) provides leadership, technical assistance, guidance, and consultation in the administration of policies and procedures for appointment of individuals through the SBRS, SES, distinguished consultants, experts, consultants, and fellows under Title 42 appointment authorities; (2) provides advisory services and technical assistance on pay and compensation guidelines in accordance with OPM rules and regulations, HHS and CDC established pay and compensation recommendation policies, and procedures; (3) provides expert HR advisory services and technical assistance support to the performance review boards and compensation committees; (4) reviews actions for statutory and regulatory compliance; (5) manages strategic recruitment, relocation, and retention incentives to facilitate attraction of a quality, diverse workforce to ensure accomplishment of the agency's mission; (6) provides performance management training for all SES and Title 42 executives with emphasis on performance systems, timelines, supervisory and employee responsibilities; (7) provides guidance on establishing performance plans, conducting mid-year reviews, and conducting final performance rating discussions and closing performance plans; (8) develops and maintains a standard HHS-wide performance management system and forms for executives; (9) conducts reviews of SES performance plans and appraisals and provide feedback; (10) prepares and submits SES performance system certification request to OPM and Office of Management and Budget (OMB); (11) processes performance awards and performance-based pay adjustments; (12) provides advice, assistance, templates and training workshops on performance award and Presidential Rank Award requirements; (13) manages the HHS Executive Development Program, including developmental activities, rotational assignments, and the Candidate Development Program; (14) advises on development of executive succession planning activities; and (15) provides program guidance, administration, and oversight of immigration and visa programs.

Office of the Director (CAJQG1). (1) provides leadership and overall direction for the Executive and Scientific Resources Office (ESRO); (2) develops goals and objectives, and provides leadership, policy formation, oversight, and guidance in program planning and development; (3) plans, coordinates, and develops strategic plans for the ESRO; (4) coordinates all program reviews; (5) provides technical assistance and consultation to the activities within ESRO; and (6) coordinates, develops, and monitors implementation of program initiatives.

Executive and Scientific Compensation and Performance Activity (CAJQG2).

(1) Provides advisory services, and technical assistance on pay and compensation guidelines in accordance with OPM rules and regulations, HHS and CDC established pay and compensation recommendation policies, and procedures; (2) provides expert HR advisory services and technical assistance support to the CDC performance review boards and compensation committees; (3) reviews actions for statutory and regulatory compliance; (4) manages strategic recruitment, relocation, and retention incentives to facilitate attraction of a quality, diverse workforce to ensure accomplishment of the agency's mission; (5) provides performance management training for all SES and Title 42 executives with emphasis on performance systems, timelines, supervisory and employee responsibilities; (6) provides guidance on establishing performance plans, conducting mid-year reviews, and conducting final performance rating discussions and closing performance plans; (7) develops and maintains a standard Department-wide performance management system and forms for executives; (8) conducts reviews of SES performance plans and appraisals and provides feedback; (9) prepares and submits SES performance system certification request to OPM and OMB; (10) processes performance awards and performance-based pay adjustments; (11) provides advice, assistance, templates and training workshops on performance award and Presidential Rank Award requirements; (12) manages the HHS Executive Development Program, including developmental activities, rotational assignments, and the Candidate Development Program; and (13) advises on development of executive succession planning activities.

Executive and Scientific Staffing Activity (CAJQG3). (1) provides leadership, technical assistance, guidance, and consultation in the administration of policies and

procedures for the appointment of individuals through the distinguished consultants, experts, consultants, and fellows under Title 42 appointment authorities; and (2) administers and manages the Guest Researcher and Oak Ridge Institute for Science and Education Program.

Immigration Activity (CAJQG4). (1) provides technical guidance and visa assistance for employment-based, CDC-sponsored visas; (2) administers and manages the Exchange Visitor Program; (3) works closely with the U.S. Office of Exchange and Cultural Affairs, U.S. Citizenship and Immigration Services (USCIS), U.S. Department of Homeland Security, U.S. Department of State, Office of the Secretary/HHS, and U.S. Department of Labor to facilitate immigration procedures; (4) reviews, processes and files H–1B, O–1, and Green Card (I–140) Petitions with USCIS; (5) provides advisory services and guidance on employment-based green card petitions in the Alien of Extraordinary Ability category; (6) issues Certificate of Eligibility for J–1 Exchange Visitor Status through the Student and Exchange Visitor Information System to non-U.S. citizens seeking CDC J–1 visa sponsorship; (7) coordinates and provides consultations and guidance on Interested Government Agency Waivers; (8) provides immigration training workshops to administrative staff; and (9) determines the appointment mechanism, legal status, and work authorizations for non-U.S. citizens through the Visitors Management System.

Enterprise and Integration Tiers Management Office (CAJQH). (1) provides leadership, oversight, guidance and support for policy, human capital accountability, communication, and customer service supporting OHR; (2) develops, administers and monitors the implementation of human capital and human resources management policies and operational procedures as directed by OPM, HHS, CDC or other pertinent Federal agencies to ensure consistent application; (3) liaise with HHS and OPM on HR management, policy, compliance and execution of the Human Capital Assessment and Accountability Framework; (4) conducts organizational assessments to determine compliance with human capital policies, guidance, regulatory and statutory requirements of Federal human capital and resource management programs and initiatives; and (5) provides issues management and resolution support to OHR including internal and external customers.

Office of the Director (CAJQH1). (1) provides leadership and overall direction for the Enterprise and Integration Tiers Management Office, (2) provides leadership, oversight, guidance and support for policy, communications, human capital accountability, tiers management across the lines of business and offices/activities, communication, and customer service supporting OHR; (3) develops goals and objectives, and provides leadership, policy formation, communications, oversight, and guidance in special projects, program planning and development; (4) plans, coordinates, and develops strategic plans for the Office; (5) coordinates all program reviews; (6) provides technical assistance and consultation to the offices and activities within OHR; (7) coordinates, develops, and monitors implementation of program initiatives and activities; (8) oversees the service delivery model; (9) liaises with HHS and OPM on HR management, policy, compliance and execution of the Human Capital Assessment and Accountability Framework; (10) conducts organizational assessments to determine compliance with human capital policies, guidance, regulatory and statutory requirements of Federal human capital and resource management programs and initiatives; (11) provides issues management and resolution support to OHR including internal and external customers; and (12) provides oversight of shared services approaches focused on achieving desired economies of scale, enhance consistency or standardization across the organization, improve quality, leverage technology investments, manage labor costs across OHR and provide greater value to the business.

Tiers Management Activity (CAJQH2). (1) provides leadership, oversight, integrated and shared services within OHR, and guidance and support for policy activities supporting OHR; (2) develops, administers and monitors the implementation of human capital and human resources management policies and operational procedures as directed by OPM, HHS, CDC or other pertinent Federal agencies to ensure consistent application; (3) serves as the focal point for the analysis, development, technical review and clearance of controlled correspondence and non-scientific policy documents that require approval/signature from the OHR Director or other senior leadership; (4) responds to and coordinates requests from the OHR/OD for issues management information to ensure efficient responses to the Director's priority issues; (5) operates as an internal audit function to maintain the operational integrity of HR and human capital areas and safeguards legal and regulatory requirements; (6) ensures that human capital goals and programs are aligned with and support the agency's mission; (7) ensures that human capital planning is guided by a data driven, results-oriented process toward goal achievement; (8) ensures that managers and HR practitioners are held accountable for their human capital decisions; (9) assesses the effectiveness and efficiency of the HR function; (10) ensures human capital programs and policies adhere to merit system principles and other pertinent laws and regulations; (11) conducts recurring delegated examining audits and periodic human capital management reviews to verify and validate the level of compliance and performance; (12) implements a plan for addressing issues or problems identified during accountability audits and related activities; (13) provides technical assistance, guidance, and consultation on employee and labor relations, employee services, pay, leave and benefits administration, staffing and recruitment, position classification; (14) provides issues management and resolution support to OHR including internal and external customers; (15) manages workload assessment and customer based training; (16) monitors customer satisfaction, (17) tracks and assess key performance indicators and other reporting requirements; (18) oversees, administers and maintains the enterprise -wide customer service help desk; (19) provides direct services spanning the full spectrum of personnel programs; (20) operates Employee Resource Center providing routine, repeatable and transactional support through knowledge management, customer contact, in a responsive, interactive manner; (21) serves as the end-to-end process owner; (22) collaborates with Tier 0–3 for all personnel programs executed by CDC; and (23) develops, administers, and monitors the implementation of human capital and human resources management policies and operational procedures as directed by OPM, HHS, CDC or other pertinent Federal agencies to ensure consistent application.

Communication Activity (CAJQH4). (1) provides leadership, oversight, guidance and support for communication activities supporting OHR; (2) responds to and coordinates requests from the OHR/OD for issues management information to ensure efficient responses to the Director's priority issues; (3) provides and manages a wide range of communication services in support of

OHR; (4) facilitates open and transparent employee communication; (5) develops and implements internal and external public relations strategies to communicate upward and outward to customers and partners; and (6) utilizes multiple channels and methods to communicate and disseminate HR policies, announcements, procedures, information, and other relevant messages.

Data Analytics and Technology Office (CAJQJ). (1) serves as the liaison to OCIO and HHS in the development, maintenance, and support of Department-wide human resource information systems and applications; (2) support capital planning and investment control activities related to all developed human capital and human resources management systems and applications; (3) serves as liaison and provides support in the development and maintenance of HHS enterprise human resources systems; (4) supports periodic reporting requirements from CDC, HHS, OPM, and OMB; (5) oversees the HR information systems governance structure and change control board activities; (6) develops strategic plans for information technology and information systems required to support human capital and HR management information requirements; (7) coordinates HR information resource management activities with OCIO and related governance groups; (8) coordinates management information systems and analyses of data for improved utilization of resources; (9) provides business data strategy, data analytics, and reporting services; (10) performs analysis, forecasting, and modeling to interpret quantitative and qualitative data; (11) reports and evaluates organizational performance outcomes on key measures and metrics; (12) facilitates the administration, analysis and reporting of survey data; and (13) provides recommendations for business process reengineering efforts.

Administrative and Operations Management Office (CAJQK). (1) provides leadership, oversight, and guidance in the management and operations of OHR programs; (2) provides and oversees the delivery of OHR-wide administrative management and support services in the areas of fiscal management, personnel, travel, records management, internal controls, and other administrative services; (3) prepares annual budget formulation, budget justifications and execute the OHR budget; (4) coordinates OHR requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (5) develops and implements administrative policies, procedures, and operations, as appropriate, for OHR, and prepares special reports and studies, as required, in the administrative management areas; (6) liaises with related staff offices and other officials; (7) oversees the HR governance structure and change control board activities; (8) manages the OHR working capital fund activities; oversee the development and updating of annual performance plans; (9) provides administrative oversight of the telework management system to ensure all applicable employees are on the appropriate agreement; (10) provides oversight and administration of the purchase card and procure goods and services in compliance with applicable laws and regulations; (11) serves as liaison with OCIO on the timekeeping responsibilities for OHR; (12) prepares and processes personnel actions for the organization; (13) maintains oversight and administration of Freedom of Information Act and litigation hold requests; and (14) provides management and oversight of the property management program.

Ethics and Integrity Office (CAJQL). (1) provides leadership, oversight, guidance, services and support, counseling, education and awareness and training for federally-mandated ethics requirements and activities supporting HHS and CDC; (2) develops, administers, and monitors the implementation of ethics-related programs, policies, and operational procedures as directed by Office of Government Ethics (OGE), HHS, CDC, and other applicable Federal entities to ensure compliance and consistent application across the agency; (3) liaises with HHS and OGE on ethical standards and expectations, ethics policy, compliance with Federal ethical guidelines, and their implementation at CDC; (4) conducts routine and periodic assessments to determine compliance with Federal requirements in support of the standards of ethical conduct, applicable regulations, policies, guidance, statutory requirements for ethics programs and initiatives; (5) provides procedures to capture and address ethics-related issues and resolution in support of the CDC workforce and applicable stakeholders; (6) plans, coordinates, and develops strategic plans for the Ethics and Integrity Office (EIO); (7) provides guidance and oversight for all program activities; (8) provides technical management and oversight for the activities within EIO; (9) provides management and oversight of ethics information systems, tools, and resources; (10) provides and oversees the delivery of agency-wide communications applicable to ethics-related training, services, and support activities; (11) monitors and manages the receipt, distribution, and accountability of organizational and individual ethics actions and activities; (12) captures, manages, and develops actionable ethics data reports to inform management decisions; (13) manages and responds to Federal and agency-related information requests applicable to CDC stakeholders; (14) provides and manages applicable files maintenance requirement for digital and physical environments; (15) prepares and provides special reports and information, routine and ad hoc, in the EIO functional management areas; (16) receives, reviews, and provides ethics counseling on financial disclosure actions to eliminate or mitigate conflicts of interest; (17) provides federally-mandated review, consultation, and recommendation on employee participation in activities in with outside organizations; (18) provides agency-mandated review, consultation, and recommendation on employee participation in official duties with external organizations on behalf of the agency; and (19) conducts a review and provides recommendations on compliance with statutes and regulations applicable to creative research relationships involving academic institutions, public health manufacturers, and private industry.

Commissioned Corps Liaison Office (CAJQM). (1) serves as the liaison office for leadership to Commissioned Corps Headquarters (CCHQ) in the Office of the Surgeon General and is responsible for the administration of Public Health Service (PHS) officers stationed at CDC and ATSDR; (2) serves as the primary contact for management and officers in obtaining a full range of advisory services and personnel assistance related to the management of PHS officers; (3) provides leadership, technical assistance, guidance, and consultation for benefits, entitlements, career management, retirement counseling, promotion counseling, adverse actions, casualty assistance, special pays, flag positions, international assignments, Epidemic Intelligence Service and Laboratory Leadership Service officers, interns, Long-term Training, and personnel actions; (4) advises on Commissioned Corps PHS policies and systems such as salary/benefits, performance management, assignments, protocol, health benefits, training, permanent change of station, relocation, career management, standards of service,

readiness, deployments, and retirement; (5) provides PHS-related training to managers, supervisors, and PHS officers; (6) leads recruitment and retention efforts for staffing positions with PHS officers and champions diversity and inclusion efforts; (7) manages and administers the Commissioned Corps promotion and awards programs; (8) collaborates with CCHQ on deployments, manages agency deployments, oversees the Emergency Operations Center (EOC) Commissioned Corps deployment desk during activation of the EOC; and (9) plans, directs, and manages the Department of Defense's Eligibility Enrollment Report System identification card program for all active duty officers, retirees, and eligible dependents.

Benefits and Employee Services Office (CAJQN). (1) provides leadership, technical assistance, guidance, and consultation on work-life programs, pay, overseas allowances, retirement benefits, leave and benefits administration, on-the-job injuries and exposures to infectious diseases, debt complaints and other job-related issues; (2) coordinates and processes garnishment, child support, and other collection actions for employees; (3) provides technical advice, consultation, and training on matters of employee conduct and performance; (4) provides consultation, guidance, and technical advice to HR specialists, managers, and employees on the development, coordination and implementation of all payroll, benefits, retirement and worker's compensation initiatives; (5) provides personnel services relating to on-the-job injuries and exposures to infectious diseases; (6) facilitates the development and implementation of an agency-wide strategic approach to monitoring, evaluating, aligning, and improving benefits and employee services policies and practices; (7) provides HR services and assistance on domestic and international employee benefits, allowances and leave administration; (8) serves as liaison between CDC and the HHS payroll office resolving discrepancies with pay and leave; (9) administers the leave donor program and processes time and attendance amendments; (10) administers the Federal life and health insurance programs; (11) provides policy guidance and technical advice and assistance on retirement, the Thrift Savings Plan, health/life insurance, and savings bonds; (12) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims and the Voluntary Leave Donation Program; and (13) administers the Veteran's Leave Program and processes the leave in the payroll system and coordinates with Technical Service Activity to update employee's record.

Office of the Director (CAJQN1). (1) provides leadership and overall direction for the Benefits and Employee Services Office; (2) develops goals and objectives, and provides leadership, policy formation, oversight, and guidance in program planning and development; (3) plans, coordinates, and develops strategic plans for the Benefits and Employee Services Office (BESO); (4) coordinates all program reviews; (5) provides technical assistance and consultation to the activities within BESO; (6) provides help desk support for BESO; and (7) coordinates, develops, and monitors implementation of program initiatives.

Retirement and Benefits Services Activity (CAQJN2). (1) provides HR services and assistance on domestic and international employee benefits, overseas allowances, and leave administration; (2) serves as liaison between CDC and the HHS payroll office resolving discrepancies with pay and leave; (3) audits payroll-related discrepancies regarding leave programs and processes time and attendance amendments; (4) administers the Federal life and health insurance programs; and (5) provides policy guidance and technical advice and assistance on retirement, the Thrift Savings Plan, health/life insurance, and savings bonds.

Compensation and Leave Administration Activity (CAJQN3). (1) provides consultation, guidance, and technical advice to human resources specialists, managers, and employees on the development, coordination and implementation of all Work Life program initiatives; (2) provides personnel services relating to on-the-job injuries and exposures to infectious diseases; (3) provides HR services and assistance on domestic and international employee benefits, overseas allowances; (4) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (5) furnishes advice and assistance in the processing of the Voluntary Leave Donation Program; (6) administers Veterans Leave Program and coordinates with the Technical Services Activity for record update; and (7) provides guidance on the FMLA.

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Global Health Center

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Global Health Center (GHC). GHC reorganized to ensure optimal strategic planning and implementation of CDC's global health work to protect the United States and achieve global public health impact.

DATES: This reorganization was approved by the Director of CDC on June 28, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Thurmond, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS TW–2, Atlanta, GA 30329. Telephone 770–488–4401; Email: *reorgs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 88 FR 9290–9291, dated February 13, 2023) is amended to reflect the reorganization of the Global Health Center, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, insert the following:

- Global Health Center (CW)
- Office of the Director (CW1)
- Division of Global HIV and TB (CWB)
- Office of the Director (CWB1)
- International Laboratory Branch (CWBB)
- HIV Prevention Branch (CWBC)
- HIV Care and Treatment Branch (CWBD)

- Maternal and Child Health Branch (CWBE)
- Epidemiology and Surveillance Branch (CWBG)
- Economics and Health Services Research Branch (CWBH)
- Overseas Strategy and Management Branch (CWBJ)
- Program Budget and Extramural Management Branch (CBK)
- Global Tuberculosis Prevention and Control Branch (CWBL)
- Science Integrity Branch (CWBM)
- Management and Operations Branch (CWBN)
- Strategy, Policy, and Communications Branch (CWBP)
- Special Initiatives Branch (CWBQ)
- Health Informatics, Data Management, and Statistics Branch (CWBR)
- Monitoring, Evaluation, and Data Analysis Branch (CWBS)
- Global Immunization Division (CWC)
- Office of the Director (CWC1)
- Polio Eradication Branch (CWCB)
- Accelerated Disease Control and Vaccine Preventable Diseases Surveillance Branch (CWCC)
- Immunization Systems Branch (CWCD)
- Strategic Information and Workforce Development Branch (CWCE)
- Division of Global Health Protection (CWD)
- Office of the Director (CWD1)
- Global Public Health Systems Branch (CWDB)
- Global Surveillance, Laboratory, and Data Systems Branch (CWDC)
- Global Workforce Development Branch (CWDD)
- Global Program and Extramural Management Branch (CWDE)
- Global Public Health Emergency Branch (CWDG)

II. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Global Operations and Strategic Management Branch (CWEE) to the Global Program and Extramural Management Branch (CWDE)

III. Under Part C, Section C–B, Organization and Functions, delete the mission or functional statements for and replace with the following:

Global Health Center (CW). The Global Health Center (GHC) (1) leads the coordination and execution of CDC's global health country and regional programs, to achieve maximum public health impact in support of the agency mission; (2) works in partnership to assist ministries of health to build capacity, maximize public health impact and promote country ownership and sustainability; (3) achieves U.S. Government (USG) and international organization goals to improve health, including disease eradication and elimination targets; (4) strengthens CDC's global health programs that focus on the leading causes of mortality, morbidity and disability and improves international capabilities through Global Health Security commitments to address public health emergencies and threats; (5) generates and applies new knowledge to achieve health goals; (6) strengthens health systems and their impact; and (7) ensures broad and specific investments in global health to promote USG commitments to protect health abroad and in the United States and meet public health emergency needs and health threats in international settings.

Office of the Director (CW1). (1) serves as the responsible authority for regional and country planning and cross-program integration, (2) harmonizes CDC global health priorities with host country priorities and those of regional entities, and works with ministries of health to improve essential public health functions, maximize positive health outcomes and promote country ownership and sustainability; (3) provides leadership, direction, and oversight, regardless of program affiliation, to all CDC country directors and regional directors in their role as a senior CDC representative with the U.S. Embassy and ministry of health and in implementing CDC's global health strategy in countries and across regional platforms; (4) provides coordination for CDC's global health security strategy, programs, policy and partnerships; (5) leads its divisions in implementing public health programs and ensures the impact and effectiveness of administration initiatives, congressionally-mandated programs and other public health programs; (6) measures the performance of CDC's global health programs in terms of public health impact and fiscal accountability; (7) provides leadership to promote growth and improvement of CDC global health programs; (8) provides scientific leadership in developing and implementing evidence-based public health interventions and promotes best scientific practice; (9) facilitates the conduct and maintenance of ethical and high-quality, scientific investigations by implementing regulatory requirements, monitoring human subjects compliance, and clearing scientific products; (10) works to strengthen surveillance systems to analyze, measure and evaluate the global burden and distribution of disease; (11) promotes scientific innovation and advances in global health surveillance, epidemiology, monitoring and evaluation, and informatics; (12) harmonizes CDC's global laboratory activities to strengthen laboratory capacity globally and (13) promotes the introduction of innovative technologies and approaches to improve the diagnostic and screening capability of programs to better detect and respond to emerging pathogens; (14) participates in defining, developing, shaping and implementing U.S. global health policy and actions; (15) coordinates prioritization and planning for visits of high level officials to CDC and other strategic engagements; (16) provides leadership on issues management, budget formulation and performance integration for country-specific, regional, and geographic issues; (17) plans and executes CDC's internal and external global health communications strategy and public affairs media response/outreach in conjunction with CDC Immediate Office of the Director; (18) provides oversight, guidance, and accountability for all operations functions, human resources, workforce management, budget formulation and distribution, extramural reviews and processing, internal and domestic travel and property management responsibilities for the Center; (19) provides holistic operations support for all CDC workforce assigned overseas; (20) provides leadership and guidance in international hiring actions, including temporary assignments and liaison roles with international organizations, USG agencies, and related global institutes; (21) develops and maintains an effective global health workforce for CDC through strategic and innovative personnel solutions, policies and training initiatives, while demonstrating accountability for personnel resources and results of human capital investment; (22) provides leadership and guidance on informatics, information technology systems implementation, security, governance and planning for the Center and CDC's overseas presence; and (23) develops and ensures compliance with standardized management processes and solutions for CDC country offices and regional offices.

Division of Global Health Protection (CWD). The Division of Global Health Protection (DGHP) works to strengthen public health capacity globally to protect Americans and people around the world from health threats. DGHP helps to ensure global health protection and security through supporting the implementation of the International Health Regulations (IHR); developing and supporting in-country programs

including Field Epidemiology Training Programs and other public health workforce development programs, and the establishment or strengthening of national public health institutes (NPHIs); detecting emerging health threats; and by providing support to program and Center-led international public health emergencies, and agency-wide responses. DGHP works with partners to build strong, transparent, sustained public health systems through training, consultation, capacity building, and technical assistance in applied epidemiology, public health surveillance, policy development, informatics and health information systems, evaluation, implementation science, and laboratory systems. Specifically, DGHP: (1) works collaboratively across CDC and with external partners to provide country-based and international coordination for public health systems strengthening, disease detection, and IHR implementation; (2) provides support to build operational readiness and country capacity for robust functional public health leadership and coordination; and (3) provides resources and assists in developing country-level epidemiology, surveillance and data systems, laboratory, public health workforce and other core public health capabilities and partners with countries to support NPHIs as sustainable homes for public health preparedness and response to ensure country emergency preparedness and capacity to respond to outbreaks and incidents of local and international importance.

Office of the Director (OD) (CWD1). The DGHP OD provides leadership, management, and oversight for division activities. Specifically, the OD: (1) sets the broader strategy and priorities for the division in coordination with GHC and other program partners; (2) guides the implementation of the division's global health security program priorities and ensures activities align with agency goals and country priorities to support a ''one-CDC'' strategy; (3) develops and promotes partnerships with both national and international organizations, including other USG agencies, in support of division activities; (4) provides oversight and support to Regional Country Managers who provide programmatic leadership and technical supervision, and to branches who provide programmatic leadership to technical programs; (5) develops and implements risk management frameworks and identifies, analyzes, and develops strategies to prevent, manage, and respond to financial, legal, political, physical, and security risks within the division; (6) ensures scientific quality, ethics, and regulatory compliance; (7) develops and coordinates division policy and communication strategies; (8) provides coordination of financial planning and liaises with GHC and the Office of Financial Resources on budget development and execution; (9) manages and coordinates division staffing, personnel, and resources; (10) manages monitoring and evaluation of division-supported activities to assess the effectiveness and impact of investments to support partner governments in building sustainable public health programs to address emerging health threats; and (11) provides support to program and Center-led international public health emergencies, and agency wide responses.

IV. Under Part C, Section C–B, Organization and Functions, add the following functional statements:

Global Public Health Systems Branch (CWDB). The Global Public Health Systems Branch (GPHSB) collaborates with government and key partners to establish or strengthen public health systems to ensure countries can quickly detect outbreaks and coordinate a national public health response. Specifically, GPHSB: (1) partners with countries to support the establishment or strengthening of NPHIs as sustainable homes for public health preparedness and response; (2) assists with the development of legal frameworks for NPHIs and operational plans for public health security, supports the operational readiness of NPHIs, and builds capacity for robust functional public health systems and leadership, including coordination of public health emergency response at national and sub-national levels; (3) partners with countries and supports regional collaborations to build operational capacity for public health response to ensure effective coordination and mobilization of resources during public health emergencies; (4) supports public health emergency management capacity building and systems strengthening of countries to facilitate implementation and enhance sustainable local, national and regional capacities, coordination and collaboration; (5) supports emergency management and response capacity building of CDC field staff and implementing partners; (6) measures country capacities to prevent, detect, and respond to infectious disease threats through existing evaluation frameworks such as joint external evaluations and State Party Self-assessment Annual Reporting and provide support for operational planning to identify gaps within the 7–1–7 global health security framework; (7) strengthens public health partnerships to promote adherence to international health regulations; (8) identifies implementation strategies to support public health systems strengthening including primary care systems for health security, building on and leveraging strategic investments, and coordinates with appropriate subject-matter experts (SMEs) across GHC and other Centers, Institute, and Offices (CIOs); (9) promotes scientific innovation and advances implementation science to support the implementation of evidence-based public health interventions and rapid uptake of best practices; and (10) provides support to program and Center-led international public health emergencies, and agency-wide responses.

Global Surveillance, Laboratory, and Data Systems Branch (CWDC). The Global Surveillance, Laboratory, and Data Systems Branch (GSLDSB) focuses on building country capacity to address gaps in the modernization of disease-agnostic surveillance systems and supports building robust laboratory systems that are well integrated into public health systems and closely link epidemiology, laboratory, and surveillance systems to improve early detection of outbreaks. Specifically, GSLDSB: (1) provides oversight and accountability towards meeting agency global public health surveillance, laboratory and applied epidemiology objectives; (2) provides technical support on surveillance (event-based, early warning, indicator-based, integrated disease surveillance, etc.) to division field staff and supported countries; (3) increases health informatics capacities and supports data modernization and surveillance systems integration to improve early detection and effective use of data for public health action; (4) assists in the development and implementation of country national laboratory strategies and in close collaboration with other CIOs support capacities to strengthen early detection to outbreaks, especially of diseases of international public health concern; (5) provides technical assistance and scientific guidance to national public health entities in mapping laboratories in countries, assessing their diagnostic capacity for priority diseases, and supporting the establishment or strengthening of robust sample referral networks; (6) partners with CIOs and Offices to develop and conduct trainings based on international guidelines that facilitate the timely

transfer of newly emerging laboratory diagnostics and genomic applications, especially for public health action; (7) provides support, technical assistance, and trainings to promote biosafety, biosecurity, and global health laboratory quality standards and best practices, including through accreditations; (8) implements the Global Laboratory Leadership Program, which works to foster and mentor current and emerging leaders to build, strengthen, and sustain national laboratory systems; (9) identifies surveillance and laboratory implementation strategies building on and leveraging strategic investments, and coordinates with technical groups in GHC and global programs in other CIOs; (10) provides technical support for assessment, laboratory, surveillance, monitoring, applied epidemiology, and coordination during agency responses to public health emergencies; (11) promotes scientific innovation and advances implementation science to support implementation of evidence-based public health interventions and rapid uptake of best practices; and (12) provides support to program and Center-led international public health emergencies, and agency wide responses.

Global Workforce Development Branch (CWDD). The Global Workforce Development Branch (GWDB) plans and implements capacity-building competencies, science, and policy to support a robust public health workforce needed to strengthen countries' capacity to address public health threats at national, sub-national, and local levels. Specifically, GWDB: (1) partners with countries to develop and implement public health and emergency response workforce strategies that lead to sustainable improvements in time to detect, report, and respond to outbreaks, with an emphasis on field epidemiology, emergency response, health information, and bio-informatics; (2) implements the Field Epidemiology Training Program to support the development and sustainability of trained field epidemiologists in priority countries, with focus on foundational skills needed to collect, analyze, and interpret data to support evidence-based decision-making and inform timely public health action; (3) partners with other CIOs, international and regional organizations, and countries to develop and implement health information and bioinformatics workforce strategies that lead to sustainable improvements in time to detect, report, and respond to outbreaks; (4) supports building capacity of frontline health care workforce in countries using standardized approaches to improve their skills to identify priority diseases and quickly respond to public health emergencies; (5) provides technical support to expand global public health workforce needed to stop outbreaks at their source in priority countries; (6) promotes scientific innovation and advances implementation science to support implementation of evidence-based public health interventions and rapid uptake of best practices in coordination with appropriate SMEs across GHC and other CIOs; (7) provides support to program and Center-led international public health emergencies, and agency wide responses; and (8) plans, implements, and evaluates training courses and workshops to strengthen in-country technical capacity in public health emergency situations in close coordination with relevant global programs and other CIOs.

Global Program and Extramural Management Branch (CWDE). The Global Program and Extramural Management Branch (GPEMB) provides cross-cutting coordination to support country-specific program planning, implementation, management, and oversight for division extramural functions, including grants, cooperative agreements, contracts, and interagency agreements. Specifically, GPEMB: (1) supports division headquarters and country staff to implement management and operations, and financial systems to effectively support public health systems that strengthen, advance, and protect health security, enhance health equity, and respond to public health emergencies; (2) facilitates program planning and implementation; fiscal and extramural management; personnel management; and administrative support in division country offices; (3) serves as a liaison between headquarters and the field to identify management and operations challenges, obstacles, and successes in implementing division activities in country offices; (4) executes effective program hiring, staffing requirements, oversight, and accountability for division in country offices in coordination with division branches, offices, and the OD; (5) in coordination with CIOs, facilitates and manages the development, cross CIO coordination of SME review, clearance, award, and close-out of all new and on-going division headquarters and country program office grants, cooperative agreements, contracts, and interagency agreements; (6) provides oversight, monitoring, and facilitates reporting for all division grants, cooperative agreements, contracts, and interagency agreements; (7) supports agency efforts during public health emergencies by coordinating, facilitating, and managing programmatic priorities and extramural functions in concert with GHC and other divisions; (8) promotes scientific innovation and advances implementation science to support implementation of evidence-based public health interventions and rapid uptake of best practices. In coordination with CIOs and global programs; and (9) provides support to program and Center-led international public health emergencies, and agency wide responses.

Global Public Health Emergency Branch (CWDG). The Global Public Health Emergency Preparedness Branch (GPHEPB) builds public health emergency management capacities to address global health security threats. Specifically, GPHEPB: (1) provides technical assistance and resources for public health disease surveillance, monitoring and evaluation, and applied epidemiology, in public health emergency settings in coordination with appropriate SMEs across GHC and other CIOs; (2) develops technical guidelines in collaboration with other CIOs on public health issues associated with international humanitarian emergencies; (3) plans and implements operational assessments aimed at developing the most effective public health interventions for populations in emergency settings in close coordination with relevant global programs and other CIOs; (4) supports strengthening strategic water, sanitation, hygiene monitoring, and intervention in collaboration with other CIOs in humanitarian settings; (5) liaises with international, bilateral, and non-governmental relief organizations involved with humanitarian emergencies; (6) promotes scientific innovation and advances implementation science to support implementation of evidence-based public health interventions and rapid uptake of best practices in coordination with global programs across GHC and other CIOs; and (8) provides support to program and Center-led international public health emergencies, and agency wide responses.

V. Under Part C, Section C–B, Organization and Functions, the following organizational units are deleted in its entirety:

- Office of the Associate Director for Global Health Coordination (CAE)
- Division of Parasitic Diseases and Malaria (CBBC)
- Workforce and Institute Development Branch (CBBEC)
- Global Operations and Strategic Management Branch (CBBED)

- Global Epidemiology, Laboratory, and Surveillance Branch (CWED)
- Global Operations and Strategic Management Branch (CWEE)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Robin D. Bailey, Jr.,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–14706 Filed 7–11–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Income Withholding for Support Order (OMB No.: 0970–0154)

AGENCY: Office of Child Support Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Services (OCSS) (formerly the Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), is requesting the federal Office of Management and Budget (OMB) to extend approval of the Income Withholding for Support Order (IWO), with minor changes, for an additional three years. The current OMB approval expires September 30, 2023.

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 IWO is the required, standard form used to order, and notify, employers and income providers to withhold child support payments from an obligor's income. It is also used to notify employers and other income providers where to remit the payments, as well as other information needed to correctly withhold payments so that children and families receive the support to which they are entitled. On June 5, 2023, the Administration for Children and Families published a notice in the **Federal Register** (see 88 FR 36587) to announce a new official name for the former Office of Child Support Enforcement. As a result, all of the IWO instruments underwent revisions to change the ''Office of Child Support Enforcement (OCSE)'' to ''Office of Child Support Services (OCSS).'' The IWO form instructions underwent minor edits to clarify the language and OCSS augmented the instructions to include a sample form to improve the respondent's ability to properly complete the IWO Form. The burden estimates changed to reflect current estimates for the annual number of respondents and responses.

Respondents: Courts, private attorneys, custodial parties, or their representatives, employers, and other entities that provide income to noncustodial parents

ANNUAL BURDEN ESTIMATES

Information collection instrument	Total annual number of respondents	Total annual number of responses per respondent	Average burden hours per response	Total annual burden hours
Income withholding order/notice (Courts, private attorneys, custodial parties or their representatives).	4,694,517	1	5 minutes	391,210
Income withholding orders/termination of employment/income status (Employers and other income providers).	1,277,952	8.01	2 minutes	341,213
Electronic income withholding orders/termination of employment/income status (Employers and other income providers).	33,746	67.70	30 seconds ..	19,038

Estimated Total Annual Burden Hours: 751,461.

Authority: 42 U.S.C. 666(a)(1), (a)(8), and (b)(6).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–14662 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–2647]

Inborn Errors of Metabolism That Use Dietary Management: Considerations for Optimizing and Standardizing Diet in Clinical Trials for Drug Product Development; Draft Guidance for Industry; Availability

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

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled ''Inborn Errors of Metabolism That Use Dietary Management: Considerations for Optimizing and Standardizing Diet in Clinical Trials for Drug Product Development.'' This draft guidance describes FDA's current recommendations for optimizing and standardizing dietary management in clinical trials for the development of drug products intended to treat inborn errors of metabolism (IEM) when dietary management is a key component of patients' metabolic control. Optimizing

and standardizing dietary management in these patients before they enter clinical trials and during clinical trials is essential to providing an accurate evaluation of the efficacy of new drug products. This guidance revises the draft guidance of the same name issued on July 24, 2018.

DATES: Submit either electronic or written comments on the draft guidance by September 11, 2023, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2018–D–2647 for ''Inborn Errors of Metabolism That Use Dietary Management: Considerations for Optimizing and Standardizing Diet in Clinical Trials for Drug Product Development.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Robert Temple, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6304, Silver Spring, MD 20993, 301–796–1153; or Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Inborn Errors of Metabolism That Use Dietary Management: Considerations for Optimizing and Standardizing Diet in Clinical Trials for Drug Product Development.'' This draft guidance describes FDA's current recommendations for optimizing and standardizing dietary management in clinical trials for the development of drug products intended to treat IEM when dietary management is a key component of patients' metabolic control. Optimizing and standardizing dietary management in these patients before they enter into clinical trials and during clinical trials is essential to providing an accurate evaluation of the efficacy of new drug products.

This draft guidance revises the draft guidance of the same name issued on July 24, 2018 (83 FR 35006). FDA considered comments received on the draft guidance and is reissuing the guidance in draft form. Revisions from the previous draft include: (1) clarification that drug products, including both small molecules and biological products, should be studied in conjunction with dietary management for conditions where dietary management is the current standard of clinical care; (2) clarification that metabolic control may be evaluated by biochemical analytes and clinical assessment as substantiated by current clinical standards of care; (3) clarification that differences in baseline dietary management standards among patients from different countries should be considered and clearly stated in the protocol; and (4) clarification that the

most informative design is a randomized, double-blind clinical trial that includes a concurrent control group (approved drug or placebo).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Inborn Errors of Metabolism That Use Dietary Management: Considerations for Optimizing and Standardizing Diet in Clinical Trials for Drug Product Development.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB Control No. 0910–0014.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14691 Filed 7–11–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2727]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of individuals on its advisory committee regardless of their gender identification, religious affiliation, racial and ethnic identification, or disability status and, therefore, encourages nominations of appropriately qualified candidates from all groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by August 28, 2023, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by August 28, 2023. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2023.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov or* by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4769, *Rakesh.Raghuwanshi@fda.hhs.gov*.	FDA Science Board Advisory Committee.
Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1226, Silver Spring, MD 20993–0002, 240–402–8006, *Prabhakara.Altreya@fda.hhs.gov*.	Allergenic Products Advisory Committee.
Moon Hee Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–2894, *MoonHee.Choi@fda.hhs.gov*.	Anesthetic and Analgesic Drug Products Advisory Committee; Non-Prescription Drugs Advisory Committee.
She-Chia Jankowski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31 Rm. 2438, Silver Spring, MD 20993–0002, 240–402–5343, *She-Chia.Jankowski@fda.hhs.gov*.	Antimicrobial Drugs Advisory Committee.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2412, Silver Spring, MD 20993–0002, 301–796–7699, *Jessica.Seo@fda.hhs.gov*.	Peripheral and Central Nervous System Drugs Advisory Committee.
Yvette Waples, Center for Drug Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2510, Silver Spring, MD 20993–0002, 301–796–9034, *Yvette.Waples@fda.hhs.gov*.	Cardiovascular and Renal Drugs Advisory Committee; Medical Imaging Drugs Advisory Committee.
LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993–0002, 301–796–2855, *LaToya.Bonner@fda.hhs.gov*.	Endocrinologic and Metabolic Drugs Advisory Committee.
Takyiah Stevenson, Center for Drug Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2406, Silver Spring, MD 20993–0002, 240–402–2507, *Takyiah.Stevenson@fda.hhs.gov*.	Pharmacy Compounding Advisory Committee.
Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2426, Silver Spring, MD 20993–0002, 301–796–7973, *Joyce.Frimpong@fda.hhs.gov*.	Psychopharmacologic Drugs Advisory Committee.
Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–636–0510, *Candace.Nalls@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Ear, Nose and Throat Devices Panel; Gastroenterology-Urology Devices Panel; General and Plastic Surgery Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	Circulatory System Devices Panel; Microbiology Devices Panel.
Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, *Akinola.Awojope@fda.hhs.gov*.	Dental Products Panel; Orthopaedic and Rehabilitation Devices Panel.
Jarrod Collier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1333, Silver Spring, MD 20993–0002, 240–672–5763, *Jarrod.Collier@fda.hhs.gov*.	General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Molecular and Clinical Genetics Panel; Ophthalmic Devices Panel; Radiological Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	National Mammography Quality Assurance Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs Administration (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Allergenic Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	Immediately.
Anesthetic and Analgesic Drug Products Advisory Committee—Knowledgeable in the fields of anesthesiology, analgesics (such as: abuse deterrent opioids, novel analgesics, and issues related to opioid abuse), epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Non-Prescription Drugs Advisory Committee—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties.	1—Voting	Immediately.
Antimicrobial Drugs Advisory Committee—Knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Peripheral and Central Nervous Systems Drugs Advisory Committee—Knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Cardiovascular and Renal Drugs Advisory Committee—Knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics.	1—Voting	Immediately.
Medical Imaging Drugs Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Endocrinologic and Metabolic Drugs Advisory Committee—Knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties.	1—Voting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Pharmacy Compounding Advisory Committee—Knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing, pharmacy, medicine, and related specialties.	1—Voting	October 1, 2023.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Ear, Nose and Throat Devices Panel—Otologists, neurotologists, audiologists	1—Nonvoting	November 1, 2023.
Gastroenterology-Urology Devices Panel—Gastroenterologists, urologists, and nephrologists	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Circulatory System Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.,* hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Dental Products Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Nonvoting	Immediately.
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.,* pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, as well as ancillary fields of study will be considered.	1—Nonvoting	Immediately.
Ophthalmic Devices Panel—Ophthalmists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	1—Nonvoting	Immediately.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties, and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
National Mammography Quality Assurance Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	3—Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. FDA Science Board Advisory Committee

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of

allergies and allergic disease and makes appropriate recommendations to the Commissioner regarding the affirmation or revocation of biological product licenses; on the safety, effectiveness, and labeling of the products; on clinical and laboratory studies of such products; on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products; and on the quality and relevance of FDA's research programs.

C. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products including analgesics, *e.g.,* abuse-deterrent opioids, novel analgesics, and issues related to opioid abuse, and those for use in anesthesiology and makes appropriate recommendations to the Commissioner.

D. Non-Prescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (non-prescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advises the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee serves as a forum for the exchange of views regarding the prescription and non-prescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency-sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

E. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

F. Arthritis Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

G. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

H. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

I. Medical Imaging Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

J. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

K. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding under sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353a and 353b), and, as required, any other product for which FDA has regulatory responsibility.

L. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

M. Medical Devices Advisory Committee Panels

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the FD&C Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. Except for the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

N. National Mammography Quality Assurance Advisory Committee

Advises the Agency on the development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; establishing a mechanism to investigate consumer complaints; reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities. The Committee also advises on determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; determining whether there will be a sufficient number of medical physicists after October 1, 1999; and determining the costs and benefits of compliance with these requirements.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 45 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. After selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14690 Filed 7–11–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1149]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Emergency Use Authorization of Medical Products and Related Authorities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 11, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0595. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Emergency Use Authorization of Medical Products and Related Authorities

OMB Control Number 0910–0595—Revision

This information collection helps support FDA's implementation of sections 564, 564A, and 564B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3, 360bbb–3a, and 360bbb–3b), which govern the authorization of medical products for use in emergencies. The statutes authorize FDA to permit the introduction into interstate commerce *a drug, device, or biological product intended for use in an actual or potential emergency.* The purpose of these provisions is to sustain and strengthen national preparedness for public health, military, and domestic emergencies involving chemical, biological, radiological, and nuclear agents, including emerging infectious disease threats.

We are revising the information collection to discuss the guidance document entitled, ''Transition Plan for Medical Devices Issued Emergency Use

Authorizations (EUAs) Related to Coronavirus Disease 2019 (COVID–19),'' announced in the **Federal Register** of March 27, 2023 (88 FR 18144). The guidance document describes a phased-in approach intended to help avoid disruption in device supply and help facilitate compliance with applicable legal requirements. The recommendations discussed in the guidance document result in the one-time collection of information intended to ensure an orderly and transparent transition from temporary policies established during the COVID–19 public health emergency to normal operations.

In the **Federal Register** of December 23, 2021 (86 FR 72978), FDA published a 60-day notice requesting public comment on the proposed collection of information. However, upon further review, we find the recommendations discussed in the guidance document apply to specific medical devices already issued EUAs and characterize the activity as non-standardized followup designed to clarify responses to approved collections of information, *i.e.,* plans for continued compliance unique to that medical device issued an EUA. We therefore believe the activity constitutes the collection of non-identical and/or followup information, as defined under 5 CFR 1320.3. At the same time, we expect some degree of fluctuation in submissions under 21 CFR 814.20, as a result of implementation of the medical device transition plan. Information collection associated with 21 CFR part 814 is currently approved in OMB control number 0910–0231.

Dated: July 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14714 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2653]

Nonprescription Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Nonprescription Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on September 11, 2023, from 9 a.m. to 5:30 p.m. Eastern Time and September 12, 2023, from 9 a.m. to 2:30 p.m. Eastern Time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–2653. Please note that late, untimely filed comments will not be considered. The docket will close on September 8, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 8, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before August 25, 2023, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2023–N–2653 for ''Nonprescription Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this

information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7699, email: *NDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The Committee will discuss new data regarding the 'Generally Recognized as Safe and Effective' (GRASE) status of oral phenylephrine as a nasal decongestant that have become available since FDA last examined the issue.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before August 25, 2023, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5:30 p.m. Eastern Time on September 11, 2023. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 17, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 18, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Jessica Seo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. No participant will be prejudiced by this waiver, and that the ends of justice will be served by allowing for this modification to FDA's advisory committee meeting procedures.

Dated: July 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–14713 Filed 7–11–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rapid Uptake of Disseminated Interventions (RUDI) Evaluation OMB No. 0915–xxxx—[New]

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than September 11, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Rapid Uptake of Disseminated Interventions (RUDI) Evaluation OMB No. 0915–xxxx—[New].

Abstract: HRSA has dedicated significant resources and effort to developing novel intervention strategies aimed at eliminating disparities and improving HIV-related health outcomes for people with HIV. HRSA encourages and supports Ryan White HIV/AIDS Program (RWHAP) providers to implement interventions developed through its Special Projects of National Significance (RWHAP Part F SPNS) program and technical assistance initiatives that have been found to be effective, with adaptations for priority populations served as applicable. HRSA disseminates its RWHAP Part F SPNS and technical assistance initiative resources and products across a variety of dissemination channels, hoping to reach a maximum number of RWHAP recipients and subrecipients for whom these resources may meet an important need. This mixed-methods Rapid Uptake of Disseminated Interventions (RUDI) evaluation will use a web-based survey and virtual site visits to collect information from RWHAP recipients and subrecipients on the uptake, utility, and efficacy of the resources and products HRSA disseminates; the effectiveness of its dissemination processes; and the reach of its dissemination channels. HRSA will use the information to identify opportunities for strengthening its dissemination channels and resources to improve care and health outcomes for program participants.

Need and Proposed Use of the Information: Currently, HRSA does not systematically gather information about the resources accessed by RWHAP providers, RWHAP recipients, or AIDS Education and Training Center (AETC) staff and the extent to which they use those resources to inform implementation of interventions.

The mixed-methods RUDI evaluation will help HRSA systematically assess and understand (1) how, where, and why recipients of RWHAP funding access and use its disseminated resources and products; and (2) the utility and effectiveness of the disseminated resources and products in caring for and treating people with HIV. HRSA will use the findings from the RUDI evaluation to develop strategies to maximize the uptake and impact of its disseminated resources and products, contributing to ending the HIV epidemic in the United States.

Likely Respondents: The mixed-methods RUDI evaluation includes a web-based survey of all RWHAP recipients and subrecipients nationally, individual interviews with a sample of RWHAP recipients, virtual site visits with a sample of RWHAP providers, and individual interviews with all AETCs. The RUDI web-based survey design includes two versions of the survey that will be administered to non-overlapping respondents—the RUDI Recipients Survey for RWHAP Part A and B recipient administrative entities—and the RUDI Providers Survey for Part A and B subrecipients and Part C, D, and F recipients who provide direct care. Both versions ask about respondents' use of HRSA-disseminated resources, how they were helpful, what could be improved, and reasons for non-use where applicable. In addition, the RUDI Recipients Survey asks about the recipients' role in guiding their subrecipients to needed resources, and the RUDI Providers Survey asks about the recipients' experience implementing interventions for which they used the resources. Both surveys are designed to be followed up with additional sets of interviews with a sample of the survey respondents to provide deeper understanding of their experience to support development of actionable recommendations pertaining to dissemination. Virtual site visits to RWHAP providers include interviews with an average of three staff within each provider organization that were part of an intervention implementation with assistance from HRSA resources. Individual interviews for Part A and B recipient administrative entities and AETCs will generate a complete picture of how those organizations use HRSA resources and how the resources or their dissemination could be improved for the future, especially when considered together with the survey responses and virtual site visit data from the RWHAP providers.

Burden Statement: Burden in the context of this study means the time that persons expend to generate, maintain, retain, disclose, and provide the requested information. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
RUDI Recipient Survey	56	1	56	.25	14
RUDI Provider Survey	1,066	1	1,066	.25	266.5
Interviews	20	2	40	.75	30
Virtual site visit interviews	40	3	120	1.00	120
Interviews AETCs	8	1	8	1.00	8
	1,190		1,290		438.5

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–14772 Filed 7–11–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on May 1, 2023, through May 31, 2023. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table, but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table, but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Delshun Carter, Waupun, Wisconsin, Court of Federal Claims No: 23–0618V
2. Tommie Lee Lanier, Statesboro, Georgia, Court of Federal Claims No: 23–0624V
3. Haley Petz, Clarks Summit, Pennsylvania, Court of Federal Claims No: 23–0625V
4. Denise Bernhang on behalf of B. B., Boca Raton, Florida, Court of Federal Claims No: 23–0627V
5. Torri Kidder, Plaquemine, Louisiana, Court of Federal Claims No: 23–0628V
6. Tessa Needham, Portland, Oregon, Court of Federal Claims No: 23–0630V
7. Lyndzee Weiss, Phoenix, Arizona, Court of Federal Claims No: 23–0633V
8. Mikako Welborn, Springfield, Oregon, Court of Federal Claims No: 23–0635V
9. Sangeetha Gnanasundaram, Colorado Springs, Colorado, Court of Federal Claims No: 23–0636V
10. Erica Jennings, Tupelo, Mississippi, Court of Federal Claims No: 23–0637V
11. Daisy Santiago, San Diego, California, Court of Federal Claims No: 23–0640V
12. Edith Fox, La Luz, New Mexico, Court of Federal Claims No: 23–0646V
13. Ranaye Goff, Luck, Wisconsin, Court of Federal Claims No: 23–0649V
14. Douglas Eberline, Peoria, Arizona, Court of Federal Claims No: 23–0655V
15. Sharee Barber on behalf of A. B., Medford, Oregon, Court of Federal Claims No: 23–0657V
16. Michelle Palazzolo, Staten Island, New York, Court of Federal Claims No: 23–0658V
17. Timothy Johnnies, Waupun, Wisconsin, Court of Federal Claims No: 23–0659V
18. Terry Cooper, Lewisburg, Pennsylvania, Court of Federal Claims No: 23–0661V
19. Tuipine Sofara, San Bruno, California, Court of Federal Claims No: 23–0662V
20. Veronica Madden, North Weymouth, Massachusetts, Court of Federal Claims No: 23–0665V
21. Carissa Photopoulos on behalf of Steven Wedekind, Deceased, Clintonville, Wisconsin, Court of Federal Claims No: 23–0667V

22. Chris Sullivan and Michelle Routhier on behalf of C. S., Deceased, Stockton, California, Court of Federal Claims No: 23–0670V
23. Diana Vorholt, Portage, Michigan, Court of Federal Claims No: 23–0671V
24. Francine Hargens, Clinton, Missouri, Court of Federal Claims No: 23–0672V
25. Susan Colby, Hines, Illinois, Court of Federal Claims No: 23–0673V
26. Sharee Barber on behalf of A. B., Medford, Oregon, Court of Federal Claims No: 23–0674V
27. Sepideh Pourhassani, Huntsville, Alabama, Court of Federal Claims No: 23–0675V
28. Natalie Brouwer Potts, Lincolnwood, Illinois, Court of Federal Claims No: 23–0678V
29. Omar Rueda Denvers, Lovelock, Nevada, Court of Federal Claims No: 23–0681V
30. Barbara Raufmann, Chicago, Illinois, Court of Federal Claims No: 23–0682V
31. Roger M. Miller, Marietta, Georgia, Court of Federal Claims No: 23–0684V
32. Dawn Coppersmith, Chestertown, New York, Court of Federal Claims No: 23–0685V
33. Jamila Washington, Kalamazoo, Michigan, Court of Federal Claims No: 23–0686V
34. Stacy Ann Dixon, Morristown, New Jersey, Court of Federal Claims No: 23–0687V
35. Jocelyn Ashley, Jacksonville, North Carolina, Court of Federal Claims No: 23–0689V
36. Nancy Harrison, Salinas, California, Court of Federal Claims No: 23–0691V
37. Susan Rogers, Rochester, Indiana, Court of Federal Claims No: 23–0695V
38. Jennifer Marie Tate, Bangor, Pennsylvania, Court of Federal Claims No: 23–0697V
39. Kristine Eldridge, Billings, Montana, Court of Federal Claims No: 23–0699V
40. Vinod Agarwal, Webster, New York, Court of Federal Claims No: 23–0703V
41. Shanie Roman, Phoenix, Arizona, Court of Federal Claims No: 23–0705V
42. Lauren Naude, Baltimore, Maryland, Court of Federal Claims No: 23–0709V
43. Rachel Sloan on behalf of A. S., Boca Raton, Florida, Court of Federal Claims No: 23–0710V
44. Abigail La Croix, New York, New York, Court of Federal Claims No: 23–0711V
45. Kay Lloyd, New Orleans, Louisiana, Court of Federal Claims No: 23–0712V
46. Terry Boyd, Crowley, Texas, Court of Federal Claims No: 23–0714V
47. David Hammett and Judy Hammett on behalf of E. H., Phoenix, Arizona, Court of Federal Claims No: 23–0716V
48. Rebecca Crawley, Boston, Massachusetts, Court of Federal Claims No: 23–0717V
49. William T. Lewek, M.D., Rochester, New York, Court of Federal Claims No: 23–0718V
50. Cory Scott, Indianapolis, Indiana, Court of Federal Claims No: 23–0725V
51. Marina Bendarcyk, Phoenix, Arizona, Court of Federal Claims No: 23–0729V
52. Thongsavahn Rodthong, Plymouth, Wisconsin, Court of Federal Claims No: 23–0730V
53. Jacob Drake, Phoenix, Arizona, Court of Federal Claims No: 23–0731V
54. Rose Panzarella, Delray Beach, Florida, Court of Federal Claims No: 23–0732V
55. Monica Vinogradoff, Fresno, California, Court of Federal Claims No: 23–0733V
56. John Maseiro, Bethalto, Illinois, Court of Federal Claims No: 23–0735V
57. Robert Paveglio, Great Neck, New York, Court of Federal Claims No: 23–0739V
58. Stacy Fogerty, Ballwin, Missouri, Court of Federal Claims No: 23–0741V
59. Tiffani Weber on behalf of C. W., North Brunswick, New Jersey, Court of Federal Claims No: 23–0742V
60. Lori Hess-Rosio, Crivitz, Wisconsin, Court of Federal Claims No: 23–0744V
61. Gregory Hampton, Marshall, Texas, Court of Federal Claims No: 23–0745V
62. Kimberly Davidson, South Milwaukee, Wisconsin, Court of Federal Claims No: 23–0746V
63. Muskan Wadhwa, Exton, Pennsylvania, Court of Federal Claims No: 23–0747V
64. Suzanne Booher, Phoenix, Arizona, Court of Federal Claims No: 23–0750V
65. Gracie Clements on behalf of P. A. C., Gadsden, Alabama, Court of Federal Claims No: 23–0751V
66. Shane Brown, Oak Grove, Missouri, Court of Federal Claims No: 23–0752V
67. Rodney Steele, Pittsburgh, Pennsylvania, Court of Federal Claims No: 23–0753V
68. A'Ja Lawrence, New Orleans, Louisiana, Court of Federal Claims No: 23–0755V
69. Melissa Marshall, Boston, Massachusetts, Court of Federal Claims No: 23–0756V
70. Michael Pendleton, Hopkinsville, Kentucky, Court of Federal Claims No: 23–0758V
71. Gordon Morris, Ann Arbor, Michigan, Court of Federal Claims No: 23–0760V
72. Kelly Jo Gutknecht, New Ulm, Minnesota, Court of Federal Claims No: 23–0764V
73. Chantel Gissentanner, Brooklyn, New York, Court of Federal Claims No: 23–0768V
74. Sean M. O'Malley, Carlisle, Pennsylvania, Court of Federal Claims No: 23–0769V
75. Kate S. Latimer Courtney, Saint Paul, Minnesota, Court of Federal Claims No: 23–0771V
76. Melissa Rogala, Newport News, Virginia, Court of Federal Claims No: 23–0773V
77. Inessa Ivanyuk, Irvine, California, Court of Federal Claims No: 23–0775V
78. Joel Kirkland and Tami Kirkland on behalf of S. K., Boston, Massachusetts, Court of Federal Claims No: 23–0777V
79. Adam Perez on behalf of L. P., Miami, Florida, Court of Federal Claims No: 23–0778V
80. Jerry Belt, Frisco, Texas, Court of Federal Claims No: 23–0779V
81. Erin Shinn, St. Charles, Missouri, Court of Federal Claims No: 23–0780V
82. Bryanne Tome on behalf of K. S., Phoenix, Arizona, Court of Federal Claims No: 23–0781V
83. Chris Strickland and Kirsten Strickland on behalf of K. S., Phoenix, Arizona, Court of Federal Claims No: 23–0785V
84. Leslie Susie, Greenville, South Carolina, Court of Federal Claims No: 23–0786V
85. Eric Vincent, Macomb, Michigan, Court of Federal Claims No: 23–0787V
86. Patricia Young, Phoenix, Arizona, Court of Federal Claims No: 23–0790V
87. Michaela Johnson, Napa, California, Court of Federal Claims No: 23–0791V
88. Rebecca Strehl, Kansas City, Missouri, Court of Federal Claims No: 23–0795V

[FR Doc. 2023–14717 Filed 7–11–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Replacement of 2015 Statement of Organization, Functions, and Delegations of Authority; Office of the Assistant Secretary for Public Affairs

AGENCY: Office of the Assistant Secretary for Public Affairs, Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides an updated Statement of Organization, Functions, and Delegations of Authority for HHS' Office of the Assistant Secretary for Public Affairs, replacing the statement as last amended in 2015. The statement is republished in full.

SUPPLEMENTARY INFORMATION: Chapter AP continues to include three sections: AP.11 Mission, AP.10 Organization, and AP.20 Functions. ASPA's organizational structure formerly included six offices (A through F), three of which included suboffices, and now includes four offices (A through D), three of which include suboffices. Specifically, the following amendments were made, in addition to minor wording changes:

- A new office, titled ''The Office of the Deputy Agency Chief FOIA Officer/Privacy Act Implementation Officer,'' has been established at paragraph B in sections AP.10 and AP.20, with the FOIA/Privacy Act Division as its sole division.
- The Office of the Executive Officer/Deputy Chief FOIA Officer, which was formerly listed last (*i.e.,* at the end of section AP.10 Organization, and at paragraph F in section AP.20 Functions) and formerly included the FOIA/Privacy Act Division as one of its three divisions, is now retitled ''The Office of the Executive Officer'' and located at paragraph C in sections AP.10 and AP.20, and now includes a new division, *i.e.,* the Enterprise Data Analytics Division, instead of the FOIA/Privacy Act Division.
- The Office of the Principal Deputy Assistant Secretary, which was formerly listed second in section AP.10 and at paragraph B in section AP.20, and formerly included the Strategic

Planning Division and the Speechwriting Division, is now located at paragraph D of sections AP.10 and AP.20 and includes these five suboffices: The Office of the Deputy Assistant Secretary for Public Health, the Office of the Deputy Assistant Secretary for Health Care, the Office of the Deputy Assistant Secretary for Human Services, the Broadcast Communications Division, and the Digital Communications Division.

- The previous organizational structure for The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs (ASPA) will be replaced with the new the organizational structure listed within this notice.
- The departmental codes used to refer to [each organization] have been changed from the previous version to fit the current office structure and names.

Delete Chapter AP in its entirety and replace with the following:

Section AP.00 Mission

The ASPA serves as the Secretary's principal counsel on public affairs, leading efforts across the Department to promote transparency, accountability and access to critical public health and human services information to the American people. The Office of the Assistant Secretary for Public Affairs conducts national public affairs programs, provides centralized leadership and guidance for public affairs activities within HHS' Staff and Operating Divisions and regional offices, manages the Department's digital communications and administers the Freedom of Information and Privacy Act. The Division leads the planning, development and implementation of emergency incident communications strategies and activities for the Department. The ASPA reports directly to the HHS Secretary.

Section AP.10 Organization

The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs (ASPA) who reports to the Secretary, supports public affairs efforts for three primary issue areas: Public Health, Human Services, and Health Care. ASPA consists of the following organizations:

A. The Office of the Assistant Secretary for Public Affairs/Agency Chief FOIA Officer (AP). The Office of the Assistant Secretary for Public Affairs (APA)—Provides executive leadership, policy direction, and management strategy for the Department's public affairs programs and activities. Counsels and acts for the Secretary and the Department in carrying out responsibilities under statutes, Presidential directives, and Secretarial orders for informing the general public, specialized audiences, HHS employees, and other Federal employees about the programs, policies, and services of the Department. Establishes and enforces policies and practices which produce an accurate, clear, efficient, consistent flow of information to the general public and other audiences about Departmental programs and activities, and management oversight of the Strategic Planning Division and national public education communications. Provides advice, counsel and information to the Secretary and other HHS policymakers to ensure that public affairs impact is considered in the establishment of Departmental policies or the conduct of its activities. Serves as the principal point of contact with senior White House officials regarding communications and press issues. Exercises professional leadership and provides functional management of public affairs activities throughout the Department to ensure that Secretarial priorities are followed, high quality standards are met, and cost-effective, non-duplicative communications products are developed which accurately and effectively inform its audiences. Serves as Secretarial surrogate throughout the public and private sector to both represent the views of the Administration and the Secretary, and to inform and educate various audiences. Ensures coordination among public affairs components. Manages public affairs issues and special activities that cut across Operating Division lines.

Serves as the HHS Agency Chief FOIA Officer (ACFO), pursuant to Executive Order 13392 (/executive-order/13392) and the Freedom of Information Act, as amended by Public Law 110–175 (*https://www.govinfo.gov/link/plaw/110/public/175*), 121 Stat. 2524, 5 U.S.C. 552(k) (*https://www.govinfo.gov/link/uscode/5/552*). In this capacity, the ASPA/ACFO is responsible for administering information access and privacy protection laws and HHS regulations implementing these laws to ensure Department wide consistency in information disclosure, confidentiality policies, practices and procedures. Such laws include the Freedom of Information Act and the Privacy Act, as well as the open meetings provisions of the Federal Advisory Committee Act, the Government in the Sunshine Act and the disclosure provisions of the Ethics in Government Act.

Provides Departmental, strategic, long-term vision and strong leadership on public health, health care, and human services initiatives. Collaborates with and has the authority to work across HHS OpDiv/StaffDivs and White House Press Offices. Leads implementation of strategic plans and coordinates earned, digital, and specialty media staff across the Department to boost impact, ensuring the right message is delivered to the right audience through the right channel. Advises the Secretary and Senior Staff on tactics, timing and level of investment in accordance with the Department's strategic priorities.

Provides proactive consultation and advice to HHS Operating Divisions and Staff Divisions (OpDiv/StaffDiv), including regional staff, regarding the dissemination of information on programs, policies, and initiatives; while ensuring the wide dissemination of accurate materials to the American public. Participates with the Assistant Secretary for Public Affairs the Principal Deputy Assistant Secretary and other ASPA staff in discussions with staff across the Department on cross-cutting issues regarding overall policies, planning, issues, concerns and activities and related health care programs. Works with OpDiv/StaffDivs to develop a long-term outreach strategy, coordinate in-house communications efforts, and ensure consistency with plain writing directives. Promotes full and open participation in the communications process and develops reports and recommendations, ensuring full review and vetting of drafts by appropriate staff between and among ASPA's customers and stakeholders at all levels. Researches, understands, and translates for a lay audience laws, policies, regulations and precedents applicable to public health, health care, and human services.

Oversees the document clearance process and the prioritization of rollouts while considering internal and external feedback. Coordinates and/or prepares briefings, memos, policy calendars and other information material for use by the Secretary, HHS, at Secretarial and senior staff briefings, the White House, and for congressional and other briefings.

B. The Office of the Deputy Agency Chief FOIA Officer/Privacy Act Implementation Officer (APC). Deputy Agency Chief FOIA Officer/Privacy Act Implementation Officer (APC)—serves as the designated Deputy Agency Chief Freedom of Information Act (FOIA) Officer (DACFO) and Privacy Act Implementation Officer (PA) and is delegated authority to execute the provisions of E.O. 13392, Improving Agency Disclosure of Information, 70 FR 75373 (Dec. 14, 2005), and the FOIA

statute at 5 U.S.C. 552(k) and the provisions of the Privacy Act statute (5 U.S.C. 552a), as follows: Monitoring FOIA implementation throughout the department and keeping the Secretary and the Office of the General Counsel (OGC), HHS, and the U.S. Attorney General appropriately informed of HHS' performance in implementing FOIA; recommending to the Secretary adjustments to departmental practices, policies, personnel, and funding necessary to improve HHS implementation of FOIA; facilitating public understanding of the purposes of the statutory FOIA exemptions; establishing Departmental FOIA policies and providing training and technical assistance to the department's Operating Divisions (OpDivs); concurring in the delegation by an authorized HHS OpDiv FOIA Officer of the officer's authority to deny records or determine fees; serving as the review authority for appeals from a decision to deny a request for records or a refusal to waive fees made by the Director, FOIA/Privacy Act Division, ASPA, as well as ensuring consultation with OGC and providing review and concurrence on all departmental appeal decisions, including those on fees; general responsibility for Department-wide implementation and administration of the Privacy Act; including authority to decide appeals of refusals to amend or correct Privacy Act records of the Office of the Secretary (OS) (note that authority to decide Privacy Act amendment appeals can only be re-delegated one level below the ASPA, so cannot be further re-delegated; see limitation in September 25, 1987 delegation to ASPA from the Assistant Secretary for Management and Budget, predecessor to the Assistant Secretary for Administration); and serving as ASPA's designated senior level official on the HHS Data Integrity Board.

C. The Office of the Executive Officer (APA). Executive Officer (APA)—Coordinates ASPA's day-to-day operations, overseeing management operations and policy, workforce plans and other human resources activities, and general administrative support including information technology requirements. Oversees the formulation and execution of ASPA's annual budgets and financial operating plans. Ensures that ASPA effectively integrates its performance metrics and budget processes, in order to support informed decision-making related to funding constraints and program requirements and outcomes.

Supports the development and implementation of management strategies, business processes, and standard operating procedures that fully support the attainment of ASPA program goals and mission critical initiatives.

C1. Business Operations Division (APA1). Business Operations Division (APA1)—Directs ASPA budget formulation, execution and financial management; incorporating a results-oriented, program quality, and cost effectiveness focus into assessing and managing ASPA's resource requirements and developing and executing integrated performance-based budgets. Oversees and manages ASPA contracts and procurements, physical property, projects, governance, and information technology initiatives and requirements. Coordinates travel operations support, reporting, and auditing.

Serves as ASPA's liaison to the Office of the Assistant Secretary for Financial Resources (ASFR) for budget and finance matters and the Office of the Assistant Secretary for Administration (ASA) for facilities, property accountability, and contract implementation and oversight matters. Additionally serves as the ASPA point of contact for Departmental financial, and acquisition management initiatives and for budget and performance integration inquiries from OMB and Congress.

C2. Administrative Operations Division (APA2). Administrative Operations Division (APA2)—Directs ASPA's human capital planning, human resources (HR) performance management, and other departmental HR policy and program requirements. Serves as ASPA's internal consultant and source of expert technical assistance on organizational development and human capital management (*e.g.,* staffing and workforce analysis, transition and succession planning, awards and special honors programs), and as liaison to the Office of the Secretary (OS) Office of Human Resources (OHR) on sensitive personnel issues (*e.g.,* EEO, labor and management relations, performance and conduct-based actions). Coordinates with OHR concerning all ASPA recruitment and personnel actions and manages professional staff development. Administers ASPA's Ethics Program and serves as liaison regarding personnel security initiatives and requirements.

C3. Data Analytics Division (APA3). Data Analytics Division (APA3)—Responsible for providing enterprise data analytics support to portions of the Department and producing a variety of custom analyses and reports, including, but not limited to, analytics implementation audits, top-task analyses, trend analyses, key performance indicators business analytics, and regression analyses with predictive expansion for ASPA and OpDiv/StaffDivs. In addition, the Data Analytics Division analyzes operational data, web content, engagement, and social media data, as well as data sources from external offices made available on a per project basis.

D. The Office of the Principal Deputy Assistant Secretary (APB). The Office of the Principal Deputy Assistant Secretary for Public Affairs (APB)—Responsible for developing effective strategies to publicize Departmental policies, goals and accomplishments, activities related to the Department's communications services, public affairs policy analysis, and national public education communications, and direction and oversight to the ASPA Public Health Portfolio, ASPA Health Care Portfolio, ASPA Human Services Portfolio, Online Communications, Speechwriting Division, Broadcast Communications Division (BCD), and Digital Communications Division (DCD). Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs; coordinates with ASPA's Public Health, Health Care, and Human Services Portfolios in providing prompt response to media and public inquiries, and in helping the Assistant Secretary for Public Affairs generate a strategic focus for stories and other information products that the Department develops and wishes to highlight. Manages or coordinates the conduct of high priority Departmental media campaigns and information programs. Acts as the internal and external liaison, *e.g.,* HHS OpDiv/StaffDivs programs and public affairs offices, private sector organizations, other Federal agencies, including OMB and the Office of Public Liaison at the White House. Initiates, designs and effects outreach programs for all organizations, associations and individuals concerned with the broad range of policies, programs and issues of the Department. Performs special assignments which involve and cut across Department programs and activities to achieve broadly defined public affairs management and program objectives. Interacts with internal and external organizations, groups and individuals to secure and provide information concerning matters affecting HHS policy, interests, and initiatives. Represents the Assistant Secretary for Public Affairs in conveying official viewpoints and policy considerations of the Department and the Administration. Serves as the principal resource with the Department

for reviewing and editing written materials reflecting the views of the Secretary, Deputy Secretary, and Chief of Staff. Prepares speeches, statements, articles, and related material for the Secretary, Deputy Secretary, and Chief of Staff and other top Departmental officials. Researches and prepares Op Ed pieces, features, articles, and stories for the media.

D1. The Office of the Deputy Assistant Secretary for Public Health (APB1). The Office of the Deputy Assistant Secretary for Public Health (APB1)—The Public Health portfolio works with the Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, U.S. Food and Drug Administration, National Institutes for Health, Office of Global Affairs, Office of the Assistant Secretary for Emergency Preparedness and Response, and Assistant Secretary for Planning and Evaluation/Public Health issues and offices of the Assistant Secretary for Health and the Surgeon General on initiatives and strategies to promote public health, improve health outcomes and national public education communications, prevent disease and outbreak, and accelerate scientific discovery.

D2. The Office of the Deputy Assistant Secretary for Health Care (APB2). The Office of the Deputy Assistant Secretary for Health Care (APB2)—The Healthcare portfolio works to advance a healthcare system that delivers high-quality, affordable care to all Americans. The team works with the Agency for Healthcare Research and Quality, Office of the National Coordinator for Health Information Technology, Health Resources and Services Administration, Centers for Medicare & Medicaid Services, and Assistant Secretary for Planning and Evaluation/Health Care issues to improve access, quality, safety, efficiency and effectiveness of the nation's healthcare and national public education communications.

D3. The Office of the Deputy Assistant Secretary for Human Services (APB3). The Office of the Deputy Assistant Secretary for Human Services (APB3)—The Human Services portfolio helps improve and promote national public education communications and Americans of all ages and backgrounds live full, productive lives: kids getting a ''Head Start'' through early childhood education, families transitioning out of poverty to economic independence, teens and adults recovering from mental illness and addiction, and seniors participating in communities that value their contributions. These and other human service programs are carried out by the Administration for Children and Families, Administration for Community Living, Indian Health Service, Office for Civil Rights, Substance Abuse and Mental Health Services Administration, Office of the Chief Technology Officer, Center for Faith-Based and Neighborhood Partnerships, Office of the Chief Information Officer and Assistant Secretary for Planning and Evaluation/Human Services issues.

D4. Broadcast Communications Division (APB4). Broadcast Communications Division—BCD (APB4)—Collaborates with subject matter experts and key stakeholders to create useful and cost effective video products that support Departmental goals. Provides a wide range of video production, A/V, live streaming, and on-demand services. Operates the HHS studio and coordinates activities with other HHS studios as required. Under the direction of the ASPA, supports key initiatives for the Secretary and all HHS Staff and Operating Divisions by developing and implementing media campaigns and special projects. Acts as liaison to broadcast organizations. Supports A/V services in the Studio, Humphrey Auditorium, Great Hall, and any location that require services.

D5. Digital Communications Division (APB5). Digital Communications Division—DCD (APB5)—Leads the development and review of HHS Web content, social media, and supporting technologies. Recommends and implements digital (including Web) information policy, standards, guidance, and tools for the Department. Assesses the content and usability of all proposed Department-wide and Office of the Secretary (OS)-level websites to ensure they are consistent with Departmental policies and goals. Manages the daily operations of the main HHS/OS public website (*HHS.gov*) and associated social media; internal communications, the Department's priority websites and several cross-federal topic websites, such as *FoodSafety.gov, StopBullying.gov, betobaccofree.hhs.gov* Secretary-level web pages; and the HHS intranet. Runs the Department's user experience (UE) program, responsible for Section 508 (accessibility) compliance across all Departmental digital communications platforms, including Web, and national public education communications.

Cheryl R. Campbell,

Assistant Secretary for Administration.

[FR Doc. 2023–14733 Filed 7–11–23; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing and Collaboration for Phase 3 Study

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention described below will be a first-in-class, reversible, hormonal contraceptive method for males and is co-owned by the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), National Institutes of Health, and The Population Council, Inc., a New York not-for-profit corporation based in New York City (''Population Council''). The co-owners will complete the Phase 2b clinical stage of development in 2024 and are seeking a licensee and investor/collaborator for the Phase 3 clinical stage, anticipated to begin as early as 2024.

ADDRESSES: Inquiries relating to this licensing and collaboration opportunity should be directed to: Heather Gunas, JD, MPH, Senior Technology Transfer Manager, National Cancer Institute (NCI) Technology Transfer Center, 9609 Medical Center Drive, Room 1E446, Rockville, MD 20850 (*for overnight mail*) or Bethesda, MD 20892 (*for regular mail*), Telephone: (240) 276–5530; Facsimile: (240) 276–5504; Email: *gunash@mail.nih.gov.* A Confidential Disclosure Agreement will be required to receive copies of unpublished information regarding this invention.

SUPPLEMENTARY INFORMATION: The following and all continuing U.S. and foreign patents/patent applications thereof are available for licensing: PCT Application No. PCT/US23/21154, filed May 5, 2023, and entitled ''Progestin/Testosterone Transdermal Gel''. Government rights to this invention are consolidated to Population Council under an active Interinstitutional-Agreement Institution Lead. The invention pertains to a combination of progestin and testosterone in a transdermal composition for use as male contraception. The transdermal gel is applied daily to the shoulders and upper arms, has had a low incidence of adverse events in early clinical trials, and its sperm suppression is reversible. There is currently no available highly effective reversible method of male contraception; the methods of condom and withdrawal are not highly effective, and vasectomy is not always reversible.

NICHD's Contraceptive Clinical Trials Network is currently conducting the Phase 2b clinical study, which will complete in 2024. The Phase 2b study had favorable interim results and high acceptability with subjects; some subjects requested to re-enroll or participate in a later phase trial. The co-owners are planning the Phase 3 stage and will finalize the protocol design in conjunction with a licensee and after Food and Drug Administration (FDA) feedback. A licensee and commercial collaborator for Phase 3 is desired—the license will be established with Population Council as the technology lead, and if the NICHD Contraceptive Clinical Trials Network conducts the Phase 3 clinical program or a portion of it, the licensee would collaborate with NICHD under a Cooperative Research and Development Agreement (CRADA) to facilitate funding and conduct of the study.

The licensee needs the capacity to file and maintain an NDA (New Drug Application) with the US FDA and take responsibility for sales, marketing, and distribution of the approved product in the U.S. and other territories to be determined.

Achieving expeditious commercialization of federally funded research and development is consistent with the goals of the Bayh-Dole Act, codified as 35 U.S.C. 200–212.

Potential Commercial Application: male contraceptive.

Development Stage: Phase 2b study completes in 2024; Phase 3 study starts in 2024+.

Dated: July 7, 2023.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2023–14761 Filed 7–11–23; 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 1009 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; Detection of HIV for Self-Testing (R61/R33 Clinical Trial Not Allowed).

Date: August 3, 2023.

Time: 10:00 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 3G11A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: J. Bruce Sundstrom, 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 3G11A, Rockville, MD 20852, 240–669–5045, *sundstromj@niaid.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: July 6, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14711 Filed 7–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 1009 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 Mental Health Special Emphasis Panel; Mental Health Research.

Date: July 31, 2023.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742 *nick.gaiano@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: July 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14675 Filed 7–11–23; 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 1009 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; Maintaining Immunity after Immunization (U01 Clinical Trial Not Allowed).

Date: August 7–8, 2023.

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 3G31B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31B, Rockville, MD 20852, (240) 669–5060, *james.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 6, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14710 Filed 7–11–23; 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 1009 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; Immunity in Older Adults (U01 Clinical Trial Not Allowed).

Date: August 3–4, 2023.

Time: 10:00 a.m. to 3:30 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 3G45, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Vanitha S. Raman, 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 3G45, Rockville, MD 20852, 301–761–7949, *vanitha.raman@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: July 6, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14712 Filed 7–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Clinical, Behavioral, and Physiological Studies of Open- and Closed-loop Platforms;

Date: August 7, 2023.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room7015, Bethesda, MD 20892–2542, (301) 594–4721, *ryan.morris@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14718 Filed 7–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS StrokeNet Infrastructure Clinical Trial—panel 1.

Date: July 17, 2023.

Time: 9:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nilkantha Sen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *nilkantha.sen@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; StrokeNet infrastructure trials network—panel 2.

Date: July 17–18, 2023.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nilkantha Sen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *nilkantha.sen@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; P01 Review.

Date: July 19, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/

NIH, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–451–2854, *li.jia@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Data Harmonization: Curation and Secondary Analysis of Existing Clinical Datasets (R61/R33 Clinical Trial Not Allowed).

Date: July 19, 2023.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *bo-shiun.chen@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: July 7, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14796 Filed 7–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

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 Heart, Lung, and Blood Advisory Council.

Date: August 22, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NHLBI, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laura K Moen, Ph.D., Director Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–Q, Bethesda, MD 20892, 301–827–5517, *moenl@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS) for the meeting will be posted when available.

Dated: July 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14674 Filed 7–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; ORWH-Autoimmune R21 NOSI Meeting.

Date: August 2, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14719 Filed 7–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Environmental Health Sciences.

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 Environmental Health Sciences Special Emphasis Panel; NIEHS Outstanding New Environmental Scientist (ONES).

Date: July 25, 2023.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Alfonso R. Latoni, Ph.D., Chief and Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, (984) 287–3279, *alfonso.latoni@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 6, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–14720 Filed 7–11–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. ICEB–2022–0016]

RIN 1653–ZA36

Update to the Department of Homeland Security STEM Designated Degree Program List

AGENCY: U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS).

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is amending the DHS STEM Designated Degree Program List by adding eight qualifying fields of study and a corresponding Department of Education Classification of Instructional Programs (CIP) code for each. No CIP codes from the existing list are being removed. The list is used to determine whether a degree obtained by certain F–1 nonimmigrant students following the completion of a program of study qualifies as a science, technology, engineering, or mathematics (STEM) degree as determined by DHS, as required for the F–1 student to be eligible to apply for a 24-month extension of their post-completion optional practical training (OPT).

DATES: DHS adopts the list announced in this notice as of July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Center Unit, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement, 500 12th Street SW, Stop 5600, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number.

Program information is available at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Department of Homeland Security (DHS) is updating the list of STEM fields of study that fall within the regulatory definition of ''STEM field.'' The list, known as the DHS STEM Designated Degree Program List (''STEM list''),[1] is used to determine whether a degree obtained by an F–1 nonimmigrant student qualifies as a STEM degree, as required for the F–1 nonimmigrant student to be eligible to apply for a STEM OPT extension. The current format of the STEM list, which consists of four primary CIP code series designated at the two-digit level, and CIP codes in related fields designated at the six-digit level, was established in a final rule issued in 2016.[2] The STEM list was most recently updated in 2022.[3]

Why is DHS taking this action?

In 2016, DHS published a final rule providing a 24-month extension of OPT for F–1 nonimmigrant students who majored in a designated STEM field of study. *See* 81 FR 13039 (March 11, 2016) (''Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students'') (''2016 STEM Rule''). The 2016 STEM Rule stated that DHS will continue to accept for consideration suggested additions or deletions to the STEM list and may publish updates to the STEM list in the **Federal Register**. In 2022, DHS published a **Federal Register** notice announcing the addition of 22 qualifying fields of study to the STEM list. *See* 87 FR 3317 (January 21, 2022) (''Update to the Department of Homeland Security STEM Designated Degree List''). The **Federal Register** notice also included instructions for how interested parties, including members of the public, can nominate CIP codes for potential inclusion on or removal from the STEM list. DHS received from interested parties, including members of the public, a total of 285 nominations, representing 120 unique fields of study, to be added to the STEM list. DHS did not receive any nominations to remove CIP codes currently on the list. DHS is now announcing that a number of the fields of study submitted for consideration will be added to the STEM list.[4] Nominators may resubmit a nomination with additional supporting views and evidence, at any time, if their original submission is not addressed in this notice.

What is OPT and STEM OPT?

OPT is one type of work permission available to certain F–1 nonimmigrant students. It allows eligible F–1 students (except those in English language training programs) to obtain real-world work experience directly related to their major area of study.

The STEM OPT extension is a 24-month extension of OPT available to F–1 nonimmigrant students who have completed 12 months of OPT and received a degree in an approved STEM field of study as designated by the STEM list.

Who may be impacted by this notice?

This notice may impact qualifying F–1 nonimmigrant students who seek a 24-month extension of post-completion OPT.

Where can I find the STEM list?

The STEM list can be found in the docket for this notice and on the Student and Exchange Visitor Program (SEVP) website.[5]

What authority does DHS have to make changes to the STEM list?

The Secretary has broad authority to administer and enforce the Nation's immigration laws. *See generally* 6 U.S.C. 202; Immigration and Nationality Act of 1952, as amended (INA), sec. 103, 8 U.S.C. 1103. The INA establishes the F–1 nonimmigrant classification for individuals who wish to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an academic institution or accredited language training school certified by the U.S. Immigration and Customs Enforcement's (ICE) SEVP. *See* INA sec. 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i). The INA provides the Secretary with broad authority to determine the time and conditions under which nonimmigrants, including F–1 students, may be admitted to the United States. *See* INA sec. 214(a)(1), 8 U.S.C. 1184(a)(1). The Secretary also has broad authority to determine which individuals are authorized for

[1] ICE, DHS STEM Designated Degree Program List, *https://www.ice.gov/doclib/sevis/pdf/stemList2022.pdf (last visited Oct. 25, 2022).*

[2] *See* 81 FR 13039, Mar. 11, 2016.

[3] *See* 87 FR 3317, Jan. 21, 2022.

[4] While the 2016 STEM Rule provided for ''additions or deletions to the list,'' no deletions will be made at this time.

[5] *See* SEVP, Eligible CIP Codes for the STEM OPT Extension, *https://studyinthestates.dhs.gov/stem-opt-hub/additional-resources/eligible-cip-codes-for-the-stem-opt-extension* (last visited Oct. 25, 2022).

employment in the United States. *See* INA sec. 274A(h)(3), 8 U.S.C. 1324a(h)(3). Finally, the Secretary, or his or her designee, has authority to maintain the STEM list, which is a complete list of qualifying degree program categories published on the SEVP website at *https://www.ice.gov/sevis.* Changes that are made to the STEM list may also be published in a notice in the **Federal Register**. *See* 8 CFR 214.2(f)(10)(ii)(C)(*2*)(*ii*).

Who may nominate a CIP code?

Interested parties, including members of the public, may nominate a CIP code for inclusion on, or removal from, the STEM list.

How does DHS assess nominations?

Nominations to add or remove degrees from the STEM list are assessed consistent with the authorizing regulation.[6] As defined in the governing regulations, a STEM field is a field included in the CIP taxonomy [7] that falls within the two-digit series containing engineering, biological sciences, mathematics and statistics, and physical sciences, or a related field, which generally involves research, innovation, or development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences). *See* 8 CFR 214.2(f)(10)(ii)(C)(*2*)(*i*). This definition is widely used by U.S. institutions of higher education and provides an objective measure by which to identify STEM fields of study.

Through regulation,[8] DHS has designated four areas as core STEM fields and lists these four areas at the two-digit CIP code level. As a result, any new additions to those areas are automatically included on the STEM list. These four areas are: Engineering (CIP code 14), Biological and Biomedical Sciences (CIP code 26), Mathematics and Statistics (CIP code 27), and Physical Sciences (CIP code 40). If a degree is not within the four core fields, DHS considers whether the degree is in a STEM-related field listed at the six-digit level. The six-digit designation allows for individualized review of a specific field of study to ensure it meets the ''related field'' criteria of ''involving research, innovation, or development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences).''

SEVP evaluates submissions to assess whether the degree is generally considered to be a STEM degree by recognized authorities, including input from educational institutions, governmental entities, and non-governmental entities. SEVP also reviews the National Center for Education Statistics (NCES) definition of the CIP code, and any supporting material submitted by the nominator, such as the required curriculum for the degree and the extent to which it is comprised of core STEM disciplines, as well as research, innovation, and development of new technologies using engineering, mathematics, computer science, or natural sciences (including physical, biological, and agricultural sciences). Additionally, degree requirements and curriculum may be assessed across academic institutions to ensure that the core aspects of the degree are sufficiently consistent among educational institutions.

A proposed addition does not have to have all supporting elements to be added to the STEM list. DHS assesses the totality of a submission and may approve a proposed CIP code if the submission presents sufficient evidence and reasoning to establish that the degree under consideration fits within the regulatory definition of a STEM field.

How may a nomination be submitted?

Nominations may be submitted by email to the SEVP Response Center at *SEVP@ice.dhs.gov,* with the subject line ''Attention: STEM CIP Code Nomination.''

What new fields of study will be added to the STEM list?

The following fields of study are being added to the STEM list:

Landscape Architecture (04.0601) *A program that prepares individuals for the independent professional practice of landscape architecture and research in various aspects of the field. Includes instruction in geology and hydrology; soils, groundcovers, and horticultural elements; project and site planning; landscape design, history, and theory; environmental design; applicable law and regulations; and professional responsibilities and standards.* This field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using natural sciences, engineering, and mathematics.

Institutional Research (13.0608) *A program of study that prepares an individual to be an institutional researcher at a postsecondary educational institution. Includes instruction in data analysis, data-driven decision-making, data mining, higher education administration and organization, research methods, and statistics.* This is a new CIP code added by NCES in its decennial 2020 update to the CIP. The field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using mathematics and computer science.

Mechatronics, Robotics, and Automation Engineering Technology/Technician (15.0407) *A program that prepares individuals to apply basic engineering principles and technical skills in the support of engineers to the design, development, and operational evaluation of autonomous, computer-controlled, electro-mechanical systems. Includes instruction in computer and software engineering, control engineering, electronic and electrical engineering, mechanical engineering, and robotics.* This is a new CIP code added by NCES in its decennial 2020 update to the CIP. The field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using engineering and computer science.

Composite Materials Technology/Technician (15.0617) *A program of study that prepares individuals to apply basic engineering principles and technical skills in support of engineers and other professionals engaged in the development, manufacture, and use of composite materials in aircraft technology, automotive technology, boats, medical prostheses, and wind turbines. Includes instruction in computer-aided design and drafting, composite materials and processes, composite maintenance, composite manufacturing, composite repair, material science, and mold manufacturing and production.* This is a new CIP code added by NCES in its decennial 2020 update to the CIP. The field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using engineering, physical sciences, and computer science.

Linguistics and Computer Science (30.4801) *A program that focuses on the relationship between computer and human language and computational*

[6] *See* 8 CFR 214.2(f)(10)(ii)(C)(2).

[7] The CIP taxonomy is a taxonomic scheme that was developed by the Department of Education's National Center for Education Statistics (NCES) to support the accurate tracking and reporting of fields of study and program completion activity. See the NCES website (*https://nces.ed.gov/ipeds/cipcode/Default.aspx?y=55*) (last visited Oct. 25, 2022).

[8] *See* 8 CFR 214.2(f)(10)(ii)(C)(*2*)(*i*).

techniques applied to natural language. Includes instruction in computer programming, human languages, linguistic analysis, logic, natural language processing, semantics, machine learning, psycholinguistics, software engineering, and syntax. This is a new CIP code added by NCES in its decennial 2020 update to the CIP. The field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using computer science.

Developmental and Adolescent Psychology (42.2710) *A program that focuses on the scientific study of the unique stages of psychological growth and development of individuals from adolescence to adulthood. Includes instruction in cognitive and perceptual development, emotional development, personality development, the effects of biological maturation on behavior, theories of cognitive growth and related research methods, testing and assessment methods for different age levels, research on child and adolescent behavior therapy, and the psychology of aging.* This is a new CIP code added by NCES in its decennial 2020 update to the CIP. The field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using biological sciences.

Geospatial Intelligence (43.0407) *A program that prepares individuals to analyze security and intelligence problems using a geographic perspective by relating human actions to cultural, political, economic, social, and physical landscapes. Includes instruction in aerial photography analysis, cartography, geographic information systems (GIS), physical geography, remote sensing, spatial programming, and quantitative methods in geographic research.* This is a new CIP code added by NCES in its decennial 2020 update to the CIP. The field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using mathematics and computer science.

Demography and Population Studies (45.0501) *A program that focuses on the systematic study of population models and population phenomena, and related problems of social structure and behavior. Includes instruction in population growth, spatial distribution, mortality and fertility factors, migration, dynamic population modeling, population estimation and projection, mathematical and statistical analysis of population data, population policy studies, and applications to problems in economics and government planning.* The field of study, as described in the NCES definition, is comprised of STEM disciplines such as research, innovation, or development of new technologies using mathematics and computer science.

Paperwork Reduction Act (PRA)

Eligible students are required to submit a Form I–765, ''Application for Employment Authorization,'' to request employment authorization and an Employment Authorization Document, and a Form I–983, ''Training Plan for STEM OPT Students,'' to ensure that they are receiving the academic and training benefits of the STEM OPT extension. Consistent with the PRA, the Office of Management and Budget (OMB) has previously approved the collection of information contained on the current Form I–765 (OMB Control No. 1615–0040) and Form I–983 (OMB Control No. 1653–0054). Although there could be a slight increase in the number of filings for both the Form I–765 and Form I–983 because of this notice, the number of filings currently contained in the OMB annual inventory is sufficient to cover any additional filings. Accordingly, there is no further action required under the PRA.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–14807 Filed 7–11–23; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0021]

Homeland Security Academic Partnership Council

AGENCY: The Department of Homeland Security (DHS), The Office of Partnership and Engagement (OPE).

ACTION: Notice of public meeting of the Homeland Security Academic Partnership Council.

SUMMARY: The Homeland Security Academic Partnership Council (HSAPC) will hold a public meeting on Monday, August 7, 2023. The meeting will be open to the public via web conference.

DATES: The meeting will take place from 3:00 p.m. EST to 4:00 p.m. EST on Monday, August 7, 2023. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The HSAPC meeting will be held via web conference. Members of the public interested in participating may do so by following the process outlined below. The public will be in listen-only mode. Written comments can be submitted no later than Wednesday, August 9, 2023. Comments must be identified by Docket No. DHS–2023–0021 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments, or
- *Email: DHSAcademic@hq.dhs.gov.* Include Docket No. DHS–2023–0021 in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2023–0021,'' the docket number for your comments. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2023–0021,'' and ''Open Docket Folder'' to view the comments.

FOR FURTHER INFORMATION CONTACT: Tamara Molina, Acting Deputy Executive Director of the Office of Academic Engagement and Alternate Designated Federal Officer, Homeland Security Academic Partnership Council, Department of Homeland Security at *DHSAcademic@hq.dhs.gov* or 202–891–3108.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 117–286 (5 U.S.C. ch. 10), which requires each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The HSAPC provides provide organizationally independent, strategic, timely, specific, and actionable recommendations to the Secretary on key issues at the intersection of education, academia, and the DHS mission. The meeting will include:

(1) Remarks from Senior DHS leaders,

(2) Introduction and swearing in of members, and

(3) The Announcement of New Taskings.

Members of the public will be in listen-only mode. Members of the public may register to participate in this Council meeting via web conference under the following procedures. Each

individual must provide their full legal name and email address no later than 5:00 p.m. EST on Friday, August 4, 2023, to Tamara Molina of the Council via email to *DHSAcademic@hq.dhs.gov* or via phone at 202–891–3108.

Members of the public who have registered to participate will be provided the weblink after the closing of the public registration period and prior to the start of the meeting. For more information about the HSAPC, please visit our website: *https://www.dhs.gov/homeland-security-academic-partnership-council-hsapc.*

Lastly, the HSAPC is committed to ensuring all participants have equal access regardless of disability status. For information on services for individuals with disabilities or if you require a reasonable accommodation due to a disability to fully participate, please contact Tamara Molina at *DHSAcademic@hq.dhs.gov* or 202–891–3108 no later than 5:00 p.m. EST on Thursday, August 3, 2023.

Dated: July 6, 2023.

Tamara J. Molina,

Alternate Designated Federal Officer, Homeland Security Academic Partnership Council, U.S. Department of Homeland Security.

[FR Doc. 2023–14683 Filed 7–11–23; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–11]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of Chief Human Capital Officer, HUD.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended 5 U.S.C. 552a, the Department of the Housing and Urban Development (HUD), Office of the Chief Human Capital Officer (OCHCO) is issuing a public notice of its intent to establish a Privacy Act System of Records titled, ''Anti-Harassment Program''. The Anti-Harassment Program's (AHP) intent is to provide the entire HUD workforce accountability for professional conduct, a mechanism for reporting unwelcome conduct, and prevent potentially harassing activity and promptly correct harassing behaviors. The AHP promotes a ''speak-up'' culture, bolsters employee morale, and increases employee engagement, satisfaction, and retention. The AHP prevents all harassing conduct before the conduct can become severe or pervasive. As such, the Anti-Harassment Program (AHP) is a mission imperative for all stakeholders.

DATES: Comments will be accepted on or before August 11, 2023. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or 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.*

SUPPLEMENTARY INFORMATION: HUD attracts and retains highly qualified and unique individuals into mission-critical positions. Employees are likely to remain with their federal agency if they feel confidence and trustworthiness in the agency's ability to make them feel safe and secure while performing in the capacity of their duties to accomplish their mission and/or strategic goals and/or objectives. The Anti-Harassment Program provides that mechanism for individual to report such harassing conduct and behavior. The agency uses an administrative inquiry and/or investigative process to apply swift and corrective action(s) in order to prevent future instances, and/or to emphasis through training, that type of harassing conduct will not be tolerated, in accordance with the agency's Anti-Harassment Program's Policy.

SYSTEM NAME AND NUMBER:

Anti-Harassment Program, HUD/OCHCO–02.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Department of Housing and Urban Development Headquarters, 451 7th Street SW, Washington, DC 20410–0001.

SYSTEM MANAGER(S):

Alejandro Hernandez, Director, Anti-Harassment Program, Office of the Chief Human Capital Officer (OCHCO), Office of 451 Seventh Street SW, Washington, DC 20410–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*; The Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. 621 *et seq.*; The Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008, 42 U.S.C. 12101 *et seq.*

The Genetic Information Nondiscrimination Act of 2008 (GINA), 42 U.S.C. 2000ff note; The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, 5 U.S.C. 2301 note.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to allow HUD to maintain case files on employees who participate in the Anti-Harassment Program (AHP). These records may be used to help streamline and make more efficient the administrative investigations and anti-harassment processes, while ensuring compliance with applicable laws and regulations, including confidentiality requirements protecting the information individuals submit in support of their harassment claims or other participation in the investigative process.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current HUD employees, contractors and HUD volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, age, employment status, gender, marital status, military status, race, religion, sex, work addresses, email addresses, allegations of harassment, information generated

during fact-finding investigations, other records related to the investigation, and response taken as a result of the allegation.

RECORD SOURCE CATEGORIES:

Individuals from alleged victims and harassers, witnesses, members of the public, law enforcement officers of other Federal agencies, and other individuals involved with the allegation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

2. To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, or grant for the purposes of statistical analysis such as: approved payments and other pertinent and relative information, and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission.

3. To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with HUD or under contract to another agency when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

4. To appropriate agencies, entities, and persons when: (I) HUD suspects or has confirmed that there has been a breach of the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD'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 HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

6. To appropriate Federal, State, local, tribal, or governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

7. To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

8. To any agency, person, or entity in the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

9. To the alleged victim or harasser, or their representatives, the minimal information necessary to provide the status or the results of the investigation or case involving them.

10. To the Office of Personnel Management (OPM), the Merit Systems Protection Board (and its office of the Special Counsel), the Federal Labor Relations Authority (and its General Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

11. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting conditions of employment.

12. To Federal, State, or local law enforcement agencies and privacy security contractors, as appropriate, information necessary: (1) to enable them to protect the safety of HUD employees, the security of the HUD workplace, the operation of HUD facilities, or (2) to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operations of HUD facilities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Full name and case file numbers.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary: Destroy 7 years after close of case, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative Safeguards: No paper records.

Technical Safeguards: Comprehensive electronic records are maintained and stored on a shared drive in an electronic encryption database system. These records can only be accessed based off the user's rights and privileges to the system. Electronic records are stored on the Share Drive environment, which runs on the Department's network (HUD). This environment complies with the security and privacy controls and procedures as described in the Federal Information Security Management Act (FISMA), National Institute of Standards and Technology (NIST) Special Publications, and Federal Information Processing Standards (FIPS). A valid HSPD–12 ID Credential, access to HUD's LAN, a valid UserID and Password and a Personalized Identification Number (PIN) is required in order to access the records. These records are restricted to only those persons with a role in the Anti-Harassment Program, having a need to access them in the performance of their official duties.

For Electronic Records (cloud based): Comprehensive electronic records are secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Management Act (FISMA) Moderate dedicated hosting environment. All data located in the

cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handing data at rest and in transit are in accordance with HUD encryption standards.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

N/A.

HISTORY:

N/A.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–14788 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–12]

Privacy Act of 1974; System of Records

AGENCY: Office of Housing, Office of Single-Family Program Development, HUD.

ACTION: Notice of an amendment to system of records.

SUMMARY: Under the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of Single-Family Program Development is issuing a public notice of its intent to amend the system of records for: Computerized Homes Underwriting Management System (CHUMS)/Loan Application Management System (LAMS). This notice includes a section detailing Federal Housing Administration (FHA) Connection (FHAC), which was described under CHUMS in the 2016 notice. The amendment makes updates to the system of records name, location and system manager, authority, purpose, categories of individuals, categories of records in the system, record source categories, routine uses, policies and practices for storage and retrieval of records, policies and practices for retention and disposal of records, safeguards, record access and contesting procedures and notification procedures. The updates are explained in the ''Supplementary Section'' of this notice. The existing scope, objectives, business processes, and uses remain unchanged.

DATES: Comments will be accepted on or before August 11, 2023. The SORN becomes effective immediately, while the routine uses become effective after the comment period immediately upon publication except for the routine uses, which will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. LaDonne White, Chief Privacy Officer; Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*. including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. LaDonne White; 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001, telephone number (202) 708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or 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.*

SUPPLEMENTARY INFORMATION: HUD amends system of records notice (SORN) for the Computerized Homes Underwriting Management System (CHUMS)/Loan Application Management System (LAMS) and Federal Housing Administration (FHA) Connection (FHAC), to include these substantive changes reflecting the new and modified items listed below and administrative updates to regulatory references along with word and format changes throughout the SORN.

i. *System Name and Number:* Updated to Single Family Mortgage Insurance Origination System which includes FHA Connection (FHAC), which was previously described as a subsystem of CHUMS without the detail provided in this update.

ii. *System Location:* Updated to reflect the current locations of CHUMS which migrated from a legacy mainframe environment to Microsoft Azure Federal Cloud service environment.

iii. *Authority For Maintenance of the System:* Updated to include additional citations for the legal authority for HUD to collect Social Security Numbers, which were inadvertently omitted from the previous SORN.

iv. *Purpose(s) of the System:* Updated to include more details about FHAC as a sub-system of CHUMS.

v. *Categories of Individuals Covered by the System:* Updated to reflect records collected from System Users in FHAC, as well as Borrowers and Appraisers in LAMS.

vi. *Categories of Records in the System:* Updated to detail the categories of records in FHAC, CHUMS and LAMS.

vii. *Record Source Categories:* Updated to clarify HUD does not collect records in FHAC, CHUMS or LAMS directly from borrowers.

viii. *Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses:* The routine uses in the previous SORN were numbered. In this update, they are listed by letter. Item (1) was removed as obsolete. Items (4) and (5) were consolidated into single routine use since they are related to the Department of Justice. Item (7) is being split in two to clarify that the use related to Technology Open to Approved Lenders (TOTAL) Scorecard

and the National Mortgage Database (NMDB) are separate from the routine use for research and risk management activities related to automated underwriting systems (AUSs) and credit standards. Item (11) was erroneously included in the last SORN and is therefore being deleted. Item (12) is being revised to include all public rosters within CHUMS, not just housing counseling agencies.

Two new Routine Uses are being added. The first new Routine Use (new item L) is specific to CHUMS data and covers a new Computer Matching Agreement (CMA) with the Social Security Administration that includes verification of SSNs and other user data for security purposes.

The second new Routine Use (new item O) is specific to LAMS and covers data sharing with Federal financial regulators, Fair Lending enforcement agencies, and financial institutions for analysis and research to assess program compliance and risks associated with real estate appraisal and other property valuation methods used in Federal housing finance transactions. Recipients may use the data, including analysis and research, in conducting investigations and taking enforcement action (including cases and administrative proceedings) for violations of laws, rules or regulations, and for coordinated policy development and implementation.

Routine Uses (A) through (K) apply to data found in FHAC, CHUMS and LAMS. Routine Uses (L) through (N) apply specifically to CHUMS data, and Routine Use (O) applies specifically to LAMS data.

ix. *Policies and Practices for Storage of Records:* Updated to remove reference to paper records. The systems only contain electronic records.

x. *Policies and Practices for Retrieval of Records:* Removed the reference to paper records and replaced ''other identification number'' with ''HUD Roster ID number.'' Added Appraiser Roster ID and 203k Consultant Roster ID.

xi. *Policies and Practices for Retention and Disposal of Records:* Edited to simplify and make more concise.

xii. *Administrative, Technical, and Physical Safeguards:* Updated to reflect the current operating environment for CHUMS in the MS Azure Federal Cloud.

SYSTEM NAME AND NUMBER:

Single Family Mortgage Insurance Origination System. HUD/HSNG.03.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATIONS:

The core CHUMS system is in the Microsoft Azure Federal Cloud US East, One Microsoft Way, Redmond, Washington, 98052–6399. FHAC and LAMS are located and backed up on servers housed at the National Center for Critical Information Processing and Storage located at NASA's Shared Services Center, Building 1111, Stennis Space Center, MS 39529–6000.

SYSTEMS MANAGER:

Elissa Saunders, Director, Office of Single-Family Program Development, HUD Headquarters; 451 7th ST SW, Room 9278, Washington, DC 20410–0001. (202) 402–2378; *Elissa.O.Saunders@hud.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

Title I, Section 2 of the National Housing Act (12 U.S.C. 1703). Section 202 of the National Housing Act (12 U.S.C. 1708). Section 203 of the National Housing Act (12 U.S.C. 1709). Section 255 of the National Housing Act (12 U.S.C. 1715z–20). 31 U.S.C. 7701 r. 42 U.S.C. 3543 and 24 CFR part 200, subpart U and 24 CFR 203.35.

PURPOSES OF THE SYSTEMS:

Federal Housing Administration (FHA) Connection (FHAC) is integrated with HUD's security infrastructure to assign user roles and permissions based on business need. FHAC's function as a security and access management portal includes web pages to collect first and last names, Social Security Numbers (SSNs), dates of birth (DOB), mother's maiden name, work telephone number and email address. All data collected by FHAC for security and access management is stored in Computerized Homes Underwriting Management System (CHUMS).

CHUMS supports HUD and its approved business partners with processing and underwriting applications for single-family mortgages insurance under the National Housing Act. CHUMS provides functionality to track and process cases and manages workloads for HUD field office management. CHUMS functionality enables lenders and HUD in determining eligibility for participation in HUD's single family mortgage insurance program and lets lenders use Automated Underwriting Systems (AUS) provided by mortgage financial institutions by granting authorized AUS providers access to FHA's Technology Open to Approved Lenders (TOTAL) Scorecard.

Loan Application Management System (LAMS) supports the Federal Housing Administration (FHA) mortgage insurance program by providing automated processing, analysis, and screening of appraisal documentation. LAMS receives and stores appraisal data from the Electronic Appraisal Delivery (EAD) portal in a Mortgage Industry Standards Maintenance Organization (MISMO) Extensible Markup Language (XML) format tailored to HUD specifications. LAMS passes certain data elements onto FHAC and CHUMS to ensure data integrity and provides valuable time savings to lenders by reducing the burden of paper-based delivery and manual data entry processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

System Users, HUD business partners (appraisers, inspectors, mortgagee staff underwriters), HUD employees, Mortgagors (Borrowers), Individuals who applied for a mortgage insured under HUD/FHA's single family mortgage insurance programs, including Home Equity Conversion Mortgages (HECM) Non-Borrowing Spouses, Appraisers (both applicants and Appraisers listed on the HUD Appraiser Roster), 203k Consultants (both applicants and 203k Consultants listed on the HUD 203k Consultant Roster), Mortgagee (Lender) Staff including, but not limited to, loan originators, appraisers, underwriters, processors and file clerks, Individuals registering for access to the HUD Housing Counselor Certification Examination, whether or not they become certified, Individuals registering for HUD Certified Housing Counselor certification or housing counseling clients receiving housing counseling from an agency participating in HUD's Housing Counseling Clients.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Full name, Social Security Number (SSN), IRS Employer Identification Number (EIN), Appraiser Roster ID number, 203k Consultant ID number, License Number, Date of Birth (DOB), mother's maiden name, home and/or work telephone number, email address, mailing address (home and/or work) and Agency or organization affiliation, Lender ID, racial/ethnic background (if disclosed), sex (if disclosed), credit scores (FICO® scores), Non-borrowing Spouse status (HECM loans only), mortgage loan terms, including documents used by the lender when underwriting the loan (including, but not limited to paystubs, bank statements, tax returns), Appraiser's license/expiration date, and address, email address, demographic data, Minority Business Enterprise (MBE) Code, 203K Consultant ID number, 203K

license number (if applicable), Roster termination date for Appraisers, 203k Consultants, Housing Counselors), business territory/participation state, Nationwide Mortgage Licensing System (NMLS) number, transaction history and/or workload of the individuals using the system, Housing Counseling System (HCS) number, preferred language, and subject property addresses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

A. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that there has been a breach of the system of records; (b) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

B. To another Federal agency or Federal entity, when HUD determines that information from this system of record 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.

C. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

D. To the General Accounting Office (GAO) for audit purposes.

E. To contractors, grantees, experts, consultants, and the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to these systems of records, limited to only those data elements considered relevant to accomplishing an agency function.

F. To the general public through rosters maintained and published by HUD to look up Appraisers, 203k Consultants, Housing Counselors, and HECM Counselors. The information will be released to any interested person only through a specific web page on either *www.hud.gov* or the HUD Exchange designated by HUD. Such disclosures are limited to name, contact information, licensing, and certification status.

G. To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or computer matching agreement for: (a) detection, prevention, and recovery of improper payments; (b) detection and prevention of fraud, waste, and abuse in major Federal programs administered by a Federal agency or non-Federal entity; (c) detection of fraud, waste, and abuse by individuals in their operations and programs; d) for the purpose of establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefits programs or recouping payments or delinquent debts under such Federal benefits programs. Records under this routine use may be disclosed only to the extent that the information shared is necessary and relevant to verify pre-award and pre-payment requirements prior to the release of Federal funds, or to prevent and recover improper payments for services rendered under programs of HUD or of those Federal agencies and non-Federal entities to which HUD provides information under this routine use.

H. To Federal agencies, and non-Federal entities, including, but not limited to contractors, grantees, experts, consultants, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement, for the purposes of analysis and research to support program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

I. To appropriate Federal, State, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would help in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

J. To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in civil discovery, litigation, mediation, or settlement negotiations; or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (a) HUD, or any component thereof; or (b) any HUD employee in his or her official capacity; or (c) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (d) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

K. To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (a) HUD, or any component thereof; or (b) any HUD employee in his or her official capacity; or (c) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (d) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

L. To the Social Security Administration through a computer matching program to verify the eligibility of program participants and applicants in FHA's housing finance programs. (This use is specific to CHUMS data.)

M. To HUD authorized AUS providers and software companies involved in providing access to TOTAL Scorecard including, but not limited to, Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac,

financial institutions and software companies to respond to requests for assistance with individual cases submitted to TOTAL Scorecard and for the purposes of research and analysis to enhance program operations and performance through automated underwriting, credit scoring and risk management. PII data used for research and analysis including the results of the research and analysis must be de-identified and aggregated and may not be disclosed or published. (This use is specific to CHUMS data.)

N. To other Federal agencies, (including but not limited to the Federal Housing Finance Agency (FHFA) and the Consumer Financial Protection Bureau), and their contractor/s through data sharing and other agreements for the purposes of research and analysis of automated underwriting, credit enhance oversight of the mortgage market, inform rulemaking, assess program effectiveness, and to publish de-identified aggregate data and results of research and analysis. (This use is specific to CHUMS data.)

O. To Federal financial regulators, Fair Lending enforcement agencies, and financial institutions (including, but not limited to the Federal Housing Finance Agency (FHFA), Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac, Veterans Administration, US Department of Agriculture Rural Development Agency, Consumer Financial Protection Bureau, the Federal Reserve, and the Appraisal Subcommittee) through data sharing agreements and other agreements for the purposes of analysis and research to assess program compliance and risks associated with real estate appraisal and other property valuation methods used in Federal housing finance transactions. Recipients may use the data, including analysis and research, in conducting investigations and taking enforcement action (including cases and administrative proceedings) for violations of laws, rules, or regulations, and for coordinated policy development and implementation. (This routine use is specific to LAMS data.)

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic only.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by Name and Social Security Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Per HUD Schedule Appendix 20 Single Family Home Mortgage Insurance Program Records, item 13B6, and HUD Schedule Appendix 5, Technical Support Records, all records in FHAC, CHUMS and LAMS will be destroyed when superseded or obsolete. Per General Record Schedule 5.2, Item 20, all FHAC, CHUMS and LAMS records are temporary and are to be destroyed upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative Safeguards: The core CHUMS system and all data are maintained simultaneously across multiple data centers within the Microsoft Azure Federal cloud, which are located within FedRAMP security approved facilities. For technical reasons, certain CHUMS databases, FHAC and LAMS are located and backed up on servers housed within secure Federal data facilities and not in the cloud.

Physical Safeguards: Controls to secure the data and protect electronic records, buildings, and related infrastructure against threats associated with their physical environment include, but are not limited to, using cypher and combination locks, key card-controlled access, security guards, closed circuit TV, identification badges, and safes. Administrative controls include encryption of back-up data, back-ups secured off-site, methods to ensure only authorized users have access to PII, periodic security audits, regular monitoring of system users' behavior and users' Security Practices.

Technical Safeguards: Controls for the systems include, but are not limited to, encryption of Data at Rest and in Transit, firewalls at HUD, user ID, password protection, role-based access controls, Least Privileged access, elevated and/or administrative privileged access, Personal Identify Verification cards, intrusion detection systems. Unauthorized access is controlled by application-level security.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rules for accessing, contesting, and appealing agency determinations by the individual concerned are published in 24 CFR part 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Docket No. FR–5921–N–17, 81–FR–71750, October 18, 2016.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–14790 Filed 7–11–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7077–N–10]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, HUD.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD) is issuing a public notice of its intent to create the Office of PIH Privacy Act system of records, One Stop Customer Service. One Stop Customer Service (OSCS) is a stand-alone service management application. It is used by Real Estate Assessment Center Public and Indian Housing (REAC–PIH) Technical Assistance Center (TAC) to document the following from callers: Inquiries, comments & complaints and Answers pertaining to HUD programs that are provided to the callers. The purpose of OSCS is to serve as a central location for documenting information provided to callers relative to their inquiries, comments & complaints.

DATES: Comments will be accepted on or before August 11, 2023. This proposed action will be effective on the date following the end of the comment

period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or 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.*

SUPPLEMENTARY INFORMATION: The main objective of the TAC One Stop Customer Service (OSCS) Salesforce CRM (Customer Relationship Management) new System is to assist HUD in meeting its mission by providing improved customer accessibility to HUD-developed knowledge materials and support the REAC, specifically in the TAC processing of inbound inquiries regarding HUD Program Area products and services, federal regulations, business and program protocols, processes and procedures, technical questions, HUD Secured Systems access and security systems administration issues to support 400,000 internal and external users of HUD's Secure Systems applications.

The TAC also receives questions from the public and provides reference and referral services to respond to requests for information, from Departmental stakeholders and business partners, including Public Housing Agencies, Tribally Designated Housing Entities, Public and Indian Housing residents/resident entities, Housing program participants, HUD staff and other Federal, state and local government officials and employees. Given the need of all Federal agencies to do more with scarce program funds, the TAC provides HUD with the capabilities needed for a customer-service oriented Multi Channel Contact Management Center and the pathway to insuring cost-effective, high-quality customer service support requirements into the future.

SYSTEM NAME AND NUMBER:

One Stop Customer Service (OSCS). HUD–PIH 03.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The files are maintained at the following locations: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

SYSTEM MANAGER(S):

Office of Public and Indian Housing (PIH), Ashley Leia Sheriff, Deputy Assistant Secretary, Real Estate Assessment Center, 550 12th Street SW, Suite 100, Washington, DC 20410. 202–402–4162.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 2 of The Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3531, which establishes the Department ''to encourage the solution of problems of housing [and] urban development . . . and to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation's communities and of the people who live and work in them.'' This system is also authorized by Executive Order 12160 and the Housing and Community Development Act of 1974, Public Law 93–383.

PURPOSES OF THE SYSTEM:

The Department of Housing and Urban Development (HUD), Office of PIH maintains the ''One Stop Customer Service'' system of records. The purpose of OSCS is to serve as a central location for documenting information provided to callers relative to their inquiries, comments & complaints. Real Estate Assessment Center (REAC) Technical Assistance Center (TAC) business area is a multi-channel inquiry operation that supports HUD programs and activities under many Departmental offices, responding to approximately 150,000 inquiries annually from a broad range of internal and external HUD business partners and program participants. The TAC has been developed to be the Customer Service for REAC business areas, the primary customer-facing organization to program area business partners and participants in the offices of Multi-Family Housing and Public and Indian Housing (REAC–TAC) The information collected by OSCS assists is used for developing reports and trend analysis to ascertain the level of customer service provided to HUD clients.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The TAC supports/serves the following types of Departmental business partners and general public individuals. Government (Local, state and federal entities), Public Housing Authority (Administrators, employees & residents), Real Property Owners (Multi-family Housing program participants), Other Real Estate Professionals (Appraisers, Investors, Real Estate CSRs, Property Inspectors) and Mortgage Banking Institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the following information. Callers Full Name, Property or Home Address, Telephone & Fax Number (if available), Email Address, User ID.

RECORD SOURCE CATEGORIES:

OSCS receives the data from HUD assisted housing residents, Independent Public Accountants, Contracted property inspectors for HUD assisted housing and Citizens through Phone, Webform, Email, Live Chat, Mail and Fax Communications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

(2) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(3) To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service

agreement, grant, cooperative agreement, or computer matching agreement for the purpose of: (1) detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in major Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs; (4) for the purpose of establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefits programs or recouping payments or delinquent debts under such Federal benefits programs. Records under this routine use may be disclosed only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of Federal funds or to prevent and recover improper payments for services rendered under programs of HUD or of those Federal agencies and non-Federal entities to which HUD provides information under this routine use.

(4) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function. Contractors provided information under these routine use conditions are subject to Privacy Act requirements and disclosure limitations imposed on the Department. HUD staff and contractor personnel who handle the tiered production support for OSCS collect contact information so that they can process the exchange and if need be, escalate the issue within the support center to more specialized technicians.

(5) To contractors, experts and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(6) To appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breached of the system of records, (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, (including its information systems, programs, and operations), the Federal Government, or national security; (3) and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(7) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(8) To appropriate Federal, State, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(9) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations, or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(10) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Individual name, email address, User ID, phone number.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

GRS 5.2, item 10, Transitory records. The system's Disposition Instructions: Temporary. Destroy when no longer needed for business use, or according to agency predetermined period or business rule. Disposition Authority is: DAA–GRS–2017–0003–0001.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

One Stop Customer Service (OSCS) system implements on Salesforce Service Cloud on the Government Cloud Plus, which is a FedRamp approved platform. The Salesforce Government Cloud Plus was granted a Provisional Authority to Operate (P–ATO) by the FedRAMP Joint Authorization Board (JAB) for both Software as a Service (SaaS) and Platform as a Service (PaaS), consistent with the FedRAMP High control baseline. Testing was performed by an independent, third-party assessment organization (3PAO).

To obtain compliance with FedRAMP, Salesforce conducted security assessment and authorization activities in accordance with FedRAMP guidance and NIST SP 800–37. As part of this process Salesforce documented a System Security Plan (SSP) for the Salesforce Government Cloud Plus service offering. The SSP is developed in accordance with NIST SP 800–18. The SSP identifies control implementations for the Salesforce Government Cloud Plus and in-scope customer facing products according to the FedRAMP High baseline. A security assessment of the information system was conducted by a 3PAO in accordance with FedRAMP High requirements. The security assessment testing determined the adequacy of the management, operational, and technical

security controls used to protect the confidentiality, integrity, and availability of Salesforce's Government Cloud Plus service offering and the Customer Data it stores, transmits and processes.

To maintain compliance with FedRAMP, Salesforce conducts continuous monitoring, which includes ongoing technical vulnerability detection, remediation of open compliance related findings, and at least annual independent assessment of security controls by a 3PAO.

Safeguards for unauthorized access to records is protected through role-based security for authorized users to have access only to the data to do their job they need as well as authentication into the system goes through HUD Active Directory Single Sign On to ensure proper identification of authorizing user. All server, security, storage, backup, and infrastructure equipment are monitored, restricted to only those with a need-to-have system access, including being secured by administrative password and authentication methods. Records in the system are electronic and stored on the FEDRAMP Salesforce Government Cloud. Only authorized users OSCS employees, contractors and have access to the records through the Salesforce SAAS web application and customers only have access to their data via Salesforce web portal. HUD's information technology partners in the Office of the Chief Information Officer (OCIO), Salesforce maintain the backups files of OSCS. Records are stored on secure servers administered by Salesforce. User's access, updates access, read-only access, and approval access based on the user's role and security access level. Further, all systems users must agree to abide by all HUD policies and federal laws and regulations.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

N/A.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–14789 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500169690]

Notice of Realty Action: Modified Competitive Sale of 17 Parcels of Public Land in Clark County, Nevada; Notice of Partial Termination of Recreation and Public Purposes Act Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer seventeen (17) parcels of public land totaling 895.155 acres in the Las Vegas Valley (Valley) by modified competitive sale at no less than each parcel's Fair Market Value (FMV) pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended. The sale will be processed in conformance with applicable provisions of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM regulations. The BLM is also notifying the public of the partial termination of the segregative effect of the Recreation and Public Purposes (R&PP) Act classification affecting one sale parcel, N–97342, resulting from the partial relinquishment of 1.25 acres of the R&PP Act lease under N–75562–01, in Clark County, Nevada.

DATES: The sale will take place on November 1, 2023, at 8 a.m., Pacific Time, on the EnergyNet website at: *https://www.EnergyNet.com/govt_listing.pl.*

Submit written comments regarding the sale until August 28, 2023. The BLM will publish this Notice of Reality Action (NORA) once a week for three consecutive weeks in the *Las Vegas Review-Journal* newspaper.

Prior to the sale, a sales matrix will be published on the following website: *https://www.EnergyNet.com/govt_listing.pl.* The sales matrix provides information specific to each sale parcel such as legal description, physical location, encumbrances, acreage, and FMV. The FMV for each parcel will be available in the sales matrix at least 30 days prior to the sale.

ADDRESSES: Mail written comments to the BLM Las Vegas Field Office (LVFO), Assistant Field Manager, Division of Lands, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Brad Gallimore, Realty Specialist, Las Vegas Field Office, by email: *sgallimore@blm.gov,* or by telephone: (702) 515–5000. For general information on previous BLM public land sales, go to *https://www.blm.gov/snplma.* Information concerning the sale parcels, including encumbrances of record, condition of boundary evidence, appraisals, reservations, procedures and conditions, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA) documents, and other environmental documents that may appear in the BLM public files for the sale parcels are available for review by appointment only during business hours from 8:00 a.m. to 4:00 p.m. Pacific Time, Monday through Friday, at the BLM LVFO, except during federal holidays.

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. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations, and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of

Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It is the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such and acquiring future access will be the responsibility of the buyer.

Of the seventeen (17) parcels of public lands that the BLM proposes to offer, ten (10) are within the Clark County jurisdiction, six (6) are within the City of Las Vegas jurisdiction, and one (1) is within the City of Henderson jurisdiction. More specifically, eleven (11) are in the northwest part of the Valley near State Route 157 (Kyle Canyon Road) and Interstate 215, five (5) are in the southwest part of the Valley near Blue Diamond Road, and one (1) is in the southeast part of the Valley east of Las Vegas Boulevard and north of Via Inspirada.

One of the sale parcels was previously classified and leased by the BLM to the City of Las Vegas (N–75562–01) under the R&PP Act for a public park. A notice was published in the **Federal Register** on October 16, 2007 (72 FR 58683), for classification for lease and subsequent conveyance of certain public land under the provisions of the R&PP Act. The City of Las Vegas requested to relinquish a portion of their lease on October 9, 2018, and the BLM accepted the partial relinquishment on March 29, 2019. As of March 29, 2019, there was no longer an application filed for the purpose for which the public lands were classified. Per the regulations found at 43 CFR 2741.5(h)(2), the segregative effect of the R&PP classification terminated without further action required by the authorized officer on the following described lands due to more than 18 months having passed since publication of the notice dated October 16, 2007:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
sec. 29, N½NE¼NW¼SE¼NE¼.

The areas described aggregate 1.25 acres, according to the official plats of the surveys of the said lands on file with the BLM.

The subject public lands for the proposed sale are legally described as:

Mount Diablo Meridian, Nevada

N–100494, 17.50 acres

T. 19 S., R. 59 E.,
sec. 1, SW¼SE¼NW¼SW¼,
W½NE¼SW¼SW¼,
E½SW¼SW¼SW¼, and
W½SE¼SW¼SW¼.

N–100496, 5.00 acres

T. 19 S., R. 59 E.,
sec. 1, E½NW¼SE¼SW¼.

N–80682, 5.00 acres

T. 19 S., R. 59 E.,
sec. 3, E½NW¼SW¼SW¼.

N–80683, 5.00 acres

T. 19 S., R. 59 E.,
sec. 3, W½SE¼SW¼SW¼.

N–99782, 6.875 acres

T. 19 S., R. 59 E.,
sec. 10, E½SW¼NW¼NW¼,
N½NE¼NW¼SW¼NW¼, and
NW¼NW¼NE¼SW¼NW¼.

N–100498, 505.00 acres

T. 19 S., R. 59 E.,
sec. 23, W½NW¼NE¼NE¼,
W½SW¼NE¼NE¼, E½NW¼NE¼,
NE¼SW¼NE¼, S½SW¼NE¼,
W½NW¼SE¼NE¼, SE¼SE¼NW¼,
NE¼SW¼, S½SW¼, and W½SE¼;
sec. 26, W½NE¼, SW¼NW¼SE¼NE¼,
W½SW¼SE¼NE¼,
SE¼SW¼SE¼NE¼, N½NW¼,
E½SW¼NW¼, and SE¼NW¼.

N–100500, 22.50 acres

T. 19 S., R. 59 E.,
sec. 25, E½NE¼NW¼NW¼,
N½SE¼NW¼NW¼,
SW¼SE¼NW¼NW¼,
W½NE¼SW¼NW¼, and
W½SE¼SW¼NW¼.

N–100501, 5.00 acres

T. 19 S., R. 59 E.,
sec. 36, E½SE¼NW¼NW¼.

N–97342, 2.03 acres

T. 19 S., R. 60 E.,
sec. 29, N½NE¼SW¼NW¼NE¼,
NE¼SW¼NE¼SW¼NW¼NE¼, and
SE¼NE¼SW¼NW¼NE¼.

N–100502, 5.00 acres

T. 19 S., R. 60 E.,
sec. 30, W½NE¼SW¼NE¼.

N–95267, 20.00 acres

T. 20 S., R. 60 E.,
sec. 6, W½NE¼NE¼SE¼, SE¼NE¼SE¼,
and W½NE¼SE¼SE¼.

N–100503, 7.50 acres

T. 22 S., R. 60 E.,
sec. 13, S½NE¼NE¼NW¼ and
NW¼SE¼NE¼NW¼.

N–100505, 2.50 acres

T. 22 S., R. 60 E.,
sec. 13, SW¼SE¼SE¼NE¼.

N–100504, 43.75 acres

T. 22 S., R. 60 E.,
sec. 23, S½SW¼NE¼NE¼,
SW¼SE¼NE¼NE¼,
S½SE¼SW¼NW¼NE¼,
S½SW¼SE¼NW¼NE¼,
S½SE¼SE¼NW¼NE¼,
NE¼SW¼NE¼, S½SW¼SW¼NE¼,
SE¼SW¼NE¼, N½NW¼SE¼NE¼,
and SW¼NW¼SE¼NE¼.

N–100506, 225.00 acres

T. 22 S., R. 60 E.,
sec. 26, S½NE¼NE¼NW¼,
W½NW¼NE¼NW¼,
SE¼NW¼NE¼NW¼,
S½SW¼NE¼NW¼,
W½SE¼NE¼NW¼,
SE¼SE¼NE¼NW¼, NE¼NW¼NW¼,
W½NW¼NW¼NW¼,
SE¼NW¼NW¼NW¼, S½NW¼NW¼,
N½SW¼NW¼, NE¼SW¼SW¼NW¼,
S½SW¼SW¼NW¼, SE¼SW¼NW¼,
SE¼NW¼, NE¼SW¼, E½NW¼SW¼,
NE¼SW¼SW¼, SW¼SW¼SW¼, and
W½SE¼SW¼SW¼.

N–100507, 7.50 acres

T. 22 S., R. 60 E.,
sec. 27, S½NE¼NW¼NW¼ and
SE¼NW¼NW¼NW¼.

N–79699, 10.00 acres

T. 23 S., R. 61 E.,
sec. 10, S½NE¼NW¼SE¼ and
S½NW¼NW¼SE¼.

The areas described aggregate 895.155 acres, according to the official plats of the surveys of the said lands on file with the BLM.

The following National Environmental Policy Act (NEPA) documents support this proposed land sale. The Las Vegas Valley Disposal Boundary Environmental Impact Statement and Record of Decision issued on December 23, 2004, and the Las Vegas In-Valley Area Multi-Action Analysis Environmental Assessment (EA), DOI–BLM–NV–S010–2016–0054–EA (*https://eplanning.blm.gov/eplanning-ui/project/60096/510*), analyzed the sale parcels. A parcel-specific Determination of NEPA Adequacy, document number DOI–BLM–NV–S010–2022–0049–DNA, was prepared in connection with this NORA.

Submit comments to the address in the **ADDRESSES** section. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including any personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Any comments regarding the proposed sale will be reviewed by the BLM Las Vegas Field Office Assistant Field Manager, Division of Lands, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any comments, this realty action will

become the final determination of the Department of the Interior. The use of the modified competitive sale method is consistent with 43 CFR 2711.3–2. Public lands may be offered for sale by modified competitive bidding procedures when the authorized officer determines it is necessary based on public policies. Consistent with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad,* utilizing an online (internet-based) auction format would maximize the opportunity for public involvement while reducing greenhouse gas emissions that would result from bidders traveling to Las Vegas. In addition, utilizing an online auction would encourage greater participation by qualified bidders.

The regulations at 43 CFR 2711.2 require that qualified conveyees (bidders) must be:

(1) A citizen of the United States 18 years of age or older;

(2) A corporation subject to the laws of any State or of the United States;

(3) A State, State instrumentality, or political subdivision authorized to hold property; or

(4) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of Nevada.

The successful bidder must submit proof of citizenship or articles of incorporation within thirty (30) days from receipt of the acceptance of bid letter. Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. Citizenship documents or articles of incorporation (as applicable) must be provided to the BLM LVFO for each sale.

The EnergyNet auction website is viewable by the public in real-time; however, you must register as a bidder with EnergyNet in advance to submit bids for a parcel during the auction. The online auction website will be active and available for use approximately ten (10) days after the date of this notice and will remain available for viewing until the completion of the auction. The available parcels in this notice will be listed in detail on the EnergyNet website. Interested parties may visit the website at any time.

Potential bidders are encouraged to visit the EnergyNet website at least ten (10) business days prior to the start of the open bidding period to review the bidding instructions available at *https://www.energynet.com/page/Government_Listings_Participation.* Supporting documentation is available on the EnergyNet website to familiarize users to the bidding process and answer frequently asked questions.

Potential bidders may register for the online auction as soon as the auction website is active. To participate in the BLM bidding process, you must register with EnergyNet and obtain a bidder number. Registration for online bidding will be available prior to the sale date on the EnergyNet website at *https://www.EnergyNet.com/govt_listing.pl.* Click on the orange ''Register for Sale'' button on the blue ''BLM Nevada SNPLMA Fall 2023 Land Sale'' banner to register. Then click on the light blue ''View Listings'' button on the ''BLM Nevada SNPLMA Fall 2023 Land Sale'' banner to obtain maps and get information on how to submit online bids for the sale. A submitted online bid is a binding offer to purchase.

To participate in this sale, prospective buyers must create an EnergyNet account, complete the EnergyNet Bidding Terms Agreement, request a bid allowance, and register for the BLM Nevada SNPLMA Fall 2023 Land Sale. EnergyNet may require approximately five (5) business days to determine the bidder's financial qualifications. Additional information on how to register with EnergyNet may be found at *https://www.energynet.com/page/Government_Listings_Participation.*

Assistance with creating an EnergyNet account and registering for the sale is available by contacting the EnergyNet Government Resources Department at (877) 351–4488. Use the following link to create a Buyer's Account: *https://www.EnergyNet.com/bidder_reg.pl?registration_choice=government.* After the account is created, follow the link ''Submit Bank Information Online'' and fill in the form with the following information:

- Bank name;
- Banker's name;
- Telephone number of banker;
- Address of bank;
- Requested bid allowance amount.

EnergyNet will verify that the bank is an accredited financial institution and contact the bank to ensure the prospective buyer has the financial means to cover the requested bid allowance. The bidder must contact its banker and grant permission for the banker to speak with EnergyNet about the bidder's bid allowance request. EnergyNet will not request the bidder's account balance nor ask any questions about assets or other lines of credit. EnergyNet will not request the bank account number, nor whether it can withdraw funds.

Payments to the BLM will not be made through EnergyNet. At the conclusion of the bidding period for the final parcel, the bidder with the highest accepted bid during the open auction period (winning bidder) for each parcel will be provided instructions via email by the online auction system on how to make the required payment to the BLM.

In addition, you will be required to pay a service fee to EnergyNet's broker of 1.5 percent (a percentage) of the highest qualifying bid for each parcel purchased by the successful bidders. EnergyNet will submit one invoice via email to each successful bidder for the total amount due to the BLM and a separate invoice for the amount due to EnergyNet's broker.

Bidding will begin at the established FMV of each parcel. Each parcel will have its own unique open bidding period, with start and stop times clearly identified on the auction website. The open bidding period for each parcel will run for 24 hours from start to finish, and only bids placed during this 24-hour period will be accepted. Bidding will close sequentially so that each bidder will know if it is the highest winning bid before subsequent parcels close. The website will display each current high bid, and the high bidder's number.

The online system allows participants to submit maximum bids, which is the highest amount a bidder is willing to pay for each parcel, to enable a bidder to participate in the online auction without having to be logged into the website at the time the auction period closes. The auction website provides a full explanation of placing maximum bids, as well as an explanation of how it works to place bids on your behalf to maintain your high bidder status up to the chosen maximum bid amount. The BLM strongly encourages potential bidders to review the bidding tutorial in the Frequently Asked Questions area on the auction website in advance of the sale. EnergyNet will declare the highest qualifying bid as the high bid. The successful bidder must submit a deposit of no less than 20 percent of the successful bid amount by 4:00 p.m., Pacific Time, immediately following the close of the sale in the form of a certified check, postal money order, electronic fund transfer, bank draft, or cashier's check made payable in U.S. dollars to the ''Department of the Interior, Bureau of Land Management.''

The BLM will send the successful bidder(s) an acceptance of bid letter with detailed information for making payment in full. In accordance with 43 CFR 2711.3–1(d), the successful bidder will forfeit the bid deposit if it fails to pay the full purchase price within 180 days of the sale. The BLM will make no exceptions. The BLM cannot accept the

remainder of the bid price at any time following the 180th day after the sale.

If a bidder is the apparent successful bidder with respect to multiple parcels and that bidder fails to submit the minimum 20 percent bid deposit resulting in default on any single parcel following the sale, the BLM may cancel the sale of all parcels to that bidder. If a successful bidder cannot consummate the transaction for any reason, the BLM may consider the second highest bidder to purchase the parcel. If there are no acceptable bids, a parcel may remain available for sale on a future date without further legal notice.

The BLM LVFO must receive requests for escrow instructions a minimum of 30 business days prior to the prospective patentee's scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the BLM LVFO by 4:00 p.m. Pacific Time, 30 days from the date on the acceptance of bid letter. There are no exceptions. To submit a name change, the apparent successful bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM LVFO.

The BLM must receive the remainder of the full bid price for the parcel no later than 4:00 p.m. Pacific Time, within 180 days following the day of the sale. The successful bidder must submit payment in the form of a certified check, postal money order, bank draft, cashier's check, or make available by electronic fund transfer payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management'' to the BLM LVFO. The BLM will not accept personal checks or other non-certified funds.

Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. The BLM will not sign any documents related to 1031 Exchange transactions. The bidder is responsible for timing for completion of such an exchange. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase or withdraw any parcel of land or interest therein from sale within 30 days, if the BLM authorized officer determines consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Per SNPLMA Section 4(c), lands identified within the Las Vegas Valley Disposal Boundary are withdrawn from location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws until such time as the Secretary of the Interior (Secretary) terminates the withdrawal or the lands are patented.

Upon publication of this notice in the **Federal Register**, the described land will also be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. Upon publication of this notice and until completion of this sale, the BLM will no longer accept land use applications affecting the parcels identified for sale. The parcels may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. The segregative effect of this notice terminates upon issuance of a patent or other document of conveyance to such lands, or publication in the **Federal Register** of a termination of the segregation. The total segregation period may not exceed two years unless it is extended by the BLM Nevada State Director prior to the termination date in accordance with 43 CFR 2711.1–2(d).

Terms and Conditions: FLPMA Section 209, 43 U.S.C. 1719(a), states that ''all conveyances of title issued by the Secretary . . . shall reserve to the United States all minerals in the lands.'' Accordingly, all minerals for the sale parcels will be reserved to the United States. The patents, when issued, will contain a mineral reservation to the United States for all minerals.

In response to requests to clarify this mineral reservation as it relates to mineral materials, such as sand and gravel, we refer interested parties to the regulations at 43 CFR 3601.71(b), which provide that the owner of the surface estate of lands with reserved Federal minerals may ''use a minimal amount of mineral materials'' for ''personal use'' within the boundaries of the surface estate without a sales contract or permit. The regulation provides that all other use, absent statutory or other express authority, requires a sales contract or permit. The BLM refers interested parties to the explanation of this regulatory language in the preamble to the final rule published in the **Federal Register** in 2001, available at *https://www.federalregister.gov/d/01-29001,* which states that minimal use ''would not include large-scale use of mineral materials, even within the boundaries of the surface estate'' (66 FR 58894). Further explanation is contained in the BLM Instruction Memorandum No. 2014–085 (April 23, 2014), available on the BLM's website at *https://www.blm.gov/policy/im-2014-085.*

The following numbered terms and conditions will appear on the conveyance documents for the sale parcels:

(1) All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary are reserved to the United States, together with all necessary access and exit rights.

(2) A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

(3) The parcels are subject to valid existing rights.

(4) The parcels are subject to reservations for roads, public utilities, and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans.

(5) An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupations on the patented lands.

To the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA, as amended. Accordingly, notice is hereby given that the lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor that any hazardous substances have been disposed of or released on the subject properties.

No warranty of any kind, express or implied, is given by the United States as to the title, the boundaries, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of a parcel will not be on a contingency basis.

Authority: 43 CFR 2711.3–2

Jamie Moeini,

Assistant Field Manager, Las Vegas Field Office.

[FR Doc. 2023–14777 Filed 7–11–23; 8:45 am]

BILLING CODE 4331–21–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–575 and 731–TA–1360–1361 (Review)]

Tool Chests and Cabinets From China and Vietnam; Determinations; Correction

AGENCY: U.S. International Trade Commission.

ACTION: Notice; correction.

SUMMARY: Correction is made to the publication number.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 7, 2023 (88 FR 43399) in FR Doc. 2023–14302, under Background, the publication number should be USITC Publication 5439 (June 2023).

Issued: July 7, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14781 Filed 7–11–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1358]

Certain LED Landscape Lighting Devices, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 7) of the presiding chief administrative law judge (''CALJ'') granting a joint motion to terminate the investigation in its entirety based upon settlement.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 14, 2023, based upon a complaint filed on behalf of Wangs Alliance Corporation d/b/a WAC Lighting (''WAC'') of Port Washington, New York. 88 FR 23096–97 (Apr. 14, 2023). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED landscape lighting devices, components thereof, and products containing same by reason of the infringement of certain claims of U.S. Patent No. 10,920,971 (the ''971 Patent''), U.S. Patent No. 10,969,088, and 11,274,816. The Commission's notice of investigation named as the respondent Hinkley Lighting, Inc. (''Hinkley'') of Avon Lake, Ohio. *Id.* The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On June 6, 2023, WAC and Hinkley jointly moved to terminate the investigation in its entirety based upon a settlement agreement.

On June 8, 2023, the CALJ issued the subject ID granting the motion. The ID found that the motion complies with the requirements of 19 CFR 210.21(b)(1), including the attachment of confidential and public versions of the parties' settlement agreement. ID at 1–2. The ID also found ''no evidence that terminating this investigation based on settlement would adversely affect the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.'' *Id.* at 2–3. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on July 6, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 6, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14671 Filed 7–11–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1288]

Certain Playards and Strollers; Notice of a Commission Determination To Review in Part a Final Initial Determination Finding a Violation; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ''), finding a violation. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission has also determined to extend the target date for completion of the investigation to August 28, 2023.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation by publication in the **Federal Register** on December 27, 2021. 86 FR 73318 (Dec. 27, 2021). The complainants are

Graco Children's Products Inc., of Atlanta, GA (''Graco'') and Wonderland Nurserygoods Co., Ltd. of Taipei, Taiwan (''Wonderland''). Graco and Wonderland's complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain playards and strollers by reason of infringement of certain claims of U.S. Patent Nos. 9,706,855 (''the '855 patent''); 9,414,694 (''the '694 patent''); RE43,919 (''the '919 patent''); and 6,979,017 (''the '017 patent''). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents Baby Trend, Inc. of Fontana, CA (''Baby Trend''); Dongguan Golden Prosper Baby Products Co., Ltd., of Guangdong, China (''Golden Prosper''); Sichuan Hobbies Baby Products Co., Ltd., of Sichuan, China (''Sichuan Hobbies''); and Anhui Chile Baby Products Co., Ltd. of Anhui Province, China (''Anhui Chile''). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On April 1, 2022, the Commission determined not to review an ID terminating the investigation as to the '017 patent. Order No. 7 (Mar. 7, 2022), *unreviewed by* Comm'n Notice (Apr. 1, 2022). On April 12, 2022, the Commission determined not to review an ID terminating the investigation as to respondent Golden Prosper based on withdrawal of the complaint. Order No. 8 (Mar. 23, 2022), *unreviewed by* Comm'n Notice (Apr. 12, 2022). And, on December 14, 2022, the Commission determined not to review an ID terminating the investigation as to claims 3–9, 11–12, 14, and 16–20 of the '855 patent, claims 2, 4–9, 11–17, and 19–20 of the '694 patent, and claims 8, 10–12, 14–19, and 27–28 of the '919 patent as to all respondents, and terminating the investigation as to claim 20 of the '919 patent as to respondents Sichuan Hobbies and Anhui Chile (but not Baby Trend). Order No. 21 (Nov. 15, 2022), *unreviewed by* Comm'n Notice (Dec. 14, 2022).

The ALJ held an evidentiary hearing from December 12–15, 2022, at which point, only claims 1, 2, 10, 13, and 15 of the '855 patent and claims 1, 10, and 18 of the '694 patent remained as to all respondents and claim 20 of the '919 patent remained as to respondent Baby Trend. At the time of the evidentiary hearing, there were three remaining respondents in this investigation: Baby Trend, Sichuan Hobbies, and Anhui Chile (''Respondents'').

On March 31, 2023, the ALJ issued the final ID in this investigation. The ID found that a violation of section 337 has occurred based on the respondents' importation and sale of products that infringe certain claims of the '855 patent and the '694 patent. By contrast, the ID found that no violation has occurred in connection with the '919 patent. The ALJ issued his recommended determination (''RD'') on remedy and bond concurrently with the ID. The RD recommended issuance of a limited exclusion order (''LEO'') directed to accused products that infringe the '855 or '694 patents. In addition to the LEO, the RD recommended the issuance of a cease-and-desist order (''CDO''). As to bond, the RD recommended a bond rate of 4% for the product accused of infringing only the '919 patent and a bond rate of 59% for the remaining accused products.

The parties filed petitions for review of the ID on April 14, 2023, and responses thereto on April 24, 2023.

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, and the petitions for review, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review: (1) for the '855 patent, whether claim 15 is anticipated by Gabriella, and whether claims 1, 2, 10, and 13 are obvious based on Troutman and Song or Hsia and Song; (2) for the '694 patent, whether claim 18 is anticipated by Hsia and whether claims 1 and 10 are obvious based on Troutman and Tharalson; (3) the '919 patent in its entirety; and (4) whether the technical and economic prongs of the domestic industry requirement are met for all three patents.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) Must the Commission identify a reason that an ordinary artisan would have been motivated to add legs like those claimed in claim 1 and 10 of the '855 patent (such as those disclosed in Song) to the stationary bassinet of Troutman, as opposed to adding legs generally? *See, e.g.,* ID at 64 (''I find that Respondents have established that a person of ordinary skill in the art would have been motivated to add legs to Troutman's infant support unit.''). Does the evidence of record demonstrate clearly and convincingly that such a motivation exists?

(2) On page five (5) of their petition for review, Respondents identify ''[w]hether . . . Hsia anticipates . . . claim 18 of the '694 Patent'' as an issue for review. Identify where, if anywhere, Respondents raised that issue in their pre- and/or post-hearing briefs before the ALJ? Did the ALJ address that issue?

(3) What is the status of the *Wonderland Nursery Goods Co., Ltd.* v. *Baby Trend Inc.,* Case No. 5:14–cv–01153–JWH–SP, district court decision? Is it a final decision? Has an appeal been filed? Must the Commission give the judgment preclusive effect with regard to invalidity under 35 U.S.C. 251?

(4) Did Respondents preserve the argument that the recited ''attachment structure'' in claim 20 of the '919 patent excludes external fasteners?

(5) Is Complainants' argument that ''mount and secure'' as used in the '919 patent requires only that the fabric member be ''held securely'' along the inside of the support tubes a new claim construction that is waived?

(6) Is there any evidence in the record that a skilled searcher conducting a diligent search reasonably could have been expected to discover Mariol, Tabarin, or Noblet?

(7) Should the Manufacturing Respondents, against whom claim 20 of the '919 patent was not asserted, be allowed to assert a defense of invalidity as to claim 20?

(8) For purposes of determining estoppel in a second proceeding, does privity require that there be a relationship between Baby Trend and the Manufacturing Respondents at the time of the first proceeding or the second? Is the answer different for purposes of IPR estoppel? Did Complainants establish that privity exists between Baby Trend and the Manufacturing Respondents for the purposes of IPR estoppel?

(9) Did the ALJ address privity with regard to the second Manufacturer Respondent, Anhui Chile?

(10) Do the customer-manufacturer contracts between Baby Trend and each Manufacturing Respondent create privity for purposes of IPR estoppel?

(11) Does claim 20 of the '919 patent require the Clamped/Slit connection? Does the specification clearly and unequivocally disclose any embodiments that do not use the Clamped/Slit connection?

(12) The Final ID considered the investments for the '855 and '694 patents together. *See, e.g.,* ID at 118. If the Commission determines that one or more claims of the '855 patent and/or '694 patent asserted for purposes of domestic industry in this case have been shown to be invalid, please identify,

with citations to the record, the appropriate domestic industry investments attributable to each patent.

(13) Can investments made by an entity that is a contractor/subcontractor, but is not a licensee of the complainant, be considered part of the domestic industry under the facts in this investigation? For purposes of determining significant or substantial investments or employment with respect to articles that practice the patents asserted in this investigation under section 337(a)(3), should the Commission consider the actual investments made by the entity or the payments made to that party by the Complainant for contracted manufacturing activity?

(14) Please discuss whether, in an investigation in which the DI products are manufactured outside the United States, it is consistent with the statute, legislative history, and court and Commission precedent not to consider foreign manufacturing expenses in determining the significance of domestic industry investments and expenditures.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The parties should specifically address, among other things, whether the Commission should issue a cease and desist order as to all respondents or just to Baby Trend.

In its initial submission, Complainants are also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on July 20, 2023. Reply submissions must be filed no later than the close of business on July 27, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 75 pages. Reply submissions are limited to 35 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1288) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission has also determined to extend the target date for completion of this investigation to August 28, 2023.

The Commission vote for this determination took place on July 6, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 6, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14778 Filed 7–11–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Third Review)]

Certain Polyester Staple Fiber From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on certain polyester staple fiber from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 5, 2023, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 12987, March 1, 2023) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on July 25, 2025. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 2, 2023 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 2, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 7, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–14727 Filed 7–11–23; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Chairman David S. Johanson voted to conduct a full review.

[3] The Commission has found the joint response submitted on behalf of Fiber Industries; Indorama Ventures Holdings LP; and Nan Ya Plastics Corp, America to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1223]

Importer of Controlled Substances Application: Restek Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Restek Corporation has applied to be registered as an importer 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 August 11, 2023. Such persons may also file a written request for a hearing on the application on or before August 11, 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. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 27, 2023, Restek Corporation, 110 Benner Circle, Bellefonte, Pennsylvania 16823–8433, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled Substance	Drug Code	Schedule
Amineptine	1219	I
Mesocarb	1227	I
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4-FMC)	1238	I
Para-Methoxymethamphetamine (PMMA), 1-(4-1245 I N methoxyphenyl)-N-methylpropan-2-amine	1245	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
Methiopropamine (N-methyl-1-(thiophen-2-yl)propan-2- 1478 I N amine)	1478	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
4,4′-Dimethylaminorex	1595	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) 7008 I N SR-18 and RCS-8 indole) SR-19 (1-P	7008	I
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR-144 and XLR11 ([1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone)	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
1-(4-Fluorobenzyl)-1H-indol-3-yl)(2,2,3,3- 7014 I N FUB-144 tetramethylcyclopropyl)methanone	7014	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB-FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB-AMB, MMB-FUBINACA, AMB-FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate)	7021	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-)3-carboxamide	7023	I
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
5F-AB-PINACA (N-(1-amino-3methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7025	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB-CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F-AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F-ADB; 5F-MDMB-PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido) 3,3-dimethylbutanoate)	7036	I
5F-MDMB-PICA	7041	
MDMB-CHMICA, MMB-CHMINACA	7042	I
Methyl 2-7043 I N (1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3dimethylbutanoate)	7043	I
MMB-CHMICA	7044	I
FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL)	7047	I
APINACA and AKB48	7048	I
5F-APINACA, 5F-AKB48	7049	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
1-(5-Fluoropentyl)-1H-indazole-3-carboxamide	7083	I
5F-CUMYL-P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4-CN-CUMYL-BUTINACA	7089	I
SR-19 (1-Pentyl-3-[(4-methoxy)-benzoyl] indole	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7221	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I

Controlled Substance	Drug Code	Schedule
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-methyl-alpha-ethylaminopentiophenone (4-MEAP)	7245	I
N-ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one 7286 I N MXE, methoxetamine (methoxetamine)	7286	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine	7348	I
Marihuana extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahexyl	7374	I
Mescaline	7381	I
2C-T-2, (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
Peyote	7415	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
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4-chloro-alpha-pyrrolidinovalerophenone (4-chloro-a-PVP)	7443	I
4′-methyl-alpha-pyrrolidinohexiophenone (MPHP)	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-MePPP (4-Methyl-alphapyrrolidinopropiophenone)	7498	I
2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C-H (2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C-I (2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C-C (2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C-N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C-T-4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethylpentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	I
Alpha-Pyrrolidinohexanophenone	7544	I
α-PVP (alpha-pyrrolidinopentiophenone)	7545	I
α-PBP (alpha-pyrrolidinobutiophenone)	7546	I
Ethylone	7547	I
PV8, alpha-Pyrrolidinoheptaphenone	7548	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I

Controlled Substance	Drug Code	Schedule
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Brorphine	9098	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Isotonitazene (N,N-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro nitro- 1H-benzimidazol-1-yl)ethan-1-amine)	9614	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etoxeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacylmorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I
Phenomorphan	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Butonitazene	9751	I
Flunitazene	9756	I
METONITAZENE	9757	I
N-PYRROLIDINO ETONITAZENE; ETONITAZEPYNE	9758	I
PROTONITAZENE	9759	I

Controlled Substance	Drug Code	Schedule
METODESNITAZENE	9764	I
ETODESNITAZENE; ETAZENE	9765	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-Methylfentanyl	9814	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Para-Methylfentanyl	9817	I
4′-Methyl Acetyl fentanyl	9819	I
Ortho-Methyl methoxyacetyl fentanyl	9820	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyryl fentanyl	9827	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyryl fentanyl	9837	I
Ocfentanil	9838	I
Thiofuranyl fentanyl	9839	I
Valeryl fentanyl	9840	I
Phenyl fentanyl	9841	I
Beta′-Phenyl fentanyl	9842	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide)	9843	I
Crotonyl fentanyl	9844	I
Cyclopropyl Fentanyl	9845	I
Cyclopentyl fentanyl	9847	I
Ortho-Methyl acetylfentanyl	9848	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Fentanyl Carbamate	9851	I
ORTHO-FLUOROACRYL FENTANYL	9852	I
ORTHO-FLUOROISOBUTYRYL FENTANYL	9853	I
Para-Fluoro furanyl fentanyl	9854	I
2′-Fluoro ortho-fluorofentanyl	9855	I
Beta-Methyl fentanyl	9856	I
Zipeprol	9873	I
Amphetam	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Dronabinol in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration (FDA).	7365	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
ANPP (4-Anilino-N-phenethyl-4-piperidine)	8333	II
Norfentanyl	8366	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Coca Leaves	9040	II
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II

Controlled Substance	Drug Code	Schedule
Meperidine	9230	II
Meperidine-intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Oliceridine	9245	II
Methadone	9250	II
Methadone intermediate	9254	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Dihydroetorphine	9334	II
Opium, raw	9600	II
Opium extracts	9610	II
Opium fluid extract	9620	II
Opium tincture	9630	II
Opium, powdered	9639	II
Opium, granulated	9640	II
Levo-alphacetylmethadol	9648	II
Opium poppy	9650	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Poppy Straw Concentrate	9670	II
Phenazocine	9715	II
Thiafentanil	9729	II
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Fentanyl	9801	II
Moramide-intermediate	9802	II

The company plans to import analytical reference standards for distribution to its customers for research and analytics purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized in 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–14728 Filed 7–11–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1225]

Importer of Controlled Substances Application: Aurobindo Pharma USA, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Aurobindo Pharma USA, Inc. has applied to be registered as an importer 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 August 11, 2023. Such persons may also file a written request for a hearing on the application on or before August 11, 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. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator,

8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 18, 2023, Aurobindo Pharma USA, Inc., 6 Wheeling Road, Dayton, New Jersey 08810–1526, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import Remifentanil (9739) in bulk form for research and development. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–14759 Filed 7–11–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Lawful Access Data Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on April 24, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 11, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Mr. Edward L. Abraham, Unit Chief, FBI, CJIS Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, phone number 304–625–4830.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* Lawful Access Data Collection.

3. Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: There is no form number for this collection. The applicable component within the Department of Justice is the CJIS Division, in the FBI.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: (State, Local and Tribal Governments) Law enforcement agencies and state/local digital forensic laboratories.

Abstract: This collection is needed to collect data on the volume of law enforcement investigations that are negatively impacted by device and software encryption.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 19,000.

7. *Estimated Time per Respondent:* 3 minutes, 12 seconds.

8. *Frequency:* 50 times annually.

9. *Total Estimated Annual Time Burden:* 50,967 hours.

Total annual responses = 950,000 [19,000 × 50]

Annual burden = ([(950,000 × 192 seconds)/60]/60) = 50,667 hours

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: July 7, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–14755 Filed 7–11–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On July 7, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Massachusetts in *United States and Commonwealth of Massachusetts* v. *Massachusetts Electric*

Company, d/b/a National Grid, 1:23–cv–11524 (D. MA).

The United States, together with the Commonwealth of Massachusetts, filed a complaint under the Comprehensive Environmental Response, Compensation, and Liability Act (''Act'') against Massachusetts Electric Company, d/b/a National Grid (''National Grid''), for recovery of damages for injury to, loss of, or destruction of natural resources under the trusteeship of National Oceanic and Atmospheric Administration (''NOAA''), the United States Department of the Interior (''DOI''), through the United States Fish and Wildlife Service (''FWS''), and Massachusetts Department of Environmental Protection (''MassDEP''). In the complaint, the United States seeks damages relating to the releases of hazardous substances to soils, sediments, groundwater, and surface water from the former Gloucester Gas Light Company Manufactured Gas Plant, located in Gloucester, Massachusetts. The proposed consent decree provides $5.38 million to the federal and state natural resources trustees to undertake habitat restoration work in the coastal area in the vicinity of the National Grid's plant.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Commonwealth of Massachusetts* v. *Massachusetts Electric Company, d/b/a National Grid,* D.J. Ref. No. 90–11–3–11881. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon email request to *pubcomment-ees.enrd@usdoj.gov.*

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–14798 Filed 7–11–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0012]

Proposed Modification to the List of Appropriate NRTL Program Test Standards and the Scope of Recognition of Several NRTLs

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA proposes to delete test standards from the Nationally Recognized Testing Laboratories (NRTL) Program's list of appropriate test standards and modify the scope of recognition of several NRTLs.

DATES: Submit comments, information, and documents in response to this notice, or request for an extension of time to make a submission, on or before August 11, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

OSHA will place comments, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2013–0012). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before August 11, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, telephone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NRTL Program recognizes organizations that provide product-safety testing and certification services to manufacturers. These organizations perform testing and certification for purposes of the program, to U.S. consensus-based product-safety test standards. The products covered by the NRTL Program consist of those items for which OSHA safety standards require ''certification'' by a NRTL. The requirements affect electrical products and 36 other types of products. OSHA does not develop or issue these test standards, but generally relies on standards development organizations (SDOs), which develop and maintain the standards using a method that provides for input and consideration of views of industry groups, experts, users,

consumers, governmental authorities, and others having broad experience in the safety field involved.

A. Deletion and Replacement of Test Standards

The NRTL Program regulations require that appropriate test standards be maintained and current (29 CFR 1910.7(c)). A test standard withdrawn by an SDO is no longer considered an appropriate test standard (CPL 01–00–004, NRTL Program Policies, Procedures and Guidelines Directive (NRTL Program Directive), Ch. 2.IX.C.1). It is OSHA's policy to remove recognition of withdrawn test standards by issuing a correction notice in the **Federal Register** for all NRTLs recognized for the withdrawn test standards (Id.). However, SDOs frequently will designate a replacement standard for withdrawn standards. OSHA will recognize a NRTL for an appropriate replacement test standard if the NRTL has the requisite testing and evaluation capability for the replacement test standard (NRTL Program Directive, Ch. 2.IX.C.2).

One method that NRTLs may use to show such capability involves an analysis to determine whether any testing and evaluation requirements of existing test standards in a NRTL's scope are comparable (*i.e.,* are completely or substantially identical) to the requirements in the replacement test standard (NRTL Program Directive, Ch. 2.IX.C.3). If OSHA's analysis shows the replacement test standard does not require additional or different technical capability than an existing test standard(s), and the replacement test standard is comparable to the existing test standard(s), then OSHA can add the replacement test standard to affected NRTLs' scope of recognition. If OSHA's analysis shows the replacement test standard requires an additional or different technical capability, or the replacement test standard is not comparable to any existing test standards, each affected NRTL seeking to have OSHA add the replacement test standard to the NRTL's scope of recognition must provide information to OSHA that demonstrates technical capability (NRTL Program Directive, Ch. 2.IX.D).

B. Other Reasons for Removal of Test Standards From the NRTL List of Appropriate Test Standards

OSHA may choose to remove a test standard from the NRTL list of appropriate test standards based on an internal review in which NRTL Program staff review the NRTL list of appropriate test standards to determine if the test standards conform to the definition of an appropriate test standard defined in NRTL Program regulations and policy. There are several reasons for removing a test standard based on this review. First, a document that provides the methodology for a single test is a test method rather than an appropriate test standard (29 CFR 1910.7(c)). A test standard must specify the safety requirements for a specific type of product(s) (NRTL Program Directive, Ch. 2.VIII.C.1). A test method, however, is a specified technical procedure for performing a test. As such, a test method is not an appropriate test standard. While a NRTL may use a test method to determine if certain safety requirements are met, a test method is not itself a safety requirement for a specific product category.

Second, a document that focuses primarily on usage, installation, or maintenance requirements, and not safety requirements (*i.e.,* features, parts, capabilities, usage limitations, or installation requirements that would create a potential hazard in operating the equipment if not properly used), would also not be considered an appropriate test standard (NRTL Program Directive, Ch. 2.VIII.C.1). In some cases, however, a document may also provide safety test specifications in addition to usage, installation, and maintenance requirements. In such cases, the document would be retained as an appropriate test standard based on the safety test specifications.

Finally, a document may not be considered an appropriate test standard if the document covers products for which OSHA does not require testing and certification (NRTL Program Directive, Ch. 2.VIII.C.2). Similarly, a document that covers electrical product components would not be considered an appropriate test standard. These documents apply to types of components that have limitation(s) or condition(s) on their use, which are not appropriate for use as end-use products. These documents also specify that these types of components are for use only as part of an end-use product. NRTLs, however, evaluate such components only in the context of evaluating whether end-use products requiring NRTL approval are safe for use in the workplace. Accordingly, as a matter of policy, OSHA considers that documents covering such components are not appropriate test standards under the NRTL Program. OSHA notes, however, that it is not proposing to delete from NRTLs' scope of recognition any test standards covering end-use products that contain such components.

In addition, OSHA notes that, to conform to a test standard covering an end-use product, a NRTL must still determine that the components in the product comply with the components' specific test standards. In making this determination, NRTLs may (within the confines of the requirements of Annex B, Section 7.4 G and H of the NRTL Program Policies, Procedures, and Guidelines, OSHA Instruction CPL 01–00–004 (Oct. 1, 2019) (the NRTL Program Directive, available at *https://www.osha.gov/sites/default/files/enforcement/directives/CPL_01-00-004.pdf*)) test the components themselves or accept the testing of a qualified testing organization that a given component conforms to the particular test standard. OSHA reviews each NRTL's procedures to determine which approach the NRTL will use to address components and reviews the end-use product testing to verify that the NRTL appropriately addresses that product's components.

II. Proposal To Delete Test Standards From the NRTL Program's List of Appropriate Test Standards and Incorporate Into the List of Appropriate Test Standards a Replacement Test Standard for a Withdrawn Test Standard

In this notice, OSHA proposes to delete twenty-six test standards from the NRTL Program's list of appropriate test standards. OSHA also proposes to incorporate two replacement standards into the NRTL Program's list of appropriate test standards.

Table 1 lists the test standards that OSHA proposes to delete from the NRTL Program's List of Appropriate Test Standards, as well as an abbreviated rationale for OSHA's proposed action. Additionally, Table 1 lists the replacement test standard that OSHA proposes to incorporate into the NRTL Program's List of Appropriate Test Standards. OSHA seeks comment on this preliminary determination.

OSHA notes that Table 1 lists the subject test standards and the proposed action with regard to each of these test standards without indicating how the proposed action will affect individual NRTLs. Section III of this notice discusses how the proposed action will affect individual NRTLs.

TABLE 1—TEST STANDARDS OSHA IS PROPOSING TO REMOVE FROM NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Proposed deleted test standard	Test standard title	Reason for deletion	Proposed replacement standard
ANSI/AAMI ES60601–1:2005/(R)2012.	Medical Electrical Equipment, Part 1: General Requirements for Basic Safety and Essential Performance (with amendments).	Standard has been amended by a SDO.	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
AAMI ES60601–1:2005/(R)2012.	Medical Electrical Equipment, Part 1: General Requirements for Basic Safety and Essential Performance (with amendments).	Standard has been amended by a SDO.	
AAMI ES60601–1	Medical Electrical Equipment, Part 1: General Requirements for Basic Safety and Essential Performance (with amendments).	Standard has been amended by a SDO.	
UL 60601–1	Medical Electrical Equipment, Part 1: General Requirements for Safety.	Withdrawn	None.
UL 60730–1A	Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements.	Standard has been amended by a SDO.	UL 60730–1 Automatic Electrical Controls—Part 1: General Requirements.
IEEE C37.013	AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis.	Withdrawn	None.
IEEE C37.46	Power Fuses and Fuse Disconnecting Switches.	Withdrawn	None.
IEEE C37.47	Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses.	Withdrawn	None.
ISA 82.02.02	Electrical Equipment for Measurement, Control and Laboratory Use.	Withdrawn	None.
NFPA 16	Installation of Foam Water Sprinkler and Foam-Water Spray Systems.	Withdrawn	None.
UL 17	Vent or Chimney Connector Dampers for Oil-Fired Appliances.	Withdrawn	None.
UL 250	Household Refrigerators and Freezers	Withdrawn	None.
UL 474	Dehumidifiers	Withdrawn	None.
UL 664	Commercial (Class IV) Electric Dry-Cleaning Machines.	Withdrawn	None.
UL 745–2–5	Particular Requirements for Circular Saws and Circular Knives.	Withdrawn	None.
UL 745–2–14	Particular Requirements for Planers	Withdrawn	None.
UL 745–2–35	Particular Requirements for Drain Cleaners.	Withdrawn	None.
UL 873	Electrical Temperature-Indicating and-Regulating Equipment.	Withdrawn	None.
UL 984	Hermetic Refrigerant Motor-Compressors.	Withdrawn	None.
UL 1028	Electric Hair-Clipping and -Shaving Appliances.	Withdrawn	None.
UL 1054	Special-Use Switches	Withdrawn	None.
UL 1626	Residential Sprinklers for Fire Protection Service.	Withdrawn	None.
UL 1662	Electric Chain Saws	Withdrawn	None.
UL 1767	Early-Suppression Fast-Response Sprinklers.	Withdrawn	None.
UL 65	Electric Wired Cabinets	Withdrawn	None.
UL 508C	Power Conversion Equipment	Withdrawn	None.

III. Proposed Modifications to Affected NRTLs' Scope of Recognition

In this notice, OSHA additionally proposes to remove test standards (*i.e.,* those listed in Table 1, above) from the scopes of recognition of several NRTLs and to add to the scopes of recognition of some of these NRTLs replacement test standards, as applicable. The tables in this section (Table 2 through Table 16) list, for each affected NRTL, the test standard(s) that OSHA proposes to remove from the scope of recognition of the NRTL, along with the proposed replacement test standard(s) (as applicable).

TABLE 2—TEST STANDARD OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF BUREAU VERITAS CONSUMER PRODUCTS SERVICES, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES60601–1:2005/(R)2012 ...	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.

TABLE 3—TEST STANDARD OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF CSA GROUP TESTING & CERTIFICATION INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
AAMI ES 60601–1:2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 60730–1A	Standard has been amended by a SDO	UL 60730–1 Automatic Electrical Controls—Part 1: General Requirements.
IEEE C37.013	Withdrawn	None.
IEEE C37.46	Withdrawn	None.
IEEE C37.47	Withdrawn	None.
UL 65	Withdrawn	None.
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 508C	Withdrawn	None.
UL 664	Withdrawn	None.
UL 745–2–14	Withdrawn	None.
UL 745–2–35	Withdrawn	None.
UL 873	Withdrawn	None.
UL 984	Withdrawn	None.
UL 1028	Withdrawn	None.
UL 1054	Withdrawn	None.
UL 1662	Withdrawn	None.

TABLE 4—TEST STANDARD OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE RECOGNITION OF DEKRA CERTIFICATION INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
AAMI 60601–1	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.

TABLE 5—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF EUROFINS ELECTRICAL AND ELECTRONIC TESTING NA, INC. A/K/A MET LABORATORIES, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES60601–1:2005/(R)2012 ...	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 65	Withdrawn	None.
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 508C	Withdrawn	None.
UL 664	Withdrawn	None.
UL 745–2–5	Withdrawn	None.
UL 745–2–14	Withdrawn	None.
UL 745–2–35	Withdrawn	None.
UL 1028	Withdrawn	None.
UL 1054	Withdrawn	None.
UL 1662	Withdrawn	None.

TABLE 6—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF FM APPROVALS

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ISA 82.02.02	Withdrawn	None.
UL 664	Withdrawn	None.

TABLE 7—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES NA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES60601–1:2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 60730–1A	Standard has been amended by a SDO	UL 60730–1 Automatic Electrical Controls—Part 1: General Requirements.
IEEE C37.013	Withdrawn	None.
IEEE C37.46	Withdrawn	None.
ISA 82.02.02	Withdrawn	None.
UL 17	Withdrawn	None.
UL 65	Withdrawn	None.
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 508C	Withdrawn	None.
UL 664	Withdrawn	None.
UL 745–2–14	Withdrawn	None.
UL 745–2–35	Withdrawn	None.
UL 873	Withdrawn	None.
UL 984	Withdrawn	None.
UL 1028	Withdrawn	None.
UL 1054	Withdrawn	None.
UL 1662	Withdrawn	None.

TABLE 8—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF NEMKO NORTH AMERICA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES60601–1:2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 250	Withdrawn	None.

TABLE 9—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF NSF INTERNATIONAL

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 65	Withdrawn	None.
UL 250	Withdrawn	None.
UL 873	Withdrawn	None.

TABLE 10—TEST STANDARD OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF QAI LABORATORIES, LTD

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
AAMI ES60601–1	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.

TABLE 11—TEST STANDARD OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF QPS EVALUATION SERVICES, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES 60601–1: 2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.

TABLE 12—TEST STANDARD OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF SGS NORTH AMERICA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES60601–1:2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 65	Withdrawn	None.
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 1028	Withdrawn	None.

TABLE 13—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF TUV RHEINLAND OF NORTH AMERICA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
AAMI ES60601–1:2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 60730–1A	Standard has been amended by a SDO	UL 60730–1 Automatic Electrical Controls—Part 1: General Requirements.
UL 65	Withdrawn	None.
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 508C	Withdrawn	None.
UL 664	Withdrawn	None.
UL 745–2–14	Withdrawn	None.
UL 745–2–35	Withdrawn	None.
UL 984	Withdrawn	None.
UL 1028	Withdrawn	None.
UL 1054	Withdrawn	None.
UL 1662	Withdrawn	None.

TABLE 14—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF TÜV SÜD AMERICA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES60601–1:2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 60730–1A	Standard has been amended by a SDO	UL 60730–1 Automatic Electrical Controls—Part 1: General Requirements.
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 508c	Withdrawn	None.
UL 745–2–14	Withdrawn	None.
UL 745–2–35	Withdrawn	None.
UL 873	Withdrawn	None.
UL 984	Withdrawn	None.
UL 1028	Withdrawn	None.
UL 1662	Withdrawn	None.

TABLE 15—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF TÜV SÜD PRODUCT SERVICES GmbH

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 60601–1	Withdrawn	None.
UL 60730–1A	Standard has been amended by a SDO	UL 60730–1 Automatic Electrical Controls—Part 1: General Requirements
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 745–2–14	Withdrawn	None.
UL 745–2–35	Withdrawn	None.
UL 873	Withdrawn	None.

TABLE 16—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF UL LLC

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ANSI/AAMI ES60601–1:2005/(R)2012	Standard has been amended by a SDO	ANSI/AAMI ES 60601–1 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.
UL 60601–1	Withdrawn	None.
UL 60730–1A	Standard has been amended by a SDO	None.
IEEE C37.013	Withdrawn	None.
IEEE C37.46	Withdrawn	None.
IEEE C37.47	Withdrawn	None.
UL 17	Withdrawn	None.
UL 65	Withdrawn	None.
UL 250	Withdrawn	None.
UL 474	Withdrawn	None.
UL 508C	Withdrawn	None.
UL 664	Withdrawn	None.
UL 745–2–14	Withdrawn	None.
UL 745–2–35	Withdrawn	None.
UL 873	Withdrawn	None.
UL 984	Withdrawn	None.
UL 1028	Withdrawn	None.
UL 1054	Withdrawn	None.
UL 1626	Withdrawn	None.
UL 1662	Withdrawn	None.
UL 1767	Withdrawn	None.

IV. Public Participation

OSHA welcomes public comment on whether the proposed deletions and replacements are appropriate, and whether individual tables omit any appropriate replacement test standard that is comparable to a withdrawn test standard. If OSHA determines that it omitted any appropriate replacement test standard that is comparable to a withdrawn test standard, it will, in the final determination, incorporate that replacement test standard into the scope of recognition of each affected NRTL.

Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request, by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2013–0012. For further information, including information on how to contact the Docket Office, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health regarding the removal of recognition of these test standards from the NRTL Program's List of Appropriate Test Standards and to update the scope of recognition of several NRTLs. The Assistant Secretary will make the final decision. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on July 6, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–14805 Filed 7–11–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–070]

Name of Information Collection: Financial Assistance Awards/Grants and Cooperative Agreements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by August 11, 2023.

ADDRESSES: Written comments and recommendations for these information collections should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of these information collection instruments and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, call 757–864–7998, or email *b.edwards-bodmer@nasa.gov*.

SUPPLEMENTARY INFORMATION:

For 2700–0092:

I. Abstract

This is a notice to revise OMB control number 2700–0092 to include a voluntary demographic information collection that is currently represented by 2700–0161. This collection is required to ensure proper accounting of Federal funds and property provided under financial assistance awards (grants and cooperative agreements) per 2 CFR 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. 2 CFR 200, Subparts A through F, applies to all NASA award recipients except for for-profit organizations. Only Subparts A through D of 2 CFR 200 apply to for-profit organizations. Reporting and recordkeeping are prescribed at 2 CFR part 1800—Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. The requirements in 2 CFR part 1800 are applicable to awards that NASA issues to non-Federal entities, government, for-profit organization, and foreign organizations as allowed by 2 CFR 200.101, Applicability.

II. Methods of Collection

Grant and cooperative agreement proposals are submitted electronically through the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES) or *Grants.gov*. The use of these systems reduces the need for proposers to submit multiple copies to the agency. Proposers may submit multiple proposals and notices of intent to different funding announcements without registering in NSPIRES each time.

Basis of Estimate

Approximately 7000 NASA financial assistance awards are open at any one time. It is estimated that out of the 9,900 proposals received each year, NASA awards approximately 1,977 new awards. The period of performance for each financial assistance award is usually three to five years. Performance reports are filed annually, and historical records indicate that, on average, 1,625 changes to these reports are submitted annually. The total number of respondents is based on the average number of proposals that are received each year and the average number of active grants and cooperative agreements that are managed each year. The total number of hours spent on each task was estimated through historical records and experience of former recipients. Using past calculations, the total cost was estimated using the average salary (wages and benefits) for a GS–12 step 5.

III. Data

Title: Financial Assistance Awards/ Grants and Cooperative Agreements.

OMB Number: 2700–0092.

Type of review: Revision of a previously approved information collection.

Affected Public: Non-profits, institutions of higher educations, government, and for-profit entities.

Estimated Annual Number of Activities: 300.

Estimated Number of Respondents per Activity: 36.

Annual Responses: 10,800.

Estimated Time per Response: 120 hours.

Estimated Total Annual Burden Hours: 1,296,000 hours.

Estimated Total Annual Cost: $47,952,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–14672 Filed 7–11–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (23–071)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel (ASAP). The ASAP will hold its Third Quarterly Meeting for 2023. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight.

DATES: Thursday, August 3, 2023, 1:30 p.m. to 3:00 p.m., Central Time.

ADDRESSES: Public attendance will be virtual only. See dial-in information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hackley, ASAP Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1947 or *lisa.m.hackley@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting is only available telephonically. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number 888–566–6133; passcode 8343253 and then the # sign. At the beginning of the meeting, members of the public may make a verbal presentation to the Panel limited to the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Lisa M. Hackley at *lisa.m.hackley@nasa.gov* or at (202) 358–1947 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel via electronic submission to Ms. Hackley at the email address previously noted. Written statements should be limited to the subject of safety in NASA.

The agenda for the meeting includes the following topics:

—Updates on the International Space Station Program
—Updates on the Commercial Crew Program
—Updates on the Moon to Mars Program

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Aerospace Safety Advisory Panel, Executive Director, National Aeronautics and Space Administration.

[FR Doc. 2023–14708 Filed 7–11–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Availability and Notice of Public Meeting for the U.S. Antarctic Program (USAP) South Pole Station Master Plan Charrette

AGENCY: National Science Foundation.

ACTION: Notice of public meeting.

SUMMARY: The National Science Foundation (NSF) is developing a Station Master Plan for the USAP South Pole Station, Antarctica. A planning charrette will provide a forum for the scientific community to engage in conversations about science conducted at the South Pole currently and capabilities in the future. Planners will facilitate discussions around facility requirements, siting criteria, infrastructure and utility needs, and phasing priorities. Following the charrette, a draft Master Plan will be posted to the **Federal Register** for public comment.

DATES: The public meeting (Charrette) is scheduled for August 22, 24, 29, and 31. (see details in **SUPPLEMENTARY INFORMATION**).

ADDRESSES: You may submit written comments by either of the following methods:

Email to: SPMasterPlan@nsf.gov, with subject line ''South Pole Station Master Plan.''

Mail to: Office of Polar Programs, RE: South Pole Station Master Plan, National Science Foundation, 2415 Eisenhower Avenue, Suite W7100, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: For further information regarding the South Pole Station Master Plan (SPSMP), contact: Office of Polar Programs RE: South Pole Station Master Plan, National Science Foundation, Office of Polar Programs, 2415 Eisenhower Avenue, Suite W9152, Alexandria, VA 22314; Suzanne Plimpton; Telephone: (703) 292–8030; email: *SPMasterPlan@nsf.gov*.

SUPPLEMENTARY INFORMATION: The Amundsen-Scott South Pole station is one of three year-round stations operated by the National Science Foundation (NSF) as outlined in Presidential Memorandum 6646. The South Pole is a unique research site that supports projects ranging from cosmic observations to seismic and atmospheric studies. The South Pole Station begins austral summer operations in October of each year. The station typically remains in summer operating mode until early February, at which point the eight-month long winter season begins.

Amundsen-Scott South Pole Station sits at the Earth's axis on a shifting continental ice sheet several miles thick. At an elevation of 2,835 meters (9,300 feet), the South Pole has an average monthly temperature in the austral summer of −28°C (−18 °F); in the austral winter, the average monthly temperature is –60°C (−76 °F).

The NSF Office of Polar Programs has identified the need for a South Pole Station Master Plan. Master Plans are a common tool used across research campuses and universities to ensure infrastructure projects are guided by a clear and consistent vision of the future. The South Pole Station Master Plan will inform investments planned under the Antarctic Infrastructure Recapitalization program and ensure that the future state will achieve the mission and priorities of the U.S. Antarctic Program and the NSF.

The Rules of Conduct for panelists will be reviewed and posted during the meeting, they will include:

- Be respectful and kind, treat everyone on the call with respect, even if you disagree with their viewpoint or ideas.
- Address the problem, not the speaker.
- Verbal attacks, lectures, and curse language will not be tolerated.

General public attendees will be able to post questions in the Q&A window only.

Public Meeting: A public planning charrette meeting to address the South Pole Station Master Plan will take place virtually via ZOOM. Individuals may register to attend at this link: South Pole Maser Plan Charrette—Registration. The meetings will be held over four days: August 22, 24, 29, & 31 between 12–6 p.m. ET each day.

Notification of the time and location will be published in a newspaper, as follows:

- *Public Meeting:* A public planning charrette meeting to address the South Pole Station Master Plan will take place virtually via ZOOM over four days: August 22, 24, 29, & 31 between 12—6 p.m. ET each day. Individuals may register to attend at this link: *https://nsf.zoomgov.com/webinar/register/WN_ZxoAb4MbSrG7rE4LZVRulA.*

Please contact NSF at least one week in advance of the meeting if you would like to request special accommodations (*i.e.,* sign language interpretation, etc.).

Dated: July 7, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–14786 Filed 7–11–23; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–180 and CP2023–184]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 14, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://*

www.prc.gov. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–180 and CP2023–184; *Filing Title:* USPS Request to Add Priority Mail Contract 781 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 6, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 14, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–14787 Filed 7–11–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 6, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 781 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–180, CP2023–184.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–14780 Filed 7–11–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97843; File No. SR–CboeBZX–2023–039]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 6, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''BZX Equities'') by amending the definition of the Russell Reconstitution Day. The Exchange proposes to implement these changes effective June 22, 2023.

The ''definitions'' section of the Exchange's Fee Schedule defines various terms used throughout the Fee Schedule. As explained under the definitions of ADAV, ADV, and TCV,[3] the Exchange currently excludes the Russell Reconstitution Day from the calculation of ADAV, ADV, and TCV, each of which are calculated on a monthly basis.[4] The Russell Reconstitution Day is defined in the Fee Schedule as ''the last Friday in June.'' [5] While generally the Russell Reconstitution Day does occur on the last Friday in June, in months where there are five Fridays in June the Russell Reconstitution Day instead falls on the fourth Friday in June. The Exchange proposes to amend the definition of Russell Reconstitution Day to ''the fourth Friday in June'' [6] in order to provide a more accurate description of the date which will not be included in the calculation of ADAV, ADV, and TCV to its Members.[7] The Exchange is not proposing to make any other changes to the Definitions in its Fee Schedule and will announce the change via a Trade Desk notice to Members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4) [11] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes its proposal to amend the definition of the ''Russell Reconstitution Day'' is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers and is designed to provide for the equitable allocation of fees. Specifically, the proposal is intended only to add clarity to the Exchange's Fee Schedule by providing Members with additional certainty as to their level of rebates and costs for trading during the month of June and involves no substantive change. Additionally, the proposed change promotes just and equitable principles of trade and is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as it provides transparency to Members regarding which date in the month of June will not be included in the calculation of ADAV, ADV, and TCV.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to revise the definition of ''Russell Reconstitution Day'' will have any impact on competition as the change is only intended to add clarity to the Exchange's Fee Schedule and involves no substantive change.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. By providing Members with a greater level of certainty as to which date in the month of June will be excluded from the calculation of ADAV, ADV, and TCV, the Exchange is providing additional certainty as to the level of rebates and costs for trading during the month of the Russell reconstitution, which could promote competition between the Exchange and other execution venues. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. ''TCV'' means total consolidated volume as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[4] The Russell Reconstitution Day is generally characterized by high trading volumes, much of which are derived from market participants who are not generally as active entering the market to rebalance their holdings in-line with the annual rebalancing of the Russell indices. The Exchange, along with other competing exchanges, excludes the Russell Reconstitution Day from certain volume calculations as the high trading volumes can significantly impact trading and quoting calculations.

[5] *See* BZX Equities Fee Schedule, Definitions.

[6] *See* Russell U.S. Equity Indices Construction and Methodology, available at *https://research.ftserussell.com/products/downloads/Russell-US-indexes.pdf* (last accessed June 21, 2023).

[7] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR-CboeBZX–2023–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR-CboeBZX–2023–039. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX–2023–039 and should be submitted on or before August 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14666 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34957; File No. 812–15463]

Crescent Private Credit Income Corp., and Crescent Cap NT Advisors, LLC.

DATES: July 6, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) and section 61(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies (''BDCs'') to issue multiple classes of shares with varying sales loads and asset-based service and/or distribution fees.

APPLICANTS: Crescent Private Credit Income Corp., and Crescent Cap NT Advisors, LLC.

FILING DATES: The application was filed on May 5, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on July 31, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicant: George P. Hawley, Esq., Crescent Cap NT Advisors, LLC, *george.hawley@Crescentcap.com,* with copies to Nicole M. Runyan, Kirkland & Ellis LLP, *nicole.runyan@kirkland.com,* and Monica J. Shilling, Kirkland & Ellis LLP, *monica.shilling@kirkland.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated May 5, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14663 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97851; File No. SR–ICEEU–2023–010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 2 to Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules

July 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2023, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the ICE Clear Europe Clearing Rules regarding the treatment of non-default losses. On May 2, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on May 10, 2023.[4] On June 21, 2023, the Commission designated a longer period for Commission action on the proposed rule change until August 8, 2023.[5] On June 30, 2023, ICE Clear Europe filed Amendment No. 2 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 and No. 2 (the ''proposed rule change''), from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') submits this partial amendment (''Amendment No. 2'') to its previously submitted proposed rule amendments, as amended by Amendment No. 1 thereto (as so amended, the ''Prior Filing'') to its Clearing Rules (the ''Rules'')[7] to address more consistently the treatment of certain losses that do not result from Clearing Member default, including certain investment losses and custodial losses. Amendment No. 2 sets forth certain additional clarifications as to funds available to the Clearing House to be applied in accordance with the Rules as proposed to be amended.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to make certain additional changes to the proposed amendments to the Rules as described in the Prior Filing. In general, these changes would clarify that certain obligations of the Clearing House to use funds would only apply to the extent that the relevant assets are available to the Clearing House ''in cleared funds.''

The proposed amendments to Rule 919(b) would be further revised to state that the obligations in the subsection only apply to the extent the relevant Loss Assets remain available to the Clearing House ''in cleared funds'' and have not themselves been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.

Rule 919(h) (as described in the Prior Filing), which addresses the allocation by the Clearing House of recoveries in respect of Investment Losses, would be further modified to state that the Clearing House's obligation to reimburse for recoveries only applies to the extent the relevant assets remain available ''in cleared funds'' to the Clearing House. Similarly, Rule 919(j), which provides for return of excess Collateral Offset Obligations, would be further revised to clarify that the obligation to return only applies to the extent the relevant amounts remain available to the Clearing House ''in cleared funds.''

In Rule 919(p), a reference to ''Non-Default Loss'' would be removed as the limitation on liability under Rule 919(p) does not apply to Non-Default Losses.

In various other locations in the Rules, further clarifications would be made that obligations of the Clearing House to return or provide certain funds or property to Clearing Members apply only to the extent such assets are received by and remain available to the Clearing House in cleared funds and are not themselves subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, reflecting the consequences of Rule 919. This includes Rules 301(f), 908(b)(iii), 908(c)(iii), 908(d)(iii), 908(g)(iii), 913(a)(iv), 914(j) and 916(n). The changes in this Amendment No. 2 correct certain inconsistent drafting across these provisions. In Rules 908(c)(iii), (d)(iii) and (g)(iii), a further drafting clarification would be made that the relevant claims under any default insurance policies (and not the received funds) arise as a result of the Event of Default.

The proposed amendments to Rule 1103(e), which address the potential situation where amounts received in respect of default insurance may themselves be subject to losses similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss, would be further revised to provide that application of such amounts could only be made to the extent that such amounts remain available to the Clearing House in cleared funds and such amounts are not subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss.

The purpose of the proposed rule changes as set out in Item 3(a) of the Prior Filing is otherwise unchanged.

(b) Statutory Basis

The description of the statutory basis for the amendments set forth in the Prior Filing is unchanged.

(B) Clearing Agency's Statement on Burden on Competition

The statement on burden on competition in the Prior Filing is unchanged.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 amended and restated in its entirety the Form 19b–4 and Exhibit 1A in order to correct the narrative description of the proposed rule change.

[4] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules, Exchange Act Release No. 97429 (May 4, 2023); 88 FR 30187 (May 10, 2023) (SR–ICEEU–2023–010).

[5] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules; Exchange Act Release No. 97780 (June 21, 2023), 88 FR 41711 (June 27, 2023) (File No. SR–ICEEU–2023–010).

[6] In Amendment No. 2, ICE Clear Europe provided additional clarifications as to funds available to the Clearing House to be applied in accordance with the Rules as proposed to be amended.

[7] Capitalized terms used but not defined herein have the meanings specified in the Rules.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The statement on comments on the proposed rule change in the Prior Filing is unchanged.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ICEEU–2023–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–ICEEU–2023–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ICEEU–2023–010 and should be submitted on or before August 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14814 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97842; File No. SR–CboeBYX–2023–009)

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

July 6, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2023, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''BYX Equities'') by amending the definition of the Russell Reconstitution Day. The Exchange proposes to implement these changes effective June 22, 2023.

The ''definitions'' section of the Exchange's Fee Schedule defines various terms used throughout the Fee Schedule. As explained under the definitions of ADAV, ADV, and TCV,[3] the Exchange currently excludes the Russell Reconstitution Day from the calculation of ADAV, ADV, and TCV, each of which are calculated on a monthly basis.[4] The Russell Reconstitution Day is defined in the Fee

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. ''TCV'' means total consolidated volume as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[4] The Russell Reconstitution Day is generally characterized by high trading volumes, much of which are derived from market participants who are not generally as active entering the market to rebalance their holdings in-line with the annual rebalancing of the Russell indices. The Exchange, along with other competing exchanges, excludes the Russell Reconstitution Day from certain volume calculations as the high trading volumes can significantly impact trading and quoting calculations.

Schedule as ''the last Friday in June.'' [5] While generally the Russell Reconstitution Day does occur on the last Friday in June, in months where there are five Fridays in June the Russell Reconstitution Day instead falls on the fourth Friday in June. The Exchange proposes to amend the definition of Russell Reconstitution Day to ''the fourth Friday in June'' [6] in order to provide a more accurate description of the date which will not be included in the calculation of ADAV, ADV, and TCV to its Members.[7] The Exchange is not proposing to make any other changes to the Definitions in its Fee Schedule and will announce the change via a Trade Desk notice to Members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4) [11] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes its proposal to amend the definition of the ''Russell Reconstitution Day'' is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers and is designed to provide for the equitable allocation of fees. Specifically, the proposal is intended only to add clarity to the Exchange's Fee Schedule by providing Members with additional certainty as to their level of rebates and costs for trading during the month of June and involves no substantive change. Additionally, the proposed change promotes just and equitable principles of trade and is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as it provides transparency to Members regarding which date in the month of June will not be included in the calculation of ADAV, ADV, and TCV.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to revise the definition of ''Russell Reconstitution Day'' will have any impact on competition as the change is only intended to add clarity to the Exchange's Fee Schedule and involves no substantive change.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. By providing Members with a greater level of certainty as to which date in the month of June will be excluded from the calculation of ADAV, ADV, and TCV, the Exchange is providing additional certainty as to the level of rebates and costs for trading during the month of the Russell reconstitution, which could promote competition between the Exchange and other execution venues. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

[5] *See* BYX Equities Fee Schedule, Definitions.

[6] *See* Russell U.S. Equity Indices Construction and Methodology, available at *https://research.ftserussell.com/products/downloads/Russell-US-indexes.pdf* (last accessed June 21, 2023).

[7] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4)

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

• Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBYX–2023–009 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBYX–2023–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBYX–2023–009 and should be submitted on or before August 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14665 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34958; File No. 812–15460]

Morningstar Funds Trust and Morningstar Investment Management LLC.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(c) of the Act.

SUMMARY OF APPLICATION: The requested exemption would permit a Trust's board of trustees (the ''Board'') to approve new sub-advisory agreements and material amendments to existing sub-advisory agreements without complying with the in-person meeting requirement of Section 15(c) of the Act.

APPLICANTS: Morningstar Funds Trust and Morningstar Investment Management LLC.

FILING DATES: The application was filed on April 27, 2023, and amended on June 23, 2023 and June 28, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on July 31, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Eric S. Purple, Esq., Stradley Ronon Stevens & Young, LLP, *epurple@stradley.com* and Mena M. Larmour, Esq., Stradley Ronon Stevens & Young, LLP, *mlarmour@stradley.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended application, dated June 28, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: July 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14664 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97848; File No. SR–CboeEDGX–2023–043]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

July 6, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2023, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGX Equities'') by amending the definition of the Russell Reconstitution Day. The Exchange proposes to implement these changes effective June 22, 2023.

The ''definitions'' section of the Exchange's Fee Schedule defines various terms used throughout the Fee Schedule. As explained under the definitions of ADAV, ADV, and TCV,[3] the Exchange currently excludes the Russell Reconstitution Day from the calculation of ADAV, ADV, and TCV, each of which are calculated on a monthly basis.[4] The Russell Reconstitution Day is defined in the Fee Schedule as ''the last Friday in June.'' [5] While generally the Russell Reconstitution Day does occur on the last Friday in June, in months [sic] where there are five Fridays in June the Russell Reconstitution Day instead falls on the fourth Friday in June. The Exchange proposes to amend the definition of Russell Reconstitution Day to ''the fourth Friday in June'' [6] in order to provide a more accurate description of the date which will not be included in the calculation of ADAV, ADV, and TCV to its Members.[7] The Exchange is not proposing to make any other changes to the Definitions in its Fee Schedule and will announce the change via a Trade Desk notice to Members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4) [11] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes its proposal to amend the definition of the ''Russell Reconstitution Day'' is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers and is designed to provide for the equitable allocation of fees. Specifically, the proposal is intended only to add clarity to the Exchange's Fee Schedule by providing Members with additional certainty as to their level of rebates and costs for trading during the month of June and involves no substantive change. Additionally, the proposed change promotes just and equitable principles of trade and is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as it provides transparency to Members regarding which date in the month of June will not be included in the calculation of ADAV, ADV, and TCV.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to revise the definition of ''Russell Reconstitution Day'' will have any impact on competition as the change is only intended to add clarity to the Exchange's Fee Schedule and involves no substantive change.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange

[3] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADAV and ADV are calculated on a monthly basis. ''TCV'' means total consolidated volume as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[4] The Russell Reconstitution Day is generally characterized by high trading volumes, much of which are derived from market participants who are not generally as active entering the market to rebalance their holdings in-line with the annual rebalancing of the Russell indices. The Exchange, along with other competing exchanges, excludes the Russell Reconstitution Day from certain volume calculations as the high trading volumes can significantly impact trading and quoting calculations.

[5] *See* EDGX Equities Fee Schedule, Definitions.

[6] *See* Russell U.S. Equity Indices Construction and Methodology, available at *https://research.ftserussell.com/products/downloads/Russell-US-indexes.pdf* (last accessed June 21, 2023).

[7] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. By providing Members with a greater level of certainty as to which date in the month of June will be excluded from the calculation of ADAV, ADV, and TCV, the Exchange is providing additional certainty as to the level of rebates and costs for trading during the month of the Russell reconstitution, which could promote competition between the Exchange and other execution venues. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2023–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2023–043. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2023–043 and should be submitted on or before August 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14668 Filed 7–11–23; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97844; File No. SR–NASDAQ–2022–079]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 4702(b)(14) and (b)(15) Concerning Dynamic M–ELO Holding Periods

July 6, 2023.

On December 21, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to replace the static holding period requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book with dynamic holding periods. The proposed rule change was published for comment in the **Federal Register** on January 10, 2023.[3] On February 22, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 9, 2023, the Exchange filed Amendment No.1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed. On April 7, 2023, the Commission provided notice of filing of Amendment No. 1 and instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[6] The Commission received comments on the proposed rule change.[7]

Section 19(b)(2) of the Act [8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92844 (January 4, 2023), 88 FR 1438.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 96963, 88 FR 12710 (February 28, 2023).

[6] *See* Securities Exchange Act Release No. 97263, 88 FR 22498 (April 13, 2023).

[7] All comments received by the Commission on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2022-079/srnasdaq2022079.htm.*

[8] 15 U.S.C. 78s(b)(2).

rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 10, 2023.[9] July 9, 2023, is 180 days from that date, and September 7, 2023, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to comments. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates September 7, 2023, as the date by which the Commission should either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–NASDAQ–2022–079).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14667 Filed 7–11–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–564, OMB Control No. 3235–0628]

Proposed Collection; Comment Request; Extension: Rule 17g–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (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 17g–2 (17 CFR 240.17g–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17g–2, ''Records to be made and retained by nationally recognized statistical rating organizations,'' implements the Commission's recordkeeping rulemaking authority under Section 17(a) of the Exchange Act.[1] The rule requires a Nationally Recognized Statistical Rating Organization (''NRSRO'') to make and retain certain records relating to its business and to retain certain other business records, if such records are made. The rule also prescribes the time periods and manner in which all these records must be retained. There are 10 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the record keeping policies and procedures required by Rule 17g–2. Based on staff experience, NRSROs are estimated to spend a total industry-wide burden of 2,390 annual hours to make and retain the appropriate records.

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 on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. August 11, 2023

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Dave Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F St NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14661 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97849; File No. SR–NYSEARCA–2023–45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

July 6, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 30, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Ratio Threshold Fee. The Exchange proposes to implement the fee change effective July 3, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[9] *See* Notice, *supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C 78q.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to (1) delete language relating to an expired waiver of the Ratio Threshold Fee and (2) add an exemption to the Ratio Threshold Fee for the first time that such fee is assessed in a rolling 12-month period. The Exchange proposes to implement the rule change on July 3, 2023.

The Ratio Threshold Fee is based on the number of orders entered as compared to the number of executions received in a calendar month and is intended to deter OTP Holders from submitting an excessive number of orders that are not executed.[4] In connection with the Exchange's migration to the Pillar platform, the Exchange implemented a waiver of the Ratio Threshold Fee (the ''Waiver'') that took effect beginning in the month in which the Exchange began its migration to the Pillar platform and would remain in effect for the three months following the month during which the Exchange completed its migration to the Pillar platform. As the Exchange completed the migration in July 2022, the Waiver was originally due to expire on October 31, 2022. The Exchange previously filed to extend the Waiver until January 31, 2023, and, subsequently, to extend the Waiver until April 30, 2023, and again to June 30, 2023.[5]

The Exchange proposes to delete language from the Fee Schedule providing for the Waiver following its expiration, as it would no longer be applicable to any OTP Holders. The Exchange also proposes to adopt an exemption from the Ratio Threshold Fee for the first time that an OTP Holder incurs such fee in a rolling 12-month period (the ''Exemption''), similar to the exemption currently offered by the Exchange's affiliate, NYSE American Options.[6] The Exchange believes that the Exemption could help protect OTP Holders from incurring the Ratio Threshold Fee when they first encounter lower than expected executions in a rolling 12-month period, such as when they are new to the trading platform, deploying new technologies, or testing different trading strategies, thereby encouraging OTP Holders to maintain their trading activity on the Exchange by mitigating the initial impact of the Ratio Threshold Fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[10] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in May 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed deletion of the language describing the Waiver is reasonable because the Waiver would no longer be in effect, and the deletion would thus improve the clarity of the Fee Schedule and reduce confusion as to the fees and credits that are currently in effect. The Exchange also believes that the removal of obsolete text from the Fee Schedule would further the protection of investors and the public interest by promoting clarity and transparency in the Fee Schedule and making the Fee Schedule easier to navigate and understand.

The Exchange believes that the proposed Exemption is reasonable because it would offer OTP Holders an exemption from the Ratio Threshold Fee the first time it is incurred in a rolling 12-month period and is designed to potentially protect firms that are, for example, new to the trading platform, deploying new technologies, or testing different trading strategies, from incurring excess Ratio Threshold Fees and affording them an opportunity to assess their order to execution ratios. To the extent the proposed change encourages OTP Holders to maintain their trading activity on the Exchange, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate effects of an ever-changing marketplace without affecting its competitiveness.

[4] *See* Fee Schedule, RATIO THRESHOLD FEE; *see also* Securities Exchange Act Release No. 60102 (June 11, 2009), 74 FR 29251 (June 19, 2009) (SR–NYSEArca–2009–50).

[5] *See* Securities Exchange Act Release Nos. 96252 (November 7, 2022), 87 FR 68210 (November 14, 2022) (SR–NYSEARCA–2022–74) (extension of Waiver until January 31, 2023); 96878 (February 10, 2023), 88 FR 10156 (February 16, 2023) (SR–NYSEARCA–2023–14) (extension of Waiver until April 30, 2023); 97460 (May 9, 2023), 88 FR 31087 (May 15, 2023) (SR–NYSEArca–2023–35) (extension of Waiver until June 30, 2023).

[6] *See* NYSE American Options Fee Schedule, Section II. Monthly Excessive Bandwidth Utilization Fees, available at: *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (''The Monthly Excessive Bandwidth Utilization Fee will not be assessed for the first occurrence in a rolling 12-month period.'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[11] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 13.08% for the month of May 2022 to 12.35% for the month of May 2023.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed change is an equitable allocation of fees and credits. The proposed deletion of language relating to the expired Waiver would eliminate text from the Fee Schedule no longer applicable to any OTP Holders. Accordingly, the Exchange believes the proposal would impact all similarly situated OTP Holders on an equal basis. The proposed Exemption is an equitable allocation of fees and credits because it would be available to all OTP Holders; all OTP Holders would be eligible for the Exemption the first time they incur the Ratio Threshold Fee in a rolling 12-month period. In addition, to the extent the Exemption encourages OTP Holders to maintain their trading activity on the Exchange by mitigating the initial impact of the Ratio Threshold Fee, the Exchange believes the proposed change would promote market quality to the benefit of all market participants.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any category of market participant. The proposed elimination of text describing the expired Waiver would affect all OTP Holders on an equal and non-discriminatory basis, as the Waiver would no longer be applicable to any OTP Holders. The Exchange believes the proposed Exemption is not unfairly discriminatory because it would apply to all OTP Holders on an equal and non-discriminatory basis. The Exemption, as proposed, would provide all OTP Holders with an exemption from the Ratio Threshold Fee the first time such fee is incurred in a rolling 12-month period. The Exchange believes that the proposed change would encourage OTP Holders to continue trading on the Exchange by lessening the initial impact of the Ratio Threshold Fee and providing OTP Holders with an opportunity to evaluate order to execution ratios. The proposed change would thus support continued trading opportunities for all market participants, thereby promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system and, in general, protecting investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [12]

Intramarket Competition

The Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate. The deletion of the language relating to the Waiver would remove language from the Fee Schedule no longer applicable to any OTP Holders and, accordingly, would not have any impact on intramarket competition. The proposed Exemption would apply equally to all OTP Holders; all OTP Holders would be eligible for the Exemption for the first occurrence of the Ratio Threshold Fee in a rolling 12-month period. To the extent the proposed change is successful in encouraging OTP Holders to maintain their trading activity on the Exchange, the Exchange believes the proposed change could promote market quality to the benefit of all market participants.

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in May 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[14]

The Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate. Deleting text describing the Waiver would add clarity to the Fee Schedule by removing expired pricing and, accordingly, would not have any impact on intermarket competition. The proposed Exemption would not impose any burden on competition that is not necessary or appropriate because it would apply equally to all OTP Holders. All OTP Holders would be eligible for the Exemption the first time the Ratio Threshold Fee is applied in a rolling 12-month period. To the extent the Exemption encourages OTP Holders to continue trading on the Exchange, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and its market quality for all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [15] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[12] *See* Reg NMS Adopting Release, *supra* note 9, at 37499.

[13] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[14] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 13.08% for the month of May 2022 to 12.35% for the month of May 2023.

[15] 15 U.S.C. 78s(b)(3)(A).

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–45. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–45 and should be submitted on or before August 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97850; File No. SR–CboeBZX–2023–043]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the Principal Focused Blue Chip ETF, a Series of Principal Exchange-Traded Funds, Under Exchange Rule 14.11(m), Tracking Fund Shares

July 6, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2023, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'')) a proposed rule change to list and trade shares of the Principal Focused Blue Chip ETF (the ''Fund''), a series of Principal Exchange-Traded Funds (the ''Trust''), under Rule 14.11(m), Tracking Fund Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange adopted BZX Rule 14.11(m) for the purpose of permitting the listing and trading, or pursuant to unlisted trading privileges (''UTP''), of Tracking Fund Shares,[5] which are securities issued by an actively managed open-end management investment company.[6] Exchange Rule

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 14.11(m)(3)(A) provides that the term ''Tracking Fund Share'' means a security that (i) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value (''NAV''); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 14.11(m)(3)(E) provides that the term ''Tracking Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 (the ''1940 Act'') applicable to a series of Tracking Fund Shares. Rule 14.11(m)(3)(F) provides that the term ''Custom Basket'' means a portfolio of securities that is different from the Tracking Basket and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Tracking Fund Shares.

[6] *See* Securities Exchange Act No. 87856 (December 23, 2019) 84 FR 72414 (December 31, 2019) (SR–CboeBZX–2019–107) (Notice of Filing of a Proposed Rule Change To Adopt Rule 14.11(m), Portfolio Fund Shares, and To List and Trade Shares of the Fidelity Value ETF, Fidelity Growth

Continued

14.11(m)(1)(A) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Tracking Fund Shares on the Exchange. Pursuant to this provision, the Exchange is submitting this proposal to list and trade shares (''Shares'') of Tracking Fund Shares of the Fund.

The Shares will be offered by the Trust, which is organized as a statutory trust under the laws of Delaware. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A with the Commission.[7] Principal Global Investors, LLC (the ''Adviser'') will be the investment adviser to the Fund. State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.

Rule 14.11(m)(2)(D) provides that, if the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio,[8] the Tracking Basket,[9] and/or the Custom Basket,[10] as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio, the Tracking Basket, and/or the Custom Basket or has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto. Rule 14.11(m)(2)(E) provides that any person or entity, including a custodian, Reporting Authority,[11] distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Tracking Basket, or Custom Basket, as applicable.

The Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer.[12] The Adviser represents that a fire wall exists and will be maintained between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable. Specifically, the Adviser represents that the personnel who make decisions on the Fund Portfolio, Tracking Basket and/or Custom Basket, as applicable, or who have access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such Fund Portfolio, Tracking Basket, and/or Custom Basket. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such Fund Portfolio, Tracking Basket, and/or Custom Basket. Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, Tracking Basket, and/or Custom Basket, as applicable, or changes thereto, will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer must have erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Tracking Basket, or Custom Basket, as applicable. The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(m) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act. A

ETF, and Fidelity Opportunistic ETF, Each a Series of the Fidelity Beach Street Trust, Under Proposed Rule 14.11(m)); and 88887 (May 15, 2020) 85 FR 30990 (May 21, 2020) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, To Adopt Rule 14.11(m), Tracking Fund Shares, and To List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF)) (the ''Original Order''). Rule 14.11(m) was later amended to provide for the use of Custom Baskets. *See* Securities Exchange Act Nos. 92626 (August 10, 2021) 86 FR 45792 (August 16, 2021) (SR–CboeBZX–2021–053) (Notice of Filing of a Proposed Rule Change To Amend Rule 14.11(m) (Tracking Fund Shares) To Provide for the Use of Custom Baskets Consistent With the Exemptive Relief Issued Pursuant to the Investment Company Act of 1940 Applicable to a Series of Tracking Fund Shares); and 93147 (September 28, 2021) 86 FR 54772 (October 4, 2021) (Order Granting Approval of a Proposed Rule Change To Amend Rule 14.11(m) (Tracking Fund Shares) To Provide for the Use of Custom Baskets Consistent With the Exemptive Relief Issued Pursuant to the Investment Company Act of 1940 Applicable to a Series of Tracking Fund Shares) (the ''Subsequent Order'').

[7] The Trust is registered under the 1940 Act. On April 6, 2023, the Trust filed a registration statement on Form N–1A relating to the Fund (File No. 811–23029) (the ''Registration Statement''). The descriptions of the Fund and the Shares contained herein are based, in part, on information included in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective. The Fund is an actively-managed exchange-traded fund that operates pursuant to an exemptive order (File No. 812–15308) from the SEC issued on April 26, 2022 (the ''Exemptive Order''). The Fund's application for exemptive relief incorporated the conditions and requirements to an exemptive order from the SEC under the 1940 Act (15 U.S.C. 80a–1) to Fidelity Beach Street Trust (File No. 812–14364), issued on December 10, 2019. *See* Investment Company Act Release Nos. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the application) and 33712 (December 10, 2019) (the exemptive order) (File No. 812–14364).

[8] See Exchange Rule 14.11(m)(3)(B).

[9] *See* Exchange Rule 14.11(m)(3)(E).

[10] *See* Exchange Rule 14.11(m)(3)(F).

[11] *See* Exchange Rule 14.11(m)(3)(C).

[12] The Fund currently has no sub-advisers.

minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange, and each creation unit size will be at least 20,000 shares. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Tracking Basket, the Fund Portfolio, and the Custom Basket, as applicable. Additionally, with respect to each Custom Basket utilized by a series of Tracking Fund Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website [13] the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Principal Focused Blue Chip ETF

The Fund's holdings will conform to the permissible investments as stated herein and as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') [14] or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund's investment objective is to seek to provide long-term growth of capital. The Fund seeks to achieve its investment objective by investing at least 80% of net assets, plus any borrowings for investment purposes, in equity securities of companies with large market capitalizations at the time of purchase that, in the opinion of the Adviser, display characteristics of a ''blue chip'' company. For this Fund, companies with large market capitalizations are those with market capitalizations similar to companies in the Russell 1000® Growth Index (as of April 30, 2023, this was between approximately $659.2 million and $2.7 trillion). In the Adviser's view, ''blue chip'' companies typically display some or all of the following characteristics: (1) large, well-established and financially sound companies; (2) issuers with market capitalizations in the billions; (3) are considered market leaders or among the top three companies in its sector; and (4) commonly considered household names. The Fund tends to focus on securities of companies that show potential for growth of capital as well as an expectation for above-average earnings. In selecting securities in which to invest, the Adviser uses a bottom-up, fundamental process, focusing on a fundamental analysis of individual companies.

Trading Halts

Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket, Custom Basket, or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, the Custom Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, the Custom Basket, or the Fund Portfolio is available to all market participants, as applicable.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[15] The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Tracking Basket for the Fund

For the Fund, the Tracking Basket will consist of a combination of Strategy Components,[16] Representative ETFs,[17] select securities from the universe from which the Fund's investments are selected, such as a broad-based market index, and cash and cash equivalents. The Exchange notes that the Tracking Basket methodology used by the Fund is substantively identical to a proposal previously approved by the Commission.[18]

Representative ETFs selected for inclusion in the Tracking Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect the Fund's holdings' exposures within the Tracking Basket without revealing the Fund's exact positions. Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that the Fund's NAV will form the basis for creations and redemptions for the Fund and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Fund will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as the Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In addition, in accordance with the Exemptive Order, the Fund may determine to use Custom Baskets that differ from the Tracking Basket in that they include instruments that are not in the Tracking Basket, or are included in the Tracking Basket but in different weightings. In the event that the value of the Tracking Basket is not the same as the Fund's NAV, the creation and redemption baskets will

[13] *See www.principalam.com.*

[14] For a list of the current members of ISG, see *www.isgportal.com.* The Exchange notes that all components, except the cash and cash equivalent components, of the Fund will trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[15] With respect to trading in Tracking Fund Shares, all of the BZX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

[16] ''Strategy Components'' refers to recently disclosed portfolio holdings.

[17] ''Representative ETFs'' refers to liquid ETFs that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which the Fund invests.

[18] *See* the Original Order and Subsequent Order.

consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

The Tracking Basket will be constructed utilizing a proprietary optimization process to minimize daily deviations in return of the Tracking Basket relative to the Fund and is used to facilitate the creation/redemption process and arbitrage. Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket. For example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. In addition to disclosure of the Tracking Basket, the Fund publishes the Tracking Basket Weight Overlap on its website on each business day before the commencement of trading in shares on the listing exchange. The Tracking Basket Weight Overlap is the percentage weight overlap between the holdings of the prior day's Tracking Basket compared to the holdings of the Fund that formed the basis for the Fund's calculation of NAV at the end of the prior business day. It is calculated by taking the lesser weight of each asset held in common between the Fund's portfolio and the Tracking Basket, and adding the totals. The Tracking Basket Weight Overlap is intended to provide investors with an understanding of the degree to which the Tracking Basket and the Fund's portfolio overlap and help investors evaluate the risk that the performance of the Tracking Basket may deviate from the performance of the portfolio holdings of the Fund.

As noted above, the Fund will also disclose the entirety of its portfolio holdings including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. The Fund's website,[19] at no charge, will include additional quantitative information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. With respect to each Custom Basket, each business day, before the opening of trading in the Regular Trading Hours,[20] the issuer shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash. Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. The Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Fund from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of the Fund.

The Exchange believes that the particular instruments that may be included in the Fund's Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Basket being able to closely track the NAV of the Fund because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, the Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund.

The Adviser anticipates that the returns between the Fund and its Tracking Basket will have a consistent relationship and that the deviation in the returns between the Fund and the Tracking Basket will be sufficiently small such that the Tracking Basket will provide authorized participants, arbitrageurs, and certain other market participants (collectively, ''Market Makers'') with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Fund will allow Market Makers to understand the relationship between the performance of the Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in the Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio will be publicly available at all times. The Fund will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. With respect to each Custom Basket, each business day, before the opening of trading in the regular market session, the Fund shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash. The Fund will also disclose the entirety of its portfolio holdings including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of

[19] *Supra* note 13.

[20] *See* Rule 1.5(w).

such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities.

The Exchange represents that the Shares of the Fund will comply with all other requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Custom Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the Shares, and firewalls as set forth in the Rules applicable to Tracking Fund Shares and the Tracking Fund Shares Approval Order. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to the Fund under Exchange Rule 14.12.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Rules relating to listing and trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities.

Rules 14.11(m)(4)(B)(iii) and (iv) provide that the Exchange will consider the suspension of trading in and will commence delisting proceedings for the Fund pursuant to Rule 14.12 under any of the circumstances described above and that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Additionally, the Exchange believes that the requirements related to information protection enumerated under Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to the Fund Portfolio, the Tracking Basket, and/or the Custom Basket or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, Tracking Basket, and/or Custom Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, Tracking Basket, and/or Custom Basket or changes thereto will act to prevent any individual or entity from sharing such information externally.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Tracking Fund Shares. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

As provided in Rule 14.11(m)(2)(C), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of the Fund. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading the Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

In addition, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain the Fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR and its Form N–CEN. The prospectus, Statement of Additional Information, and Shareholder Reports are available free upon request, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* The Exchange also notes that the Exemptive Relief provides that the Fund will comply with Regulation Fair Disclosure, including with respect to any Custom Basket, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the Shares will be

continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new series of Tracking Fund Shares, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6)[22] thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing and BZX may list the Shares as soon as practicable. The Commission has approved and noticed for immediate effectiveness proposed rule changes to permit listing and trading on the Exchange of Tracking Fund Shares similar to the Fund.[26] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–043. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–043 and should be submitted on or before August 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14670 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* note 6. *See also* Securities Exchange Act Release No. 93273 (October 7, 2021) 86 FR 57237 (October 14, 2021) (SR–CboeBZX–2021–063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of Hartford Large Cap Growth ETF, a Series of Hartford Funds Exchange-Traded Trust, Under Rule 14.11(m), Tracking Fund Shares).

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–563, OMB Control No. 3235–0625]

Proposed Collection; Comment Request; Extension: Rule 17g–1 and Form NRSRO

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g-1, Form NRSRO and Instructions to Form NRSRO under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).[1] The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1, Form NRSRO and the Instructions to Form NRSRO contain certain recordkeeping and disclosure requirements for NRSROs. Currently, there are 10 credit rating agencies registered as NRSROs with the Commission. Based on staff experience the Commission estimates that the revised ongoing annual burden for respondents to comply with Rule 17g-1 and Form NRSRO is 2,750 hours. In addition, the Commission estimates an industry-wide annual external cost to NRSROs of $4,000 to comply with the requirements.

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 on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. August 11, 2023

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Dave Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F St NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14660 Filed 7–11–23; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* 17 CFR 240.17g–1 and 17 CFR 249b.300.

DEPARTMENT OF STATE

[Public Notice: 12118]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Mark Rothko: Paintings on Paper'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Mark Rothko: Paintings on Paper'' at the National Gallery of Art, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–14763 Filed 7–11–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11997]

60-Day Notice of Proposed Information Collection: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

ACTION: Notice; request for comment.

SUMMARY: The Department of State as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. 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, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: The Department will accept comments from the public up to *September 11, 2023.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2023–0006'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: informationcollections@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number, 1405–0241 in any correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

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. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Department of State is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. The Department of State will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

The Department of State will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. The Department of State may also utilize observational techniques to collect this information.

Data:

Form Number(s): DS–4318.

Type of Review: Extension.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal Government; and Universities.

- *Estimated Number of Respondents:* 1,001,550.
- *Estimated Time per Response:* Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 1.5 hours to participate in an interview.
- *Estimated Total Annual Burden Hours:* 101,125.
- *Estimated Total Annual Cost to Public:* $0.

C. Public Comments

The Department of State invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Zachary A. Parker,

Director, Officer of Directives Management, Department of State.

[FR Doc. 2023–14657 Filed 7–11–23; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 12121]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Woven Histories: Textiles and Modern Abstraction'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Woven Histories: Textiles and Modern Abstraction'' at the Los Angeles County Museum of Art, Los Angeles, California; the National Gallery of Art, Washington, District of Columbia; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28,

2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–14767 Filed 7–11–23; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Borough of Freeland Municipal Authority—Public Water Supply System, GF Certificate No. GF–202306252, Freeland Borough, Luzerne County, Pa.; Wells 4, 6, and 10; Issue Date: June 14, 2023.

2. The Hershey Company—19 East Chocolate Ave. Offices, GF Certificate No. GF–202306253, Derry Township, Dauphin County, Pa.; Wells 6, 8, and 12, and Quarry Pumps 16 and 17; Issue Date: June 14, 2023.

3. Knouse Foods Cooperative, Inc.—Biglerville Plant, GF Certificate No. GF–202306254, Butler Township and Biglerville Borough, Adams County, Pa.; combined withdrawal from Wells 2 and 3, combined withdrawal from Wells 4, 5, 6, 7, and 8, and consumptive use; Issue Date: June 14, 2023.

4. Hazleton City Authority—Delano-Park Place Division, GF Certificate No. GF–202306255, Mahanoy Township, Schuylkill County, Pa.; Park Place Well 2; Issue Date: June 15, 2023.

5. Village of Oxford—Public Water Supply System, GF Certificate No. GF–202306256, Town of Oxford, Chenango County, N.Y.; Wells 1 and 2; Issue Date: June 15, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: July 6, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–14678 Filed 7–11–23; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: June 1–30, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(e):

1. Niagara Bottling, LLC; Big Spring Facility; ABR–202306001; Boggs Township, Centre County, Pa.; Consumptive Use of Up to 1.0000 mgd; Approval Date: June 14, 2023.

Water Source Approval—Issued Under 18 CFR 806.22(f):

1. BKV Operating, LLC; Pad ID: Plushanski Well Pad; ABR–201806001.R1; Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: June 14, 2023.

2. Chesapeake Appalachia, L.L.C.; Pad ID: Porter; ABR–201306001.R2; North Branch Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 14, 2023.

3. Chesapeake Appalachia, L.L.C.; Pad ID: Shamrock; ABR–201306003.R2; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 14, 2023.

4. Chesapeake Appalachia, L.L.C.; Pad ID: Tinna; ABR–201306002.R2; Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 14, 2023.

5. Coterra Energy Inc.; Pad ID: GillinghamR P1; ABR–201305017.R2; Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 14, 2023.

6. Coterra Energy Inc.; Pad ID: HaynesW P1; ABR–201706001.R1; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 14, 2023.

7. Coterra Energy Inc.; Pad ID: WaldenbergerP P1; ABR–201206002.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 14, 2023.

8. Range Resources—Appalachia, LLC; Pad ID: Laurel Hill B Unit; ABR–201306004.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 14, 2023.

9. Seneca Resources Company, LLC; Pad ID: Wood 626; ABR–201106006.R2; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 14, 2023.

10. Chesapeake Appalachia, L.L.C.; Pad ID: Brewer; ABR–201306007.R2; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 21, 2023.

11. Coterra Energy Inc.; Pad ID: ReynoldsR P1; ABR–201306008.R2; Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 21, 2023.

12. Repsol Oil & Gas USA, LLC; Pad ID: THORNE (07 080) G; ABR–201306005.R2; Apolacon Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: June 21, 2023.

13. Repsol Oil & Gas USA, LLC; Pad ID: TRAVER (07 081) E; ABR–201306006.R2; Choconut Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: June 21, 2023.

14. Chesapeake Appalachia, L.L.C.; Pad ID: ODowd; ABR–201305006.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 22, 2023.

15. Coterra Energy Inc.; Pad ID: BishopB P1; ABR–201305013.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: June 22, 2023.

16. Chesapeake Appalachia, L.L.C.; Pad ID: Spencer Drilling Pad; ABR–201306010.R2; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: June 29, 2023.

17. Seneca Resources Company, LLC; Pad ID: Fuller 826; ABR–201606005.R1; Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: June 29, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: July 6, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–14677 Filed 7–11–23; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on August 10, 2023. The Commission will hold this hearing in person and telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the **SUPPLEMENTARY INFORMATION** section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for September 14, 2023, which will be noticed separately. The public should note that this public hearing will be the only opportunity to offer oral comments to the Commission for the listed projects. The deadline for the submission of written comments is August 21, 2023.

DATES: The public hearing will convene on August 10, 2023, at 6:30 p.m. The public hearing will end at 9:00 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for submitting written comments is Monday, August 21, 2023.

ADDRESSES: This public hearing will be conducted in person and virtually. You may attend in person at Susquehanna River Basin Commission, 4423 N. Front St., Harrisburg, Pennsylvania, or join by telephone at Toll-Free Number 1–877–304–9269 and then enter the guest passcode 2619070 followed by #.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or *joyler@srbc.net.* Information concerning the project applications is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009–02.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Bent Creek Country Club, Manheim Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawal of up to 0.464 mgd (30-day average) from Well 1 (600 Foot Well) and consumptive use of up to 0.464 mgd (peak day) (Docket No. 19920704).

2. Project Sponsor and Facility: BKV Operating, LLC (East Branch Wyalusing Creek), Jessup Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20180902).

3. Project Sponsor: Borough of Middletown. Project Facility: Middletown Water System, Middletown Borough, Dauphin County, Pa. Application for renewal of groundwater withdrawal of up to 1.070 mgd (30-day average) from Well 6 (Docket No. 19970702).

4. Project Sponsor and Facility: Coterra Energy Inc. (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20180903).

5. Project Sponsor and Facility: Dillsburg Area Authority, Carroll Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.460 mgd (30-day average) from Well 7 (Docket No. 20070907).

6. Project Sponsor and Facility: Eagle Lake Community Association, Covington Township, Lackawanna County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.233 mgd from Well 1, 0.315 mgd from Well 2, and 0.104 mgd from Well 3.

7. Project Sponsor and Facility: East Berlin Area Joint Authority, Hamilton Township, Adams County, Pa. Application for renewal of groundwater withdrawal of up to 0.130 mgd (30-day average) from Well 6 (Docket No. 20080950).

8. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.201 mgd (30-day average) from Well 14 (Docket No. 19981202).

9. Project Sponsor and Facility: EQT ARO LLC (Pine Creek), McHenry Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20180901).

10. Project Sponsor and Facility: Indian Hills Golf and Tennis Club, Shamokin Township, Northumberland County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 19980504).

11. Project Sponsor and Facility: Inflection Energy (PA) LLC (Loyalsock Creek), Upper Fairfield Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.700 mgd (peak day) (Docket No. 20221214).

12. Project Sponsor: Lucky Bear, LLC. Project Facility: Liberty Forge Golf Course (Yellow Breeches Creek), Lower and Upper Allen Townships, Cumberland County, Pa. Applications for renewal of surface water withdrawal of up to 0.432 mgd (peak day) and consumptive use of up to 0.375 mgd (peak day) (Docket No. 19980906).

13. Project Sponsor and Facility: Montgomery Water Authority, Clinton Township, Lycoming County, Pa. Modification to increase groundwater withdrawal (30-day average) from Well 3 by an additional 0.098 mgd, for a total groundwater withdrawal of up to 0.318 mgd, and increase the total system withdrawal limit (30-day average) from 0.492 mgd to 0.730 mgd from Wells 1, 3, and 4 (Docket No. 20210304).

14. Project Sponsor and Facility: Nicholas Meat, LLC, Greene Township, Clinton County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.288 mgd from Well WS–1, 0.173 mgd from Well WS–3, and 0.144 mgd from Well WS–4.

15. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20180909).

16. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Wappasening Creek), Windham Township, Bradford County, Pa.

Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20180910).

17. Project Sponsor and Facility: Seneca Resources Company, LLC (Crooked Creek), Middlebury Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

18. Project Sponsor: South Slope Development Corporation. Project Facility: Song Mountain Ski Resort, Town of Preble, Cortland County, N.Y. Applications for renewal of surface water withdrawal of up to 0.999 mgd (30-day average) from an unnamed tributary to Crooked Lake, consumptive use of up to 0.249 mgd (30-day average), and groundwater withdrawal of up to 0.960 mgd (30-day average) from Well MW–3 (Docket No. 20070901).

19. Project Sponsor and Facility: S.T.L. Resources, LLC (Pine Creek), Pike Township, Potter County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

20. Project Sponsor: T & C Mobile Home & Construction Services, LLC. Project Facility: Glezen Mine, Town of Lisle, Broome County, N.Y. Application for consumptive use of up to 0.099 mgd (30-day average).

21. Project Sponsor and Facility: Village of Hamilton, Town of Hamilton, Madison County, N.Y. Applications for renewal of groundwater withdrawals (30-day averages) of up to 1.730 mgd from Payne Brook Well 1 and 1.500 mgd from Payne Brook Well 2 (Docket Nos. 19871101 and 19970706).

22. Project Sponsor and Facility: Village of Sidney, Town of Sidney, Delaware County, N.Y. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19860201) to provide time for development of a replacement source for existing Well 2–88.

Opportunity to Appear and Comment

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* before the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to control the course of the hearing otherwise. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* before the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted must be received by the Commission on or before Monday, August 21, 2023, to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: July 6, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–14676 Filed 7–11–23; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–1281]

Notice of Rescission of Unmanned Aircraft Systems Remote Identification Declaration of Compliance, Tracking No. RID000000111 for DJI Mavic Pro Platinum Aircraft

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice rescinds a declaration of compliance (DOC) for the DJI Mavic Pro Platinum unmanned aircraft with the assigned tracking number RID000000111 that the FAA-accepted on January 19, 2023, effective immediately.

DATES: This action is effective July 12, 2023.

FOR FURTHER INFORMATION CONTACT: Caspar Wang, Product Policy Management: GA, Rotorcraft & Emerging Aircraft Section, AIR–62B, Technical Policy Branch, Policy & Standards Division, Federal Aviation Administration. 800 Independence Ave SW, Washington DC 20591, telephone 1–844–FLY–MY–UA; email: *UASHelp@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Title 14, Code of Federal Regulations (14 CFR) part 89 establishes remote identification (RID) requirements for unmanned aircraft operated in the airspace of the United States. With a few exceptions, unmanned aircraft produced for operation in the airspace of the United States are subject to the production requirements of part 89. A person producing a standard RID unmanned aircraft or RID broadcast module for operation in the United States must show that the unmanned aircraft or broadcast module complies with the RID performance requirements of subpart D of part 89 by following a FAA-accepted means of compliance (MOC).

A DOC is the method by which a producer declares that a standard RID unmanned aircraft or RID broadcast module has been designed and produced to meet the applicable minimum performance requirements of subpart D of part 89 by using an FAA-accepted MOC.

The FAA relies on the DOC to ensure the standard RID unmanned aircraft or RID broadcast module identified on the DOC is designed and produced in accordance with an FAA-accepted MOC and complies with the applicable RID requirements of part 89.

On January 19, 2023, the FAA evaluated and accepted a DOC application with the assigned tracking number of RID000000111 appearing to be from DJI for the Mavic Pro Platinum unmanned aircraft. On February 16, 2023, the FAA received communication from DJI stating that the group of products listed in the DOC application with the assigned tracking number RID000000111 were, in fact, not compliant with the performance requirements of part 89. Therefore, DJI requested a rescission of the FAA-accepted DOC with tracking number RID000000111. DJI's subsequent internal review of the incident determined that the employee listed as the contact on the DOC application no longer had RID certification responsibilities at the time the DOC was submitted, and their employee stated he did not submit the RID000000111 DOC. The FAA is continuing to investigate.

Basis for Rescission

In accordance with § 89.540(a)(1)(i), the Administrator may rescind a DOC under the circumstance that a standard remote identification unmanned aircraft or remote identification broadcast module listed under an FAA-accepted DOC does not meet the minimum performance requirements of §§ 89.310 or 89.320. In accordance with § 89.540(a)(1)(ii), the Administrator may also rescind acceptance of a DOC when

a previously FAA-accepted DOC does not meet a requirement of this subpart.

The basis for rescission of the DOC with tracking number RID000000111 is as follows:

(1) DJI statement to the FAA that the group of products listed on DOC tracking number RID000000111 is not compliant with part 89 RID performance requirements.

(2) Statement from the DJI employee, whose name was listed as point of contact on the DOC submission, stating he had not made the DOC submission.

(3) DJI's request for rescission of the DOC with tracking number RID000000111.

Rescission

Pursuant to §§ 89.540(a)(1)(i) and 89.540(a)(1)(ii) and for the reasons stated herein, the FAA rescinds the DOC tracking number RID000000111 for the DJI Mavic Pro Platinum unmanned aircraft.

Issued in Kansas City, Missouri on July 7, 2023.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–14802 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Draft Air Tour Management Plan (ATMP) and Draft Environmental Assessment (EA); Notice of Public Meeting

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

ACTION: Notice of availability and public meeting.

SUMMARY: The FAA, in cooperation with the National Park Service (NPS), has initiated development of an ATMP for Bandelier National Monument (the Park) pursuant to the National Parks Air Tour Management Act of 2000 and its implementing regulations. This notice announces the public availability of the draft ATMP and draft EA for comment and the date of the public meeting for the Park in accordance with National Parks Air Tour Management Act of 2000 and National Environmental Policy Act (NEPA) of 1969. The purpose of the public meeting is to review the draft ATMP with the public. The draft ATMP provides acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the Park's natural and cultural resources and visitor experiences, as well as on tribal lands. In accordance with Section 106 of the National Historic Preservation Act, the FAA and the NPS are also seeking public comment on the potential of the draft ATMP to cause adverse effects to historic properties.

DATES:

Comment Period

Comments must be received on or before August 11, 2023, by 11:59 MDT. Comments will be received on the NPS Planning, Environment and Public Comment System (PEPC) website. The Park's website link is *https://parkplanning.nps.gov/BandelierATMP.*

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Public Meeting Date

The meeting will be held virtually at the date and time listed below. Questions will be accepted during the public meeting through a separate form. The link for the question form is provided below. Questions submitted for the public meeting are not considered an official comment as part of the public comment period. Attendees are encouraged to submit their comments for the official record via the link provided in the Comment Period Dates section.

- Tuesday, July 25, 2023, from 5:30 p.m.–7:00 p.m. MDT
- Meeting Livestream: *https://www.youtube.com/watch?v=yDJdlvGTWFs*
- Submit questions for the meeting: *https://forms.gle/qzyhAWKCmV8eEWuG6*

ADDRESSES: The meetings will be held virtually. Members of the public who wish to participate in the virtual meetings can access the live meeting through the link provided in this notice on the day of the event. The meeting link will also be available at *Air Tour Management Plan √ Federal Aviation Administration (faa.gov)* and on the NPS PEPC website for the Park.

Contact: Any request for reasonable accommodation related to providing public comments on the draft ATMP or draft EA should be sent to the person listed on the Park's PEPC sites. The U.S. Department of Transportation and U.S. Department of the Interior are committed to providing equal access to the meetings for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sandra Fox, (202) 267–0928, *Sandra.Y.Fox@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA is issuing this notice pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations contained in Title 14, Code of Federal Regulations (CFR) Part 136, Subpart B, National Parks Air Tour Management and the National Environmental Policy Act (NEPA) of 1969 and the Council of Environmental Quality NEPA Implementing Regulations (40 CFR parts 100–1508). The objectives of the ATMP are to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural resources, cultural resources, and visitor experiences of the Parks as well as on tribal lands. The FAA and the NPS are inviting comment from the public, Federal and state agencies, tribes, and other interested parties on the draft ATMP and draft EA for Bandelier National Monument.

The FAA and the NPS have determined that the ATMP constitutes a Federal undertaking subject to compliance with Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800). The FAA and the NPS have consulted with tribes, State and Tribal Historic Preservation Officers, and other interested parties to identify historic properties and assess the potential effects of the ATMP on them.

The meetings will be open to the public. Members of the public who wish to observe the virtual meetings can access the livestream from the link and websites provided in this notice.

The FAA and the NPS request that comments be as specific as possible in response to the draft ATMP and draft EA. All written comments become part of the official record. Written comments on the draft ATMP and draft EA can be submitted via PEPC or sent to the mailing addresses provided on the Park's PEPC sites. Comments will not be accepted by fax, email, or any other way than those specified above.

Issued in Washington, DC, on July 7, 2023.

Sandra Fox,

Environmental Protection Specialist, FAA Office of Environment & Energy.

[FR Doc. 2023–14715 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Non-Rulemaking Action at Northeast Alabama Regional Airport (GAD) Located in Gadsden, Alabama

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

ACTION: Request for public comments.

SUMMARY: Under the provisions of the United States Code (U.S.C.), notice is being given that the FAA is considering a request from the Northeast Alabama Regional Airport Authority to waive the requirement that a 150± acre parcel of airport property, located at Northeast Alabama Regional Airport (GAD) in Gadsden, Alabama, be used for aeronautical purposes.

DATES: Comments must be received on or before *August 11, 2023.*

ADDRESSES: The public may send comments using the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 601–664–9901.
- *Mail:* Brian Hendry, Community Planner, Jackson Airports District Office, 100 West Cross St., Suite B, Jackson, MS 39208–2307.
- *Hand Delivery:* Deliver to mail address above between 8 a.m. and 5 p.m. Monday through Friday, excluding Federal holidays.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Northeast Alabama Airport Authority Attn: Mr. Lee Roberts at the Northeast Alabama Airport, 185 Ira Gray Drive, Gadsden, Alabama 35904.

FOR FURTHER INFORMATION CONTACT: Brian Hendry, Community Planner, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9897. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Northeast Alabama Regional Airport Authority to release approximately 150± acres of airport property at Northeast Alabama Regional Airport (GAD) under the provisions of 49 U.S.C. 47153(c). The FAA determined that the request to release property at Northeast Alabama Regional Airport (GAD) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice. The property will be purchased by The City of Gadsden, AL, and then donated to a private entity, Ultra Safe Nuclear Corporation (USNC), to locate a non-nuclear production facility. The property is located on the southwest area of airport property adjacent and north of Steele Station Road. The airport will receive fair market value for the property, and the net proceeds from the sale of this property will be used for maintenance and improvements at the Northeast Alabama Regional Airport (GAD).

The proposed use of this property is compatible with airport operations. Copies of the Property Appraisal, Boundary Survey, Legal Description are available for examination by appointment. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Northeast Alabama Regional Airport, 185 Ira Gray Drive, Gadsden, AL 35904.

Issued in Jackson, Mississippi, on July 6, 2023.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2023–14684 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0203; FMCSA–2011–0089; FMCSA–2014–0213; FMCSA–2015–0115; FMCSA–2016–0007; FMCSA–2018–0057; FMCSA–2019–0027]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on June 10, 2023. The exemptions expire on June 10, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2010–0203, FMCSA–2011–0089, FMCSA–2014–0213, FMCSA–2015–0115, FMCSA–2016–0007, FMCSA–2018–0057, or FMCSA–2019–0027) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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 (Federal Docket Management System), which can be reviewed at

https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices, the comments are searchable by the name of the submitter.

II. Background

On May 1, 2023, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 34916). The public comment period ended on June 30, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the seven renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of June 10, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 34916):

John D. Archer (MO)
Brian Brown (PA)
Marvin Fender (CO)
Daniel Gast (KS)
Denton Hineline (WA)
Steve Hunsaker (ID)
Bryan R Jones (PA)

The drivers were included in docket number FMCSA–2010–0203, FMCSA–2011–0089, FMCSA–2014–0213, FMCSA–2015–0115, FMCSA–2016–0007, FMCSA–2018–0057, or FMCSA–2019–0027. Their exemptions were applicable as of June 10, 2023 and will expire on June 10, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–14722 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in Appendix A to Part 391—Medical Advisory Criteria, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2023–0009]

Grant Programs for Urbanized Areas: Program Guidance and Application Instructions, Proposed Circular

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of proposed circular and request for comments.

SUMMARY: The Federal Transit Administration (FTA) is seeking public comment on a new, consolidated circular entitled, ''Grant Programs for Urbanized Areas: Program Guidance and Application Instructions'' which consolidates and replaces the circulars for the Urbanized Area Formula Grants Program, the State of Good Repair Grants Program, and the Urbanized Area formula component of the Grants for Buses and Bus Facilities Program. The update and consolidation of the circulars incorporate provisions from the Fixing America's Surface Transportation (FAST) Act; the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL); the Uniform Administrative Requirements for Federal awards to non-Federal entities; and current FTA policies and procedures.

DATES: Comments must be submitted by September 11, 2023. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA–2023–0009. All electronic submissions must be made to the U.S. Government electronic site at *https://www.regulations.gov/.*

(1) *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for submitting comments.

(2) *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

(3) *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) *Fax:* 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2023–0009) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to *https://www.regulations.gov/* including any personal information provided and will be available to internet users. For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents and comments received, go to *https://www.regulations.gov/* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Latrina Trotman, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E46–301, Washington, DC 20590, phone: (202) 366–2328, or email, *Latrina.Trotman@dot.gov.* For legal questions, Jerry Stenquist, Office of Chief Counsel, same address, Room E56–314, phone: (202)

493–8020, or email, *Jerry.Stenquist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

The Federal Transit Administration's (FTA) proposed circular titled, ''Grant Programs for Urbanized Areas: Program Guidance and Application Instructions'' is a consolidation of guidance for the administration and preparation of grant applications for the Urbanized Area Formula Grants Program under 49 U.S.C. 5307 (FTA Circular C 9030.1), State of Good Repair Grants Program under 49 U.S.C. 5337 (FTA Circular C 5300.1), and the Urbanized Area component of the Grants for Buses and Bus Facilities Program under 49 U.S.C. 5339(a) (FTA Circular C 5100.1). Additionally, this circular incorporates provisions of the FAST Act (Pub. L. 114–94) and BIL (Pub. L. 117–58) and includes program-specific guidance for these formula programs. Additional requirements for all grant programs are identified in FTA's Award Management Requirements Circular C 5010.1. The proposed circular is posted on *https://www.regulations.gov* in Docket FTA–2023–0009.

The proposed circular consolidates and summarizes programmatic information, streamlines pre-existing guidance from the three program circulars, and reduces duplication of information provided between the Urbanized Area Formula Programs circular and FTA's other topic-specific circulars, including by moving certain text applicable to most or all of FTA's grant programs to FTA's Award Management Requirements Circular C 5010.1. Furthermore, the proposed circular clarifies a number of policy issues as interpreted and applied by FTA. These clarifications address topics in the existing program circulars, including: reallocations or transfers of apportionments; consolidation of grants to insular areas; intermodal use of formula funds; eligible projects and activities for each formula program; operating assistance limitations and exceptions; capital cost of contracting; the role of transportation network companies in providing public transportation services; period of availability to obligate funds flexed to the FTA formula programs from the Federal Highway Administration (FHWA); planning requirements; pre-award authority; and requirements pertaining to fares charged to seniors and persons with disabilities.

II. Chapter-by-Chapter Analysis

A. Chapter I—Introduction and Background

Due to the consolidation of the three program circulars, definitions and program descriptions were compared and revised for consistency with proposed updates to Circular C 5010.1E ''Award Management Requirements,'' Circular C 9040.1G ''Formula Grants for Rural Areas,'' and Circular C 9070.1G ''Enhanced Mobility of Seniors and Individuals with Disabilities.'' FTA proposes to amend the definitions section for consistency, clarification, and to reflect changes to statute and other authorities. Specifically, FTA has updated the following terms:

- ''Capital Asset'' is modified for consistency with Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB), Financial Accounting Standards Board (FASB), and FTA's Uniform System of Accounts.
- ''Clean Fuel Bus'' now recognizes other low or no emissions technologies besides full electric and hybrid electric buses.
- ''Fleet Management Plan'' is modified to explicitly clarify that the management plan includes an inventory of all rolling stock.
- ''Mobility Management'' is modified to explicitly exclude the operation of public transportation service as a mobility management activity, consistent with the definition in 49 U.S.C. 5302.
- ''Rehabilitate'' is expanded to include applicability to facilities and amended to clarify that not all rehabilitative activities must be a restoration to original condition to more accurately reflect the term's broad usage in 49 U.S.C. 5337 and 5339.
- ''Urbanized Area'' is updated to reflect changes in designation by the Census Bureau, which no longer utilizes ''Urbanized Area'' but ''Urban Area'' (UZA), as defined by the Secretary of Commerce.
- ''Useful Life'' now applies to real property and other capital assets. Because useful life depends on depreciation and estimated time in use, consideration of useful life changes according to the type of asset in question.

B. Chapter II—Programs Overview

FTA proposes several updates to its program guidance within Chapter II to reflect statutory and regulatory changes, including information disseminated by the Census Bureau. The proposed circular further addresses administrative procedure in apportioning and distributing funds, including the roles of designated recipients (DR), state recipients, subrecipients, and private contractors.

The proposed circular includes information related to private contractors such as transportation network companies (TNCs) and taxi service; these entities are not eligible subrecipients under sections 5307, 5337 and 5339(a) but may be contracted to perform public transit activities through eligible recipients for shared-ride on-demand service to the general public or to a segment of the public for certain eligible transit services.

C. Chapter III—General Program Information

The proposed circular contains several updates regarding the apportionment of program funds for Sections 5307, 5337, and 5339 to reflect statutory and regulatory changes. Specifically, the percentages of Section 5307 funds available for state safety oversight programs and small transit intensive cities have been amended. Furthermore, the proposed circular includes additional formula factors for apportionments for the Section 5307 and 5339 programs. Chapter III also clarifies and highlights recipients' flexibility to reallocate or transfer apportionments, including consolidating formula program funds for use in insular areas. Lastly, the circular sets forth the circumstances in which certain human resources and training supportive services are eligible costs under 49 U.S.C. 5314(b)(4) to assist individuals in the enrollment and completion of workforce training, including child and dependent care, tools, work clothing, costs of apprenticeship, and required pre-employment training.

D. Chapter IV—Eligible Projects and Requirements

The proposed circular contains several changes to the programs' eligibility and requirements to include additional flexibilities provided by law. Specifically, FTA proposes additional flexibility in financial assistance eligibility, namely that Section 5307

funds that are apportioned to a UZA based on service metrics for a variety of public transportation modes may be expended on eligible activities for other modes. Additionally, funds apportioned under 49 U.S.C. 5340 may be expended on the same activities that are eligible under Section 5307 for each recipient. FTA further clarifies that Section 5337 funds apportioned to a UZA based on the presence of high intensity motorbus may also be expended on high intensity fixed guideway projects. Lastly, the proposed circular explains that while funds are apportioned based on the presence of high intensity motorbus and high intensity fixed guideway segments in revenue service for at least seven years, the funds may be used on any part of a recipient's fixed guideway or high intensity motorbus system.

The proposed circular includes guidance on additional flexibility in program eligibility provided by the FAST Act and BIL, including additional eligibility for a recipient to use up to 20 percent of its annual Section 5307 apportionment at the capital project 80/20 Federal/local share ratio to pay for complementary paratransit services, providing for innovative procurement tools for acquiring rolling stock, accounting for the expansion of transit facilities to accommodate clean fuel vehicles, and providing funding for programs addressing public transportation human resource needs.

The proposed circular reemphasizes procedural safeguards in accounting for the capital cost of contracting to prevent recipients from utilizing this method for publicly funded assets and thus receiving reimbursement for the asset from two or more public sources and potentially resulting in overlapping federal interests. The capital cost of contracting language is also modified to clarify the exclusion of Section 5337 and 5339(a) funds from use toward capital cost of contracting except for what is specifically eligible under both programs (*e.g.,* leasing of vehicles, equipment, and facilities for Sections 5337 and 5339, and maintenance for Section 5337).

FTA also proposes updating language to account for multiple modifications to the special operations rule for large UZAs due to statutory changes, including applicability of vehicles in demand-response service and an exception to the special rule that allows up to a ten percent greater operating assistance cap for recipients. In addition, FTA updated the list of operating expenses eligible for FTA operating assistance, including public transportation security operating assistance projects. The proposed circular also modifies the list of eligible activities for Job Access and Reverse Commute (JARC) projects.

E. Chapter V—Planning & Project Development

The proposed circular amends various provisions regarding planning and project development, including clarifications of how transportation improvement programs and statewide transportation improvement programs should address projects outside of UZAs but within the metropolitan planning area. The circular explicitly identifies MPOs as the responsible party for the development and adoption of the metropolitan transportation plan and transportation improvement program, clarifying that each must cover a minimum twenty-year horizon and four-year horizon, respectively.

FTA proposes to remove language in the Section 5339 circular that restricts application for funds directly to designated recipients only on behalf of subrecipients, as section 3017 of the FAST Act authorized state and local government entities operating fixed route bus service to be direct recipients of FTA grants, regardless of their status as designated recipients.

The proposed section titled ''Program of Projects and Public Participation Requirements'' clarifies that recipients must submit the appropriate documentation demonstrating recipients complied with a local project selection process through an amendment to the relative Transportation Improvement Program (TIP)/Statewide Transportation Improvement Program (STIP). The section also clarifies that recipients must provide FTA with documentation of their amendment of a Program of Projects, TIP, and STIP to reflect applicable changes when the recipient proposes an award modification deviating from an applicable Program of Projects, TIP, or STIP.

In the section titled, ''Availability of FHWA Flexible Funds for Transit Projects,'' FTA describes how recipients may flex funds from FHWA to FTA, which may only be used for activities eligible under both the transferring and receiving programs. Funds transferred to FTA must be administered under applicable FTA program requirements. This section includes a list of FHWA programs from which funds may be flexed for planning, capital, or operating projects, and has been updated to reflect changes in the law since the last circular update.

The proposed circular seeks to further reduce the administrative burden on recipients by consolidating reporting requirements, including allowing information reporting on the spending toward associated transit improvements, required under 49 U.S.C. 5307(c)(1)(K), to be included within other federally-required reports.

Under ''Public Transportation Security Projects,'' the proposed circular notes that some security projects may also satisfy the separate requirement that each recipient in a UZA of 200,000 people or more use 0.75 percent of Section 5307 funds on safety projects.

In the section on ''Transit Asset Management Requirements,'' FTA updated its guidance to reflect changes in 49 U.S.C. 5326 and 49 CFR 625, including clarifying the relationship between transit asset management (TAM) plans and recipients' use of Section 5337 funds.

In the section titled ''Public Transportation Safety Requirements,'' the proposed circular contains updates reflecting statutory and regulatory updates, including 49 U.S.C. 5329 requirements for a National Public Transportation Safety Plan (49 CFR 670), requirements for Public Transportation Safety Certification Training Programs (49 CFR 672), requirements for Public Transportation Agency Safety Plans (49 CFR 673), and requirements for State Safety Oversight Agencies (49 CFR 674).

The circular includes proposed language addressing pre-award authority, including providing automatic pre-award authority for certain types of capital expenses. The proposed circular also clarifies that recipients may incur capital expenses under pre-award authority for projects that clearly meet the criteria for a categorical exclusion under 23 CFR 771.118, though they do so at their own risk.

F. Chapter VI—Program Management and Administrative Requirements

FTA proposes updates to reflect statutory changes and to expand the explanation of various certifications required for the Urbanized Area Formula Grant Programs. Specifically, the proposed circular more comprehensively describes the requirement and circumstances under which Section 5307 recipients must charge seniors and persons with disabilities during nonpeak hours no more than half the peak fare.

G. Appendices

FTA proposes consolidating and revising various appendices within the three formula circulars as they are shown within the new proposed circular. As such, appendices have been relabeled, updated, or removed. For

example, the proposed ''Appendix B: Preventive Maintenance (Section 5307 and 5337)'' was previously Appendix E in the current Section 5307 circular (C 9030.1).

After a review and consideration of the comments provided on this proposed circular, FTA will publish the final circular on its website.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–14793 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0141]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: REEL TIME (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0141 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0141 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0141, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel REEL TIME is:

—*Intended Commercial Use of Vessel:* ''UNinspected Passenger Vessel Charter.''

—*Geographic Region Including Base of Operations:* ''Oregon.'' (Base of Operations: Newport, OR)

—*Vessel Length and Type:* 28′6″ Motor Outboard

The complete application is available for review identified in the DOT docket as MARAD 2023–0141 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0141 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14747 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0142]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: END GAME (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0142 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0142 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0142, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel END GAME is:

—*Intended Commercial Use of Vessel:* ''Private Vessel Charters, Passengers Only.''

—*Geographic Region Including Base of Operations*: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: Redondo Beach, CA)

—*Vessel Length and Type:* 47′6″ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2023–0142 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0142 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14736 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0138]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KADE THOMAS (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0138 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0138 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0138, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KADE THOMAS is:

—*Intended Commercial Use of Vessel:* ''Summer seasonal sport fishing charters, water taxi, and sightseeing trips.''

—*Geographic Region Including Base of Operations:* ''Alaska.'' (Base of Operations: Valdez, AK)

—*Vessel Length and Type:* 30′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0138 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0138 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14740 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0150]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LLANTA BONITA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0150 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0150 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0150, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LLANTA BONITA is:

—*Intended Commercial Use of Vessel:* ''taking less than 12 passengers out for sport fishing.''

—*Geographic Region Including Base of Operations:* ''California (Base of Operations: Pittsburg, CA)''

—*Vessel Length and Type:* 38′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0150 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0150 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14743 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0136]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ANGELIQUE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0136 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0136 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0136, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ANGELIQUE is:

—*Intended Commercial Use of Vessel:* ''1-hour excursions be reservation in immediate vicinity of Saugatuck river—up and down the river ''

—*Geographic Region Including Base of Operations:* ''Connecticut'' (Base of Operations: Greenwich, CT)

—*Vessel Length and Type:* 28′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0136 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0136 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14734 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0147]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MAKE BIG HAPPEN (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this

notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0147 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0147 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0147, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MAKE BIG HAPPEN is:

—*Intended Commercial Use of Vessel:* ''Recreational Charters''

—*Geographic Region Including Base of Operations:* ''North Carolina, South Carolina, Florida, Delaware, Georgia, New Jersey, New York, Pennsylvania, Virginia, Maryland (Base of Operations: Miami, FL)''

—*Vessel Length and Type:* 78.8′ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2023–0147 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0147 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14744 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0145]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: FINS UP (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0145 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0145 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0145, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel FINS UP is:

—*Intended Commercial Use of Vessel:* ''Boat Charters''
—*Geographic Region Including Base of Operations:* ''Florida, Georgia, South Carolina, North Carolina (Base of Operations: Miami, FL)''
—*Vessel Length and Type:* 82.5′ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2023–0145 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0145 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14738 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0144]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ESTRELLA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0144 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0144 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0144, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ESTRELLA is:

—*Intended Commercial Use of Vessel:* ''Carry up to 6 passengers for commercial purposes. This includes excursions of sightseeing around the coastal waters of Puerto Rico.''

—*Geographic Region Including Base of Operations:* ''Puerto Rico.'' (Base of Operations: Fajardo, PR)

—*Vessel Length and Type:* 29′3″ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0144 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0144 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14737 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0140]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: AVENTURA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0140 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0140 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0140, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel AVENTURA is:

—*Intended Commercial Use of Vessel:* ''day charters for snorkeling, sailing, whale watching and dinner cruises.''
—*Geographic Region Including Base of Operations:* ''Hawaii.'' (Base of Operations: Lahaina, HI)
—*Vessel Length And Type:* 45′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0140 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0140 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14735 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0152]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: GOING COASTAL (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0152 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0152 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0152, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel GOING COASTAL is:

—*Intended Commercial Use of Vessel:* ''Salmon and Trout Fishing Charter Service on Lake Michigan''
—*Geographic Region Including Base of Operations:* ''Wisconsin (Base of Operations: Kewaunee, WI)''
—*Vessel Length and Type:* 38′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0152 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0152 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14739 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023-x0143]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: TIMEOUT (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0143 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0143 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0143, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel TIMEOUT is:

—*Intended Commercial Use of Vessel:* ''Private Vessel Charters, Passengers Only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: Newport Beach, CA)

—*Vessel Length and Type:* 58′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0143 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0143 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14748 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0151]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: REEL HABIT (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0151 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0151 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0151, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov* .

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel REEL HABIT is:

—*Intended Commercial Use of Vessel:* ''Coastwise. Charter fishing on Lake Michigan.''

—*Geographic Region Including Base of Operations:* ''Wisconsin (Base of Operations: Kenosha, WI)''

—*Vessel Length and Type:* 33′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0151 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0151 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14746 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0148]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ZIMOVIA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0148 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0148 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0148, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov*.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ZIMOVIA is:

—*Intended Commercial Use of Vessel:* ''Day or overnight sailing and sight-seeing trips with a maximum of 12 passengers.''

—*Geographic Region Including Base of Operations:* ''Alaska (Base of Operations: Ward Cove, AK)''

—*Vessel Length and Type:* 46.3′ Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2023–0148 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0148 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14750 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0135]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KAOHA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0135 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0135 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0135, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KAOHA is:

Intended Commercial Use of Vessel: ''Private Vessel Charter, Passenger only.''

Geographic Region Including Base of Operations: ''Hawaii'' (Base of Operations: Honolulu, HI)

Vessel Length and Type: 44′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2023–0135 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0135 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14741 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0137]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LEGACY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0137 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0137 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0137, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the

intended service of the vessel LEGACY is:

Intended Commercial Use of Vessel: ''Harbor and coastal cruises.''

Geographic Region Including Base of Operations: ''North Carolina, South Carolina, Georgia, Virginia, Florida.'' (Base of Operations: Morehead City, NC)

Vessel Length and Type: 47′2″ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0137 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0137 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14742 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0149]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SEA VILLA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0149 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0149 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0149, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461 Washington, DC 20590. Telephone 202–366–0903, Email *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SEA VILLA is:

—*Intended Commercial Use of Vessel:* ''Recreational charter service out of Jamestown, Rhode Island either on a crewed (with a captain) or a bareboat (captained by charterer) basis''

—*Geographic Region Including Base of Operations:* ''Rhode Island,

Massachusetts, Connecticut, New York, New Hampshire, Maine (Base of Operations: Jamestown, RI)''

—*Vessel Length and Type:* 48.4′ Sail Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2023–0149 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0149 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14749 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0139]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PURE VIDA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 11, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2023–0139 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2023–0139 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0139, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PURE VIDA is:

—*Intended Commercial Use of Vessel:* ''Pleasure Sailing, Skipper Chartering, Chartering.''

—*Geographic Region Including Base of Operations:* ''Washington, Oregon, California.'' (Base of Operations: San Francisco, CA)

—*Vessel Length and Type:* 44′ Sailboat

The complete application is available for review identified in the DOT docket as MARAD 2023–0139 at *http://www.regulations.gov.* Interested parties may comment on the effect this action

may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2023–0139 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–14745 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0005; Notice 1]

Forest River Bus, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Forest River Bus, LLC (Forest River) has determined that certain model year (MY) 2009–2022 Starcraft school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 222, *School Bus Passenger Seating And Crash Protection.* Forest River filed a noncompliance report dated December 21, 2022, and subsequently petitioned NHTSA (the ''Agency'') on January 17, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Forest River's petition.

DATES: Send comments on or before August 11, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a

Federal Register notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Daniel Lind, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7235.

SUPPLEMENTARY INFORMATION:

I. Overview: Forest River determined that certain MY 2009–2022 Starcraft school buses do not fully comply with paragraph S5.2.3 of FMVSS No. 222, *School Bus Passenger Seating and Crash Protection* (49 CFR 571.222).

Forest River filed a noncompliance report dated December 21, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Forest River petitioned NHTSA on January 17, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Forest River's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 3,192 of the following Starcraft school buses manufactured between April 3, 2009, and May 20, 2020, are potentially involved:

1. MY 2013–2016 Starcraft Allstar MVP
2. MY 2016 Starcraft Allstar XL
3. MY 2019 Starcraft Allstar XL
4. MY 2016–2018 Starcraft Allstar XL MVP
5. MY 2009–2010 Starcraft MFSAB/Prodigy
6. MY 2012–2018 Starcraft MFSAB/Prodigy
7. MY 2013 Starcraft MPV/Prodigy
8. MY 2015–2018 Starcraft MPV/Prodigy
9. MY 2009–2010 Starcraft Prodigy
10. MY 2009–2022 Starcraft Quest
11. MY 2011 Starcraft Quest XL
12. MY 2014–2016 Starcraft Quest XL

III. Noncompliance: Forest River explains that the noncompliance is that the subject school buses are equipped with a restraining barrier that does not meet the barrier forward performance requirement provided by S5.2.3 of FMVSS No. 222.

IV. Rule Requirements: Paragraph S5.2.3 of FMVSS No. 222 includes the requirements relevant to this petition. When force is applied to the restraining barrier in the same manner as specified in S5.1.3.1 through S5.1.3.4 for seating performance tests, the restraining barrier must meet the following requirements:

(a) The restraining barrier force/deflection curve shall fall within the zone specified in Figure 1;

(b) Restraining barrier deflection shall not exceed 356 mm; (for computation of (a) and (b) the force/deflection curve describes only the force applied through the upper loading bar, and only the forward travel of the pivot attachment point of the loading bar, measured from the point at which the initial application of 44 N of force is attained.)

(c) Restraining barrier deflection shall not interfere with normal door operation;

(d) The restraining barrier shall not separate from the vehicle at any attachment point; and

(e) Restraining barrier components shall not separate at any attachment point.

V. Summary of Forest River's Petition: The following views and arguments presented in this section, ''V. Summary of Forest River's Petition,'' are the views and arguments provided by Forest River. They have not been evaluated by the Agency and do not reflect the views of the Agency. Forest River describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Forest River begins by stating that since the subject frontal barrier was first certified in 2008, the same design has been used and has been produced by the same supplier. Forest River states since the frontal barrier was certified to comply with the FMVSS No. 222 performance requirements, it ''has not changed in any material respect.'' Furthermore, Forest River contends that NHTSA has previously conducted compliance testing on the subject frontal barriers and found them to be compliant with the S5.2.3 requirements.

In September of 2020, a third-party contractor for NHTSA, Applus IDIADA KARCO Engineer, LLC (KARCO) conducted compliance testing for the performance of MY 2019 Starcraft Quest school bus in accordance with the requirements of S5.2.3 of FMVSS No. 222. The testing conducted by Karco shows that the force/deflection curve of the passenger side restraining barrier did not comply with S5.2.3(a) resulting in a formal inquiry by NHTSA. In June 2021, Forest River responded to NHTSA's inquiry and contended that KARCO did not conduct the September 2020 compliance testing in accordance with the test procedure required by FMVSS No. 222. Specifically, Forest River believes that KARCO's setup of the test apparatus ''caused it not to be sufficiently rigid and this caused the apparatus to inappropriately contort and change direction during testing.'' Forest River contends that in the video of KARCO's testing provided by NHTSA, the ''movement of the test apparatus can clearly be seen.'' Forest River notes that NHTSA has provided videos of KARCO's testing, and requested a copy of KARCO's test report but NHTSA has not provided one. Therefore, Forest River states, it is not able to evaluate how KARCO documented its findings

In November 2021, Forest River retained an external testing facility to reevaluate the subject frontal barriers. Forest River states that this testing indicated that the subject frontal barriers complied with the S5.2.3 requirements and Forest River provided the test report and videos to NHTSA. NHTSA requested additional information from Forrest River in March 2022 and Forest River provided a partial response in April 2022 and provided the remainder in May 2022. Forest River maintained its position that the KARCO testing was not conducted in accordance with the FMVSS No. 222 test procedures ''due to insufficient rigidity of the testing apparatus that allowed for inappropriate movement of the upper loading bar.'' Forest River says that this movement can be seen in the video provided by KARCO. Thus, according to Forest River, KARCO's testing is not an accurate indicator of compliance.

Forest River states that it met with NHTSA on December 2, 2022, at the Agency's request. At the meeting, NHTSA informed Forest River that the frontal barrier tested by the external facility retained by Forest River was not the same size as the frontal barrier that was tested by KARCO. Forest River states that its external testing facility unintentionally evaluated the incorrect size frontal barrier. The external testing facility evaluated a 34-inch frontal barrier when it intended to evaluate a 30-inch frontal barrier. Forest River says, ''NHTSA indicated that a recall of vehicles equipped with the 30-inch frontal barrier would be necessary.'' At the time Forest River did not have test data to show that the 30-inch frontal barrier was compliant. As a result, Forest River says it ''acquiesced to NHTSA's demand'' and filed a noncompliance report on December 21, 2022.

Meanwhile, Forest River says that it made arrangements to evaluate a 30-inch frontal barrier, and testing took place in early January 2023. Forest River states that the test results show that the 30-inch frontal barrier complied with the FMVSS No. 222 performance requirements and absorbed nearly 125 percent of the energy absorption requirements. Forest River provided a

copy of the test report with its petition which can be found on the docket. Forest River states that video of the testing is available to NHTSA to view.

Forest River notes that no production changes are necessary because it ceased manufacturing the subject school buses in June 2020.

According to Forest River, the purpose of S5.2.3 of FMVSS No. 222, ''is to mitigate against the effects of injury if an occupant is thrown against the restraining barrier in a crash.''

Forest River states that its testing conducted in January 2023 demonstrates that the subject frontal barrier complies with the relevant performance requirements because it indicates that the 30-inch frontal barrier ''substantially exceeds'' the S5.2.3 performance requirement. Forest River contends that its January 2023 testing was conducted in accordance with S5.2.3, ''thus any noncompliance in this product (to the extent one actually exists) is inconsequential to motor vehicle safety.'' Forest River says that the testing apparatus used to conduct the testing ''was sufficiently robust so that it remained stable during operation.'' Forest River says that because the testing apparatus was sufficiently rigid, ''the path of each of the loading bars remained laterally centered and maintained a straight path to the barrier and with minimal deflection, as the test procedure requires.''

Forest River notes that NHTSA has previously stated that one of its considerations when evaluating inconsequentiality petitions is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[1] According to Forest River, the subject noncompliance does not cause an enhanced risk to an occupant of an affected school bus because ''the data clearly and unambiguously demonstrates that the frontal barriers meet the performance requirements of S5.2.3.'' Forest River contends that its petition is unlike other inconsequential noncompliance petitions that involve a noncompliance with a performance requirement because there is no performance-related concern for the subject noncompliance, as shown by Forest River's test results.

Forest River adds that no complaints, reports, or claims of any type have been received concerning the performance of the subject frontal barriers. Forest River acknowledges that NHTSA does not consider the absence of injuries or complaints when determining the inconsequentiality of a noncompliance, however, Forest River believes that ''this dearth of data in this case, when coupled with all of the other relevant data and information is instructive given the long field history of the subject barriers.''

To conduct the January 2023 testing, Forest River states that the test facility obtained four frontal barriers with the correct specifications directly from the supplier and selected one of those frontal barriers to evaluate.

Forest River claims that NHTSA ''has not accounted for the deviations in the test procedure utilized by its own testing contractor.'' Forest River states that S5.2.3 of FMVSS No. 222 requires the barrier performance forward testing to be conducted in accordance with the conditions stated in S5.1.3.1–S5.1.3.4 of FMVSS No. 222. Forest River contends that KARCO did not set up the test apparatus in accordance with FMVSS No. 222 when evaluating the subject frontal barrier on behalf of NHTSA. Forest River says that KARCO's setup caused the test apparatus ''to not be sufficiently rigid or stable and thus allowed it to inappropriately contort during testing.'' According to Forest River, the test setup allowed the upper loading bar ''to change course dramatically by veering to the left and pushing the force of the loading bar on the left side of the barrier.'' Therefore, Forest River says, ''It did not remain laterally centered against the barrier as required by S5.1.3.1 and S5.1.3.3 and deflected more than the 25 mm allowable by S6.5.1.'' which ''prevented the upper loading bar's longitudinal axis from maintaining a transverse plane as required S5.1.3.1 and S5.1.3.3.''

Forest River concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject buses that Forest River no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant buses under their control after Forest River notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–14725 Filed 7–11–23; 8:45 am]

BILLING CODE 4910–59–P

[1] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance;* 78 FR 35355 (June 12, 2013).

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2023, and ending on September 30, 2023, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 3 per centum per annum.

DATES: Rates are applicable July 1, 2023 to September 30, 2023.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <*http://www.treasury.gov*> or <*http://www.federalregister.gov*>.

FOR FURTHER INFORMATION CONTACT: Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal

regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545]. In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2023–14762 Filed 7–11–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Internal Revenue Service (IRS) Information Collection Request

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 14234, Compliance Assurance Process (CAP) Application and Sub-forms (A, B, C, D).

DATES: Comments should be received on or before August 11, 2023, 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.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Compliance Assurance Process (CAP) Application and (sub-forms A, B, C, D).

OMB Number: 1545–NEW.

Form Number: 14234 and sub-forms A, B, C and D.

Abstract: Form 14234, Compliance Assurance Process CAP Application is strictly a voluntary program available to Large Business and International Division (LB&I) taxpayers that meet the selection criteria. CAP is a real-time review of completed business transactions during the CAP year with the goal of providing certainty of the tax return within 90 days of the filing. Taxpayers in CAP are required to be cooperative and transparent and report all material issues and items related to completed business transactions to the review team.

Current Actions: There are no changes to the forms at this time. However, the agency is making an administrative change to remove the Form 14234 and associated sub-forms from being approved under Office of Management and Budget (OMB) Control number 1545–1800; and is requesting a New OMB Control number for these forms.

Type of Review: Request for a new OMB Control Number.

Affected Public: Businesses or other for-profit organizations.

Taxpayer Burden:

Form 14234:

Estimated Number of Respondents: 125.

Estimated Time per Response: 12 hours 40 minutes.

Estimated Total Annual Burden Hours: 1,584.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–14680 Filed 7–11–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Veterans Benefits Administration.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) proposes to revise the system of records titled ''Loan Guaranty Fee Personnel and Program Participant Records—VA'' (17VA26). This system contains information pertaining to Fee Personnel and Program Participants who are authorized to conduct VA property appraisals and those that process, close, fund and guaranty VA loans respectively. The previous system of records has expired and is being republished in full here.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Loan Guaranty Fee Personnel and Program Participant Records—VA'' (17VA26). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Colin Deaso Assistant Director PMDI, *Colin.Deaso@va.gov,* 202–632–8796 Loan Guaranty Service (26), VA Central Office, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: VA Loan Guaranty System(s) contain information pertaining to Fee Personnel and Program Participants who are authorized to conduct VA business for the purpose of delivering the home loan benefit to Veterans. VA delegates authority to these participants and the information assists VA Loan Guaranty in conducting oversight of these participants. The modification is necessary as VA Loan Guaranty transitions from physical paper information to electronic storage of this information. Additionally, the previous system of records has expired, necessitating republishing. Document images of paper records will be transitioned to data elements to be stored electronically in tables.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on June 5, 2023 for publication.

Dated: July 7, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Loan Guaranty Fee Personnel and Program Participant Records—VA (17VA26).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records on non-suspended fee personnel and program participants are maintained in Department of Veterans Affairs (VA) information systems, VA Central Office, (VA) regional offices, medical and regional office centers, VA offices, and VA centers having loan guaranty activities. Records of non-supervised lenders and subsidiaries of supervised lenders having authority to process VA loans automatically are maintained in VA information systems, at VA Central Office, VA regional offices, medical and regional office centers, VA offices, and VA centers having loan guaranty activities. The National Control List of suspended program participants and fee personnel are maintained in VA information systems, at VA Central Office, at VA regional offices, medical and regional office centers, VA offices, and VA centers having loan guaranty activities. A Master Control list is maintained only at VA Central Office or in VA information systems. Address locations are listed in Appendix 1 at the end of this document.

SYSTEM MANAGER(S):

Colin Deaso, Assistant Director, PMDI, Loan Guaranty Service (26), *Colin.Deaso@va.gov,* 202–632–8796, VA Central Office, Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, chapter 3, section 210(c)(1); title 38, United States Code, chapters 21 and 37.

PURPOSE(S) OF THE SYSTEM:

VA Loan Guaranty System(s) contain information pertaining to Fee Personnel and Program Participants who are authorized to conduct VA business for the purpose of delivering the home loan benefit to Veterans. VA delegates authority to these participants and the information assists VA Loan Guaranty conduct oversight of these participants. The modification is necessary as VA Loan Guaranty transitions from physical paper information to electronic storage of this information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Fee personnel who may be paid by VA or by someone other than VA (*i.e.,* appraisers, compliance inspectors, management brokers, and loan closing and fee attorneys who are not VA employees but are paid for actual case work performed), and

(2) Program participants (*i.e.,* property management brokers and agents, real estate sales brokers and agents, participating lenders and their employees, title companies whose fees are paid by someone other than VA, and manufactured home dealers, manufacturers, and manufactured home park or subdivision owners).

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Applications by individuals to become VA-approved fee basis appraisers, compliance inspectors, fee attorneys, or management brokers; These applications include information concerning applicant's name, address, email address, business phone numbers, Social Security numbers or taxpayer identification numbers, and professional qualifications,

(2) Applications by non-supervised lenders for approval to close guaranteed loans without the prior approval of VA (automatically), applications by non-supervised lender for the nomination and recommendation of VA Credit Underwriter; These applications include information concerning the applicant's name, address, email address, business phone numbers, Social Security numbers, relevant employment history and experience and other necessary qualifications,

(3) Applications by lenders supervised by Federal or State agencies for designation as supervised automatic lenders in order that they may close loans without the prior approval (automatically) of VA; applications for automatic approval or designation (*i.e.,* (2) and (3)) contain information concerning the corporate structure of the lender, professional qualifications of the lender's officers or employees, financial data such as profit and loss statements and balance sheets to insure the firm's financial integrity;

(4) Identifying information such as names, business names (if applicable), addresses, email addresses phone numbers, and professional resumes of corporate officials or employees,

(5) Corporate structure information on prior approval lenders, participating real estate sales brokers or agents, developers, builders, investors, closing attorneys, or other program participants as necessary to carry out the functions of the Loan Guaranty Program,

(6) Records of performance concerning appraisers, compliance inspectors, management brokers, or fee attorneys on both firms and individual employees,

(7) Records of performance including disciplinary proceedings, concerning program participants, *e.g.,* lenders, investors, real estate brokers, builders, fee appraisers, compliance inspectors, and developers both as to the firm and to individual employees maintained on an as-needed basis to carry out the functions of the Loan Guaranty Program;

(8) The National Control Lists which identify suspended real estate brokers and agents, lenders and their employees, investors, manufactured home dealers and manufacturers, and builders or developers; and

(9) A master record of the National Control List (*i.e.,* Master Control List) which includes information regarding parties previously suspended but currently reinstated to participation in the Loan Guaranty Program in addition to all parties currently suspended.

RECORD SOURCE CATEGORIES:

The information and the records in this system are obtained from the applicant, lenders, brokers and builder/sellers, credit and financial reporting agencies, an applicant's credit sources, depository institutions and employers, independent auditors and accountants, hazard insurance companies, taxing authorities, title companies, fee personnel, business and professional organizations, other VA records, other Federal, State, and local agencies, and other parties of interest involving VA guaranteed, insured, vendee or direct loans or specially adapted housing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Congress: To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. Data breach response and remediation, for VA: To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records,· (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. Data breach response and remediation, for another Federal agency: To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement: To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. DoJ for Litigation or Administrative Proceeding: To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. Contractors: To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. OPM: To the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. EEOC: To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. FLRA: To the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. MSPB: To the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. NARA: To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. Governmental Agencies, for VA Hiring, Security Clearance, Contract, License, Grant: To a Federal, state, local, or other governmental agency maintaining civil or criminal violation records, or other pertinent information, such as employment history, background investigations, or personal or educational background, to obtain information relevant to VA's hiring, transfer, or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

13. Federal Agencies, for Employment: To a Federal Agency, except the United States Postal Service, or to the District of Columbia government, in response to its request, in connection with that agency's decision on the hiring, transfer, or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by that agency.

14. State or Local Agencies, for Employment: To a state, local, or other governmental agency, upon its official request, as relevant and necessary to that agency's decision on the hiring, transfer, or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by that agency. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

15. Federal Agencies involved in Loan Origination: Other Groups Involved in Housing and Home Loan Origination: Identifying information and the reasons for the suspension of builders, developers, lenders, lender employees, real estate sales brokers and agents, manufactured home dealers, manufacturers, or other program participants suspended from participation in the Loan Guaranty Program may be disclosed to the Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), United States Department of Agriculture (USDA), Farmers Home Administration, or other Federal, State, or local agencies to enable that agency to consider imposing similar restrictions on these suspended persons and/or firms.

16. Other Groups Involved in Housing and Home Loan Origination: Identifying information and the performance records of qualified fee appraisers and compliance inspectors, including any information regarding their termination, non-redesignation, temporary suspension, or resignation from participation in the Loan Guaranty Program, including the records of any disciplinary proceedings, may be disclosed to Federal, State, or local, or non-government agencies, businesses, and professional organizations, to permit these entities to employ, continue to employ or contract for the services of qualified fee personnel, monitor the performance of such personnel, and take any appropriate disciplinary action.

17. Business Associations: Other Groups Involved in Housing and Home Loan Origination: Identifying information as well as other information such as educational background and former business associations may be disclosed to business and professional organizations in order for VA to obtain these organizations' recommendations concerning the performance, character, professional activities, and other qualifications relating to participation in the Loan Guaranty Program.

18. Treasury, to Report Earnings as Income:

To the Department of the Treasury to report calendar year earnings of $600 or more for income tax reporting purposes.

19. Participants in Loan Guaranty Programs: Identifying information and the reasons for suspension of individuals and/or firms suspended from the Loan Guaranty Program may be disclosed to other participants in the Loan Guaranty Program in order that to decide whether or not to employ, or continue to employ, or contract with a suspended individual or firm.

20. Individual Participants in Loan Guaranty Programs: Identifying information and information concerning the performance of contractors, fee personnel, and other program participants may be released to consumer reporting agencies in order that VA may obtain information on their prior dealings with other Government agencies and so that other Government agencies may have the benefit of VA's experience with such parties.

21. General Services Administration (GSA): The names and addresses of debarred or suspended Loan Guaranty Program participants as well as the effective date and term of the exclusion may be disclosed to the General Services Administration to compile and maintain the ''Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.''

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records on fee personnel and program participants are kept in a VA participant information system indefinitely, kept on paper documents, maintained in file folders and as electronically scanned documents. The National Control List of suspended program participants is also maintained in electronic storage within the VA datacenter. Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

All records are retrievable through the user interface of the information system or indexed or cross-indexed by the name of the individual or the firm.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records pertaining to fee personnel must be retained until imaged and uploaded into the VA system of record and as outlined in the records control schedule. Destruction of all the above records is accomplished by either shredding or burning. Electronic VA information systems records are kept indefinitely.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to VA participant information systems is managed through identity and access manager controls. VA working spaces and record file storage areas is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service or other VA security personnel. Sensitive files involving pending suspension, or a legal action are stored in separate locked files, and or electronically scanned and securely stored in VA information systems.

RECORD ACCESS PROCEDURES:

An individual seeks access to records maintained under his or her name on this system may write or call Department of Veterans Affairs Regional Office, Loan Guaranty Service. Address locations are listed in VA Appendix 1 at the end of this document. However, some of the records in this system are exempt from the record access requirements under 5 U.S.C. 552a(k). To the extent that records in this system of records are not subject to exemption, they are subject to access. A determination as to whether an exemption applies shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

(See Record access procedures above.)

NOTIFICATION PROCEDURES:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or wants to determine the contents of such record should submit a written request Department of Veterans Affairs Loan Guaranty Service. Addresses for VA Regional Loan Centers may be found in VA Appendix 1 at the end of this document or VA.gov. All inquiries must reasonably identify the benefit or system of records involved, *i.e.;* Loan Guaranty. Inquiries should include the individual's full name, VA file number or loan number. If the VA file or loan number is not available, then as much of the following information as possible should be forwarded: Address of the property secured by a VA- guaranteed, insured or portfolio loan, owner or former owners of the property, name of lender and lender's loan number, branch of service, service number or social security number. Some of the records in this system are exempt from the notification requirement under 5 U.S.C. 552a(k). To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination as to whether an exemption applies shall be made at the time a request for notification is received.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Department of Veterans Affairs has exempted this system of records from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2), 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H) and (I), and 5 U.S.C. 552a(f).

Reasons for exemptions: The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Loan Guaranty Service to prevent subjects of internal audit investigations for potential fraud and abuse in the VA Loan Guaranty Program from frustrating the investigatory process, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information and to avoid endangering these sources.

HISTORY:

78 FR 71727, November 29, 2013.

VA Appendix 1: VA Regional Offices with Loan Activities. Veterans should call the telephone numbers listed to obtain information or assistance with the VA Home Loan program. For more information or to search for a facility near you by jurisdiction, visit *http://www.benefits.va.gov/homeloans/contact_rlc_info.asp* or call (877) 827–3702. Please send address and telephone number corrections to: Department of Veterans Affairs, Loan Guaranty Service (26), 810 Vermont Ave. NW, Washington, DC 20420. Atlanta Regional Loan Center Jurisdiction for Georgia, North Carolina, South Carolina, Tennessee: Office: 1700 Clairmont Road, Decatur, GA 30033–4032 Mail: P.O. Box 100023, Decatur, GA 30031–7023 Cleveland Regional Loan Center Jurisdiction for Connecticut, Delaware, Indiana, Maine, Massachusetts, Michigan, New

Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont: Office and Mail: 1240 East, Ninth Street, Cleveland, OH 44199 Denver Regional Loan Center Jurisdiction for Alaska, Colorado, Idaho, Montana, Oregon, Utah, Washington, Wyoming: Office: 155 Van Gordon Street, Lakewood, CO 80228 Mail: Box 25126, Denver, CO 80225 Houston Jurisdiction for Arkansas, Louisiana, Oklahoma, Texas: Office and Mail: 6900 Almeda Road, Houston, TX 77030–4200 Phoenix Jurisdiction for Arizona, California, New Mexico, Nevada, Hawaii, Guam, American Samoa, Commonwealth of the Northern Marianas: Office and Mail: 3333 N Central Avenue, Phoenix, AZ 85012–2402 Roanoke Jurisdiction for District of Columbia, Kentucky, Maryland, Virginia, West Virginia: Office: 210 First Street, Roanoke, VA 24011 Mail: 116 N Jefferson Street, Roanoke, VA 24016 St. Paul Jurisdiction for Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin: Office and Mail: 1 Federal Drive, Ft. Snelling, St. Paul, MN 55111–4050 St. Petersburg Jurisdiction for Alabama, Florida, Mississippi, Puerto Rico, U.S. Virgin Islands: Office and Mail: 9500 Bay Pines Boulevard, Bay Pines, FL 33744.

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Part II

Environmental Protection Agency

40 CFR Parts 80 and 1090
Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 1090

[EPA–HQ–OAR–2021–0427; FRL–8514–02–OAR]

RIN 2060–AV14

Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, the Environmental Protection Agency (EPA) is required to determine the applicable volume requirements for the Renewable Fuel Standard (RFS) for years after those specified in the statute. This action establishes the applicable volumes and percentage standards for 2023 through 2025 for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. This action also establishes the second supplemental standard addressing the judicial remand of the 2016 standard-setting rulemaking. Finally, this action makes several regulatory changes to the RFS program, including changes related to the treatment of biogas and other modifications to improve the program's implementation. At this time EPA is not finalizing proposed provisions related to the generation of RINs from qualifying renewable electricity.

DATES: This rule is effective on September 11, 2023, except for amendatory instruction 30, which is effective on February 1, 2024, and amendatory instructions 41 and 42, which are effective on April 1, 2024. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of July 12, 2023. The incorporation by reference of ASTM D1250, ASTM D4442, ASTM D4444, ASTM D6866, and ASTM E870 was approved by the Director of the Federal Register as of July 1, 2022. The incorporation by reference of ASTM D4057, ASTM D4177, ASTM D5842, and ASTM D5854 was approved by the Director of the Federal Register as of April 28, 2014. The incorporation by reference of ASTM E711 was approved by the Director of the Federal Register as of July 1, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0427. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material is not available on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dallas Burkholder, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4766; email address: *RFS-Rulemakings@epa.gov.*

SUPPLEMENTARY INFORMATION: Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels (*e.g.,* gasoline and diesel fuel), renewable fuels (*e.g.,* ethanol, biodiesel, renewable diesel, and biogas). Potentially affected categories include:

Category	NAICS[a] codes	Examples of potentially affected entities
Industry	112111	Cattle farming or ranching.
Industry	112210	Swine, hog, and pig farming.
Industry	221210	Manufactured gas production and distribution, and distribution of renewable natural gas (RNG).
Industry	324110	Petroleum refineries.
Industry	325120	Biogases, industrial (*i.e.,* compressed, liquefied, solid), manufacturing.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Other basic organic chemical manufacturing.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710	Petroleum bulk stations and terminals.
Industry	424720	Petroleum and petroleum products merchant wholesalers.
Industry	454319	Other fuel dealers.
Industry	562212	Landfills.

[a] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this final action. This table lists the types of entities that EPA is now aware could potentially be affected by this final action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this final action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this final action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

A red-line version of the regulatory language that incorporates the changes in this action is available in the docket for this action.

I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements of the Energy Policy Act of 2005 (EPAct), which were codified in Clean Air Act (CAA) section 211(o). The statutory requirements were subsequently amended by the Energy Independence and Security Act of 2007 (EISA). The statute sets forth annual, nationally applicable volume targets for each of the four categories of renewable fuel for the years shown below.

TABLE I–1—YEARS FOR WHICH THE STATUTE PROVIDES VOLUME TARGETS

Category	Years
Cellulosic biofuel	2010–2022
Biomass-based diesel	2009–2012
Advanced biofuel	2009–2022
Renewable fuel	2006–2022

For calendar years after those for which the statute provides volume targets, the statute directs EPA to determine the applicable volume targets in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program for prior years and an analysis of specified factors:

- The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply; [1]
- The impact of renewable fuels on the energy security of the U.S.; [2]
- The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel); [3]
- The impact of renewable fuels on the infrastructure of the U.S., including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel; [4]
- The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; [5] and
- The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.[6]

While this statutory requirement does not apply to cellulosic biofuel, advanced biofuel, and total renewable fuel until compliance year 2023, it applied to biomass-based diesel (BBD) beginning in compliance year 2013. Thus, EPA established applicable volume requirements for BBD volumes for 2013–2022 in prior rulemakings.[7] This action establishes the volume targets and applicable percentage standards for cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel for 2023–2025. We are also promulgating a number of regulatory changes intended to improve the operation of the RFS program. This action describes our rationale for the final volume targets and regulatory changes. Responses to comments received from stakeholders on the proposed rule can be found in the associated Response to Comments (RTC) document.

Low-carbon fuels are an important part of reducing greenhouse gas (GHG) emissions in the transportation sector, and the RFS program is a key federal policy that supports the development, production, and use of low-carbon, domestically produced renewable fuels. This ''Set rule'' marks a new phase for the program, one which takes place following the period for which the Clean Air Act enumerates specific volume targets. We recognize the important role that the RFS program can play in providing ongoing support for increasing production and use of renewable fuels, particularly advanced and cellulosic biofuels. For a number of years, RFS stakeholders have provided input on what policy direction this action should take, and the Agency greatly appreciates the sustained and constructive input we have received from stakeholders. We appreciate the many comments we received, not only on the volumes that we proposed on December 30, 2022, but also on the

[1] CAA section 211(o)(2)(B)(ii)(I).
[2] CAA section 211(o)(2)(B)(ii)(II).
[3] CAA section 211(o)(2)(B)(ii)(III).
[4] CAA section 211(o)(2)(B)(ii)(IV).
[5] CAA section 211(o)(2)(B)(ii)(V).
[6] CAA section 211(o)(2)(B)(ii)(VI).
[7] See, *e.g.,* 87 FR 39600 (July 1, 2022), establishing the 2022 BBD volume requirement.

analyses we conducted and the proposed regulatory changes. EPA looks forward to continued engagement with stakeholders on the RFS program.

A. Summary of the Key Provisions of This Regulatory Action

1. Volume Requirements for 2023–2025

Based on our analysis of the factors required in the statute, and in coordination with the Departments of Agriculture and Energy, we are establishing the volume targets for three years, 2023 to 2025, as shown below. We proposed setting standards for three years to strike an appropriate balance between improving the program by providing increased certainty over a multiple number of years and recognizing the inherent uncertainty in longer-term projections. After reviewing stakeholder comments and considering the statutory deadlines for establishing RFS volume obligations we have determined that this three-year timeframe remains appropriate. In addition to the volume targets for 2023–2025, we are also completing our response to the D.C. Circuit Court of Appeals' remand of the 2016 RFS annual rule in *Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (2017) (''*ACE*'') by establishing a supplemental volume requirement of 250 million gallons of renewable fuel for 2023. This ''supplemental standard'' follows the implementation of a 250-million-gallon supplement for 2022 in a previous action.[8]

TABLE I.A.1–1—FINAL VOLUME TARGETS

[Billion RINs] [a]

	2023	2024	2025
Cellulosic biofuel	0.84	1.09	1.38
Biomass-based diesel [b]	2.82	3.04	3.35
Advanced biofuel	5.94	6.54	7.33
Renewable fuel	20.94	21.54	22.33
Supplemental standard	0.25	n/a	n/a

[a] One RIN is equivalent to one ethanol-equivalent gallon of renewable fuel. Throughout this preamble, RINs are generally used to describe total volumes in each of the four categories shown above, while gallons are generally used to describe volumes for individual types of biofuel such as ethanol, biodiesel, renewable diesel, etc. Exceptions include BBD (which is always given in physical volumes) and biogas (which are always given in RINs).

[b] The BBD volumes are in physical gallons (rather than RINs).

As discussed above, the statute requires that we analyze a specified set of factors in making our determination of the appropriate volume requirements. Many of those factors, particularly those related to economic and environmental impacts, are difficult to analyze in the abstract. As a result, we needed to identify a set of renewable fuel volumes to analyze prior to determining the volume requirements that would be appropriate to establish under the statute. To this end, we began by using a subset of the statutory factors that are most closely related to production and consumption of renewable fuel, and other relevant factors, to identify ''candidate volumes.'' We then analyzed the impacts of the candidate volumes on the other economic and environmental factors that the statute lists. The derivation of these candidate volumes is discussed in Section III. Section IV discusses the analysis of those candidate volumes for the other economic and environmental factors. Finally, Section VI discusses our conclusions regarding the appropriate volume requirements to establish in light of all of the analyses that we conducted and all of the comments we received from stakeholders at the public hearing on January 10 and 11, 2023, written comments, letters, and other meetings and input provided to us.

The cellulosic biofuel volumes we are finalizing in this rule for 2024 and 2025 are lower than the proposed volumes as they do not include cellulosic biofuel from eRINs (all eRIN volumes projected in the proposal have been zeroed out in this final rule). The decreases in the cellulosic biofuel volumes for 2024 and 2025 are partially offset by increases in the projected volumes of non-eRIN cellulosic biofuel (*i.e.,* CNG/LNG derived from biogas and ethanol from corn kernel fiber) for all three years. The advanced and total biofuel volumes reflect both these changes in cellulosic biofuel, and our new, higher projections of the availability of BBD relative to the proposed rule. The final volumes also reflect our decision to maintain a 15.0 billion gallon implied conventional biofuel requirement for all three years (plus an additional 250 million gallon supplemental volume requirement for 2023 to complete EPA's response to the *ACE* remand), consistent with the statutory level from 2015 through 2022, rather than increasing this volume to 15.25 billion gallons in 2024 and 2025 as we originally proposed.

The volume targets that we are establishing in this action have similar status as those in the statute for the years shown in Table I–1. Specifically, they are the basis for the calculation of percentage standards applicable to producers and importers of gasoline and diesel unless they are waived in a future action using one or more of the available waiver authorities in CAA section 211(o)(7).

2. Applicable Percentage Standards for 2023–2025

For years after 2022,[9] the CAA gives EPA authority to establish percentage standards for several years simultaneously and at the same time that it establishes the volume targets for those years. Consistent with the proposed rule, we are finalizing the percentage standards for 2023, 2024, and 2025. The percentage standards corresponding to the volume requirements from Table I.A.1–1 are shown below.

[8] See 87 FR 39600, 39628–29 (July 1, 2022) (discussing approaches for responding to the *ACE* remand).

[9] Although the statute requires EPA to establish applicable percentage standards annually by November 30 of the previous year, as discussed in Section II, this requirement does not apply to years after 2022. CAA section 211(o)(3).

TABLE I.A.2–1—PERCENTAGE STANDARDS

	2023 (%)	2024 (%)	2025 (%)
Cellulosic biofuel	0.48	0.63	0.81
Biomass-based diesel	2.58	2.82	3.15
Advanced biofuel	3.39	3.79	4.31
Renewable fuel	11.96	12.50	13.13
Supplemental standard	0.14	n/a	n/a

The formulas used to calculate the percentage standards in 40 CFR 80.1405(c) require that EPA specify the projected volume of exempt gasoline and diesel associated with exemptions for small refineries granted because of disproportionate economic hardship resulting from compliance with their obligations under the program under CAA section 211(o)(9). For this rulemaking, we have projected that there are not likely to be small refinery exemptions (SREs) for 2023–2025 based on the information available at the present time. This issue is discussed further in Section VII along with the total nationwide projected gasoline and diesel consumption volumes used in the calculation of the percentage standards.

As in previous annual standard-setting rulemakings, the applicable percentage standards for 2023–2025 are added to the regulations at 40 CFR 80.1405(a).

3. Carryover RINs and Gasoline and Diesel Projections

EPA assesses the availability of carryover RINs in determining the volumes under our set authority. Carryover RINs provide important benefits to the RFS program, including compliance flexibility to individual obligated parties, liquidity to the RIN market, and mitigation against market impacts that could occur if RIN generation in any year exceeds or falls short of the required volume of renewable fuel.

In establishing RFS volume requirements for 2020 and 2021 that were equal to the number of RINs generated in those years, EPA intended that compliance with the renewable volume obligations would not impact the total number of available carryover RINs. Since that time, obligated parties have submitted compliance reports for the 2020 and 2021 compliance years. These reports revealed that there exist significant differences between the volume of obligated fuel reported by obligated parties, on the one hand, and the volumes of gasoline and diesel from EIA that EPA used to calculate the percentage standards for 2020 and 2021 on the other. Higher-than-expected volumes of obligated fuel in 2020 and 2021 meant that the number of RINs that must be retired for these compliance years was higher than EPA anticipated. As discussed in greater detail in Section III.C.4 and RIA Chapter 1.10, compliance with these obligations has required the use of significant quantities of carryover RINs, resulting in effectively no available carryover RINs for several renewable fuel categories going into the 2022 compliance year. In an effort to better project the volume of obligated fuel in future years, we are adjusting how we project the obligated volume of gasoline and diesel in 2023–2025. These changes are discussed further in Section VII.A and RIA Chapter 1.11.

4. Regulatory Provisions for eRINs

The 2023–2025 proposed rule included a comprehensive program governing the generation of RINs from renewable electricity produced from biogas that is used in electric vehicles. The proposed ''eRIN'' regulations laid out a comprehensive approach to eRIN generation and program implementation, and included details on multiple design elements, including the entities that would be eligible to generate eRINs, approaches to ensure the prevention of double-counting of such RINs, and data requirements for valid eRIN generation. In addition to the proposed eRIN program, the December 2022 proposal also described several alternative approaches to how such a program could be established and implemented.

In response to the proposal, we received a wide variety of comments on all aspects of the proposed eRIN program. Stakeholder positions on the proposed eRIN provisions varied greatly, with some stakeholders strongly supportive of EPA finalizing the proposed provisions, some who sought significant modifications to the program while remaining broadly supportive of eRINs conceptually, and others who opposed, for a variety of reasons, EPA moving forward to finalize a new eRIN framework. In light of the significant number of comments provided by stakeholders on EPA's proposed eRIN approach, and the complexity of many of the topics raised in those comments, and the consent decree deadline on other portions of the rule, we are not finalizing the proposed revisions to the eRIN program at this time. We have adjusted the final volume requirements for this rulemaking to reflect this decision.

The large number of comments EPA received on our proposed eRIN language, representing a range of perspectives, is a clear signal that stakeholders care a great deal about a potential eRIN program. As discussed in the proposed rule, EPA's policy goal in developing an eRIN program would be to support one of the objectives of the RFS program, which is to increase the use of renewable transportation fuels, in particular cellulosic biofuels, over time, consistent with the statute's focus on growth in this category. Moreover, an eRIN program would support Congress' goals of reducing GHGs and increasing energy security,[10] both of which can be affected by the design of that program. We anticipate that an eRIN program may also have the ancillary effect of incentivizing increased electrification of the vehicle fleet.

Given strong stakeholder interest in the proposed eRIN program and the range of potential benefits that the program could provide, EPA will continue to work on potential paths forward for the eRIN program. To that end, EPA will continue to assess the comments received on the proposal. EPA will also seek additional input from stakeholders to inform potential next steps.

[10] Congress stated that the purposes of EISA, in which the RFS2 program was enacted, included ''[t]o move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, building, and vehicles, to promote research on and deploy greenhouse gas capture and storage options, and to improve the energy performance of the Federal Government, and for other purposes.'' Public Law 110–140 (2007). See also, CAA 211(o)(1) (definitions of qualifying biofuel include requirement that they reduce greenhouse gas emissions by specified amounts relative to a petroleum baseline).

5. Other Regulatory Changes

We also proposed regulatory changes in several areas to strengthen EPA's implementation of the RFS program. Stakeholders provided valuable comment on these proposed modifications, and EPA is finalizing many of the proposed changes with modifications based on that stakeholder input. The regulatory changes we are finalizing in this rulemaking include:

- Modification of the regulatory provisions for biogas-derived renewable fuels to ensure that biogas is produced from renewable biomass and used as a transportation fuel and to allow for the use of biogas as a biointermediate.
- Enhancements to the third-party oversight provisions including engineering reviews, the RFS quality assurance program, and annual attest engagements.
- Establishing a deadline for third-party engineering reviews for three-year registration updates.
- Updating procedures for the apportionment of RINs when feedstocks qualifying for multiple D-codes (*e.g.,* D3 and D5) are converted to biogas simultaneously in an anaerobic digester.
- Revising the conversion factor in the formula for calculating the percentage standard for BBD to reflect increasing production volumes of renewable diesel.
- Flexibility for RIN generation.
- Reiterating the prohibition on generating RINs for fuels not used in the covered location.
- Flexibilities for the generation and maintenance of records for waste feedstocks.
- Clarifying the definition of fuel used in ocean-going vessels.
- Modifications to the bonding requirements for foreign parties that participate in the RFS program.
- Other minor changes and technical corrections.

Each of these regulatory changes is discussed in greater detail in Section X.

We proposed but are not finalizing at this time the following regulatory changes:

- A definition of produced from renewable biomass (discussed more in Section X.K).
- The proposed changes to the requirements for the separation of RINs.[11]

We need more time to consider the public comments received on these proposed changes.

[11] See 87 FR 80707 (December 30, 2022).

B. Environmental Justice

In considering environmental justice in this action, we have sought to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities with environmental justice concerns in the United States.

This rule is projected to reduce GHG emissions, which would benefit communities with environmental justice concerns who are disproportionately impacted by climate change due to a greater reliance on climate sensitive resources such as localized food and water supplies which may be adversely impacted by climate change, as well as having less access to information resources that would enable them to adjust to such impacts.[12] [13] The manner in which the market responds to the provisions in this rule could also have non-GHG impacts. For instance, replacing petroleum fuels with renewable fuels will also have potential impacts on water and air exposure for communities living near biofuel and petroleum facilities given the potential for biofuel facilities to have increased emissions of certain criteria pollutants in local communities, resulting in a potential corresponding decrease in exposure for local communities surrounding petroleum facilities with less petroleum production. Replacing petroleum fuels with renewable fuels is also projected to increase food and fuel prices, the effects of which will be disproportionately borne by the lowest income individuals. We received extensive comment, primarily on the proposed eRIN provisions, from community-based and environmental justice stakeholders expressing concern over the use of biogas, particularly from landfills and concentrated animal feeding operations, in the RFS. While EPA is not finalizing eRIN provisions as part of this rule, we will continue to engage with stakeholders on impacts of the RFS program related to biogas use and expansion. Our assessment of potential economic impacts on communities with environmental justice concerns is provided in Section IV.E.3.

[12] USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

[13] USGCRP, 2016: The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment. Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp. *http://dx.doi.org/10.7930/J0R49NQX.*

C. Impacts of This Rule

CAA section 211(o)(2)(B)(ii) requires EPA to assess a number of factors when determining volume targets for calendar years after those shown in Table I–1. These factors are described in the introduction to this Executive Summary, and each factor is discussed in detail in the Regulatory Impact Analysis (RIA) accompanying this rule. Congress provided EPA flexibility by enumerating factors to consider without rigidly mandating the specific steps of analysis that EPA should take or how EPA should weigh the various factors. For two of these statutory factors—costs and energy security—we provide monetized impacts for the purpose of comparing costs and benefits. For the other statutory factors, we are either unable to quantify impacts, or we provide quantitative estimated impacts that nevertheless cannot be easily monetized. Thus, we are unable to quantitatively compare all of the evaluated impacts of this rulemaking. Regardless of whether we monetized a factor or not, however, EPA did consider all statutory factors in this rulemaking, and we find that the final volumes are appropriate under the set authority when we balance all the relevant factors. Table ES–1 in the RIA provides a list of all of the impacts that we assessed, both quantitative and qualitative. Our assessments of each factor, including the impacts on costs, energy security, climate, and other environmental and economic factors, are summarized in Section IV of this document. Additional detail for each of the assessed factors is provided in RIA Chapters 4 through 10.

Monetized impacts on cost and energy security are summarized in Table I.C–1 below using two discount rates (3 percent and 7 percent) following federal guidance on regulatory impact analyses.[14] Summarized impacts are calculated in comparison to a No RFS baseline as discussed in Section III.D and are summed across all three years of standards.

[14] Office of Management and Budget (OMB) *Circular A–4.* Sept. 17, 2003.

TABLE I.C–1—CUMULATIVE MONETIZED FUEL COSTS AND ENERGY SECURITY BENEFITS OF 2023–2025 STANDARDS WITH RESPECT TO THE NO RFS BASELINE

[2022$, millions]

	Discount rate	
	3%	7%
Excluding Supplemental Standard:		
Fuel Costs	$23,218	$22,366
Energy Security Benefits	524	505
Including 2023 Supplemental Standard:		
Fuel Costs	23,846	22,994
Energy Security Benefits	536	517

D. Policy Considerations

This rule comes at a time when substantial policy developments and global events are affecting the transportation energy and environmental landscape in unprecedented ways. The Inflation Reduction Act (IRA) makes historic investments in a range of areas, including in clean vehicle and alternative fuel technologies, that will help decarbonize the transportation sector and bolster a variety of clean technologies. Provisions in the IRA will accelerate many of the pollution-reducing shifts that are already occurring as part of a broad energy transition in the transportation, power generation, and industrial sectors. Major new incentives in legislation for cleaner vehicles, carbon capture and sequestration, biofuels infrastructure, clean hydrogen production, and other areas have effectively shifted the policy ground—and it is on this new ground that EPA must develop forward-looking policies and implement existing regulatory programs, including the RFS program.

Even as the IRA bolsters future investments in clean transportation technologies, EPA recognizes that maintaining and strengthening energy security in the near term remains an important policy consideration. The war in Ukraine has significantly destabilized multiple global commodity markets, including petroleum markets, and continues to have impacts in these areas. In addition, global reductions in refining capacity, which accelerated during the pandemic, have further tightened the market for transportation fuels like gasoline and diesel. Programs like the RFS program help boost energy security by supporting domestic production of fuels and diversifying the fuel supply, and it has played an important role in incentivizing the production of low-carbon alternatives. At the same time, EPA recognizes that the transition to such alternatives will take time, and that during this transition maintaining stable fuel supplies and refining assets will continue to be important to achieving our nation's energy and economic goals as well as providing consistent investments in a skilled and growing workforce.

It is against this backdrop that EPA is establishing RFS volume requirements for the next three years in this action. The volumes that EPA is finalizing continue to support ongoing growth in renewable fuels, recognizing their benefits, and based on EPA's consideration of the multiple factors identified in the statute. Beyond providing continued support for fuels like ethanol and biodiesel, this action provides a strong market signal for the continued growth of low carbon advanced biofuels, including ''drop-in'' renewable diesel, and cellulosic biofuels. Renewable fuels are a key policy tool identified by Congress for decarbonizing the transportation sector, and this rulemaking sets the stage for further growth and development of low-carbon biofuels in the coming years.

In the proposed rule EPA requested comment on multiple volume scenarios, including limiting the implied volume of conventional renewable fuel to 15.0 billion gallons in 2024 and 2025, and establishing RFS volumes with an implied volume of conventional renewable fuel at or below the E10 blendwall. The volumes we are finalizing in this rule reflect the scenario on which we requested comment wherein we are limiting the implied volume of conventional renewable fuel to 15.0 billion gallons in 2024 and 2025. We have also included an analysis of the projected impact of the other alternative scenarios in RIA Chapter 10.6.

In the proposal EPA also sought public comment on not only the elements of the proposed rule, but also asked for responses to questions on various topics that intersect with the larger energy transition and energy security issues discussed above. For example, several commenters provided responses on the topic of whether and how EPA should consider incorporating some measure of carbon intensity into the RFS program. Many of the commenters who weighed in on this topic pointed to various non-federal ''clean fuel programs'' that are being implemented in different states and jurisdictions and urged EPA to consider changes that would make the RFS program more closely resemble those programs. Other commenters suggested that the RFS program does not lend itself well to such changes and that an entirely new framework would be preferable if EPA were to pursue such carbon intensity-related changes. Many different stakeholders provided suggestions and perspectives on lifecycle analysis tools and approaches, and these comments helped inform the discussion and analysis in this rulemaking package related to the assessment of environmental impacts of renewable fuels.

Multiple commenters also provided input on what RFS-related policies EPA could pursue to incorporate new pathways and technologies into the program. For example, some commenters urged EPA to take steps to integrate carbon capture and storage (CCS) opportunities related to the production of biofuels into the RFS program, while other commenters cited various reasons why EPA should refrain from taking such steps. Similarly, EPA received comment from different stakeholders that took various positions on whether and how hydrogen should be integrated into the RFS program. Many stakeholders also shared their perspectives on how the RFS program can and should be used to further support the development of sustainable aviation fuels (SAF).

EPA appreciates commenters' input on these other policy topics raised in the proposal. We will continue to engage stakeholders on the topics we raised in the December 2022 proposal and welcome continued input on RFS policy options and opportunities. These

comments will be used to inform future rulemaking decisions.

EPA also recognizes the concerns that diverse stakeholders have shared about the potential impacts from implementation of the RFS program. Stakeholders have also shared concerns about RIN market dynamics, including RIN price volatility. EPA understands that maintaining and strengthening energy security in the near term remains a policy imperative. The war in Ukraine continues to affect multiple global commodity markets and reductions in global refining capacity, which accelerated during the pandemic, have further tightened the market for transportation fuels like gasoline and diesel. Programs like the RFS program help boost energy security by supporting domestic production of fuels and diversifying the fuel supply, and the RFS has played an important role in incentivizing the production of low-carbon alternatives. At the same time, EPA recognizes that maintaining stable fuel supplies and refining assets continues to be important to achieving our nation's energy and economic goals and retaining a skilled and necessary workforce.

Given these factors, and because we are starting a new phase of the RFS program where Congress has not prescribed volumes and with prospective standards covering three years, careful administration of the RFS program and monitoring of its impacts is critical. EPA intends to use all available data and tools to monitor the implementation of the RFS program and its impacts. EPA is committed to successful implementation of the program, and the Clean Air Act provides EPA the tools to adjust course if appropriate. EPA will monitor a set of indicators that will help us assess the impact from implementation of the final Set rule volumes to determine whether EPA should consider adjusting those volumes or taking other action. These indicators could include, but are not limited to, the following:

- The prices of biofuels relative to the petroleum-based fuels they displace;
- The cost to consumers of transportation fuel;
- The prices of biofuel feedstocks and their impacts on food prices to consumers;
- Changes in domestic energy supply that affect domestic energy security;
- Changes in domestic energy demand that negatively impact the energy security of a State, region, or the U.S.;
- The stability of fuel supplies and domestic refining assets;
- The potential for RIN deficits and noncompliance by obligated parties;
- Signs of market manipulation in RIN markets;
- RIN prices, generally, as an indicator of how the RFS program is functioning, including significant increases in RIN prices;
- Various other impacts of the RFS standards, as appropriate.

In addition to these indicators, EPA will also monitor the volatility in D6 (''conventional'') RIN prices. Specifically, as part of our oversight of program implementation, EPA intends to consider whether the following volatility measure is met:

- A 50% deviation in the monthly average D6 RIN price, relative to the 6-month rolling average D6 RIN price, evaluated at the end of the calendar month and based on EPA data or third-party data, as EPA determines appropriate. EPA would also consider whether changes in RFS standards, other related EPA actions, or court decisions have occurred which affect the relevance of this measure at a particular time.

Based on EPA's assessment of these indicators, the Administrator may then consider using the statutory authorities available under the Clean Air Act to adjust the volume standards or make other programmatic changes. For example, EPA has authority to reconsider its volumes and standards, and has shown its willingness to do so when extreme and unforeseen events require it, such as revising the 2020 and 2021 volumes to account for changes due to the COVID–19 pandemic. For years after 2022, CAA section 211(o)(2)(B)(ii) establishes the processes, criteria, and standards for setting the applicable annual renewable fuel volumes. That provision provides that the Administrator shall, in coordination with the Secretary of Energy and the Secretary of Agriculture and after public notice and opportunity for comment, determine the applicable volumes of each biofuel category specified based on a review of implementation of the program during the calendar years specified in the tables in CAA section 211(o)(2)(B)(i) and an analysis of the multiple factors, as described in Section II.B of this action.[15] Those factors include, for example, the impact of the use of renewable fuels on the cost to consumers of transportation, and the impact of the use of renewable fuel on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices. As EPA has stated in previous actions, we generally do not think it is appropriate to reconsider and revise previously finalized RFS standards. Revising standards has the potential to decrease market certainty and create unnecessary market disruption (which could in turn exacerbate some of the indicators listed above). At the same time, given the new phase of the program, we want to reiterate our commitment to monitoring various measures to ensure successful program implementation and consider adjusting course if appropriate.

Apart from EPA's authority to reconsider our RFS standards, CAA section 211(o)(7)(A) provides the Administrator the discretion to waive the national quantity of renewable fuel required under the RFS program, upon petition by one or more States, or by any party subject to the requirements of the RFS program. The Administrator may also waive the volume requirements on his own motion. The Administrator may do so only after consultation with the Secretary of Agriculture and the Secretary of Energy and after public notice and opportunity for comment.[16] A waiver may be issued if the Administrator determines that implementation of the RFS volume requirements would severely harm the economy or environment of a State, region, or the United States, or that there is an inadequate domestic supply. EPA has previously interpreted this waiver authority in prior responses to requests for a waiver of the RFS volume requirements[17] and in annual rulemakings.[18] EPA will monitor as appropriate the criteria we have laid out previously in order to determine whether we should adjust volume requirements using existing waiver authority under the statute. These criteria, for example, include whether, under the severe economic harm waiver authority, the harm is occurring with a high degree of certainty, the harm is severe, and whether the harm is to an entire state, region, or the United States.

In addition to monitoring the program's implementation for the

[15] EPA may consider using an expedited process if EPA determines such process is appropriate and consistent with statutory authority.

[16] EPA may consider using an expedited process if EPA determines such process is appropriate and consistent with the statutory waiver authority.

[17] See 73 FR 47168 (August 13, 2008) and 77 FR 70752 (November 27, 2012).

[18] See, *e.g.,* Renewable Fuel Standard Program—Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes: Response to Comments, EPA–420–R–19–018; see also *American Fuel & Petrochemical Manufacturers* v. *EPA,* 937 F.3d 559, 580 (D.C. Cir. 2019) (upholding EPA's interpretation of the severe economic harm waiver authority in the 2018 RFS rulemaking).

potential need to adjust the standards, EPA will also strengthen existing efforts, and work to develop new tools, to help us monitor and oversee the RIN market. EPA welcomes ideas from stakeholders impacted by the RFS program on how to improve market oversight capabilities, including ideas on how EPA's compliance regulations could be enhanced.

EPA closely monitors the RIN market, and we take seriously claims of RIN market manipulation. In March 2016, EPA entered into a Memorandum of Understanding (MOU) with the Commodity Futures Trading Commission (CFTC).[19] This MOU allows EPA to share RIN transaction data with CFTC to advise EPA on the techniques used to minimize market manipulation, to increase CFTC's understanding of the RIN market, and to conduct oversight for this market. Under the MOU, EPA has met with CFTC to discuss RIN market data and to evaluate strategies to identify and reduce the potential for manipulation in the RFS program.

In June 2019, EPA modified certain elements of the RFS compliance system, in order to improve functioning of the RIN market and prevent any potential manipulation in the RFS compliance market.[20] The 2019 rulemaking requires reporting of RIN holdings above a threshold to help ensure no single party can manipulate the price of RINs through the sheer size of their holdings.[21] Underpinning that reform was the observation that increased transparency would help deter market participants from amassing an excess of separated RINs, which due to the concentration in ownership could result in undue influence or market power. Since EPA implemented these provisions, no company has had RIN holdings which have exceeded the thresholds set in the rule.

The 2019 rulemaking also required reporting of RIN transaction prices to EPA.[22] EPA has utilized the new reported price data to supplement third-party RIN price assessment data. EPA has also increased transparency by aggregating the reporting price data and making it publicly available on our website.[23] We believe that publishing as much data and information on the RIN market as possible, while still protecting confidential business information, improves market transparency and helps obligated parties and other market participants make informed decisions. Since the June 2019 rule, we have not seen data-based evidence of RIN market manipulation. The potential for such behavior, however, remains a concern.

We have recently further expanded our oversight and enforcement capabilities by entering into an MOU with California Air Resources Board (CARB).[24] This MOU expands our oversight capabilities and supports our enforcement activities by leveraging information collected under California's Low Carbon Fuel Standard to help identify non-compliance and potential market manipulation in the renewable fuels and RIN markets. EPA and CARB compliance staff meet regularly to analyze market forces and participant behavior to ensure that our program meets the CAA requirements.

As we begin to implement the Set Rule volumes, EPA will work with partners in federal and state governments to assess what new improvements and modifications could reasonably be made that would further strengthen market oversight and program implementation. Furthermore, within 45 days of publication of the final 2023–2025 rule, EPA will meet with CFTC to review our MOU with CFTC and the sufficiency of the existing RIN data collection to address potential market manipulation. EPA will also discuss with CFTC whether the existing MOU should be revised to allow for the monitoring of daily trades and whether the existing MOU should be revised to include additional market oversight experts, such as the Federal Trade Commission.

E. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that federal agencies such as EPA, in consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (collectively ''the Services''), ensure that any action authorized, funded, or carried out by the action agency 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 for such species. Under ESA implementing regulations, the action agency is required to formally consult with the Services for actions that ''may affect'' listed species or designated critical habitat, unless the Services concur in writing that the action is not likely to adversely affect ESA-listed species or critical habitat. 50 CFR 402.14. Consultation is not required where the action has no effect on such species or habitat. For several prior RFS annual standard-setting rules, EPA did not consult with the Services under ESA section 7(a)(2).

Consistent with ESA section 7(a)(2) and relevant ESA implementing regulations at 50 CFR part 402, for approximately two years, EPA engaged in technical assistance and informal consultation discussions with the Services regarding this rule. On January 30, 2023, EPA submitted its initial biological evaluation to the Services, and following continued informal consultation—including regular meetings and telephone and email communications between EPA and the Services—on May 20, 2023, EPA submitted to the Services its May 19, 2023 biological evaluation. On May 31, 2023, EPA provided an addendum to the May 19, 2023 biological evaluation in response to a request from NMFS.[25] EPA has determined that this action is not likely to adversely affect listed species and critical habitat. The Services have confirmed that EPA's biological evaluation with the May 31, 2023 addendum is sufficient and USFWS and NMFS intend to proceed with informal consultation. EPA has prepared an ESA section 7(d) determination memorandum that discusses our decision to finalize this action before the informal consultation process is complete, which is also available in the docket for this action.

II. Statutory Requirements and Conditions

A. Requirement to Set Volumes for Years After 2022

The CAA provides EPA with the authority to establish the applicable renewable fuel volume targets for calendar years after those specified in

[19] See ''Memorandum of Understanding Between the Environmental Protection Agency and the Commodity Futures Trading Commission on the Sharing of Information Available to EPA Related to the Functioning of Renewable Fuel and Related Markets'' (2016), available at *https://www.epa.gov/sites/production/files/2016-03/documents/epa-cftc-mou-2016-03-16.pdf.*

[20] See 84 FR 27013–27019.

[21] See 40 CFR 80.1435.

[22] See 40 CFR 80.1451(c)(2).

[23] See ''RIN Trades and Price Information,'' available at *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information.*

[24] See ''Confidentiality Agreement Between the United States Environmental Protection Agency Offices of Transportation and Air Quality and Civil Enforcement and the California Air Resources Board for the Sharing of Information.'' August 17, 2021 (on file with EPA).

[25] ''Biological Evaluation of the Renewable Fuel Standard (RFS) Set Rule,'' May 19, 2023, and email from T. Phillips, EPA, to D. Baldwin, NOAA (May 31, 2023) are both available in the docket for this action.

the Act in Section 211(o)(2).[26] For total renewable fuel, cellulosic biofuel, and total advanced biofuel, the CAA provides volume targets through 2022, after which EPA must establish or ''set'' the volume targets via rulemaking. For BBD, the CAA only provides volume targets through 2012; EPA has been setting the biomass-based diesel volume requirements in annual rulemakings since 2013.

This section discusses EPA's statutory authority and additional factors we have considered due to the lateness of this rulemaking, as well as the severability of the various portions of this rule.

B. Factors That Must Be Analyzed

CAA section 211(o)(2)(B)(ii) establishes the processes, criteria, and standards for setting the applicable annual renewable fuel volumes. That provision provides that the Administrator shall, in coordination with the Secretary of Energy and the Secretary of Agriculture,[27] determine the applicable volumes of each biofuel category specified based on a review of implementation of the program during the calendar years specified in the tables in CAA section 211(o)(2)(B)(i) and an analysis of the following factors:

- The impact of the production and use of renewable fuels on the environment; [28]
- The impact of renewable fuels on the energy security of the U.S.; [29]
- The expected annual rate of future commercial production of renewable fuels; [30]
- The impact of renewable fuels on the infrastructure of the U.S.; [31]
- The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; [32] and
- The impact of the use of renewable fuel on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.[33]

Congress provided EPA flexibility by enumerating factors to consider without rigidly mandating the specific steps of analysis that EPA should take or how EPA should weigh the various factors. Additionally, we are not aware of anything in the legislative history of EISA that is authoritative on these issues. Thus, as the Clean Air Act ''does not state what weight should be accorded to the relevant factors,'' it ''give[s] EPA considerable discretion to weigh and balance the various factors required by statute.'' [34] These factors were analyzed in the context of the 2020–2022 standard-setting rule that modified volumes under CAA section 211(o)(7)(F),[35] which requires EPA to comply with the processes, criteria, and standards in CAA section 211(o)(2)(B)(ii). Consistent with our past practice in evaluating the factors,[36] we have again determined that a holistic balancing of the factors is appropriate.[37]

In addition to those factors listed in the statute, the statute also directs EPA to consider ''the impact of the use of renewable fuels on other factors.'' [38] Moreover, many other factors affect the statutory factors themselves. Accordingly, consistent with the statute, we have considered several other factors, including:

- The interaction between volume requirements for years 2023–2025, including the nested nature of those volume requirements and the availability of carryover RINs.[39]
- The ability of the market to respond given the timing of this rulemaking.[40]
- Our obligation to respond to the *ACE* remand (Section V).
- The supply of qualifying renewable fuels to U.S. consumers (Section III.A.5).[41]
- Soil quality (RIA Chapter 3.4).[42]
- Environmental justice (Section IV.E and RIA Chapter 8).[43]
- A comparison of costs and benefits (Section IV.D).[44]

C. Statutory Conditions on Volume Requirements

As indicated above, the CAA affords EPA flexibility to consider each of the enumerated factors and the weight to give those factors. However, the CAA does contain three conditions that affect our determination of the applicable volume requirements:

- A constraint in setting the applicable volume of total renewable fuel as compared to advanced biofuel, with implications for the implied volume requirement for conventional renewable fuel.
- Direction in setting the cellulosic biofuel applicable volume regarding potential future waivers.
- A floor on the applicable volume of BBD.

1. Advanced Biofuel as a Percentage of Total Renewable Fuel

While the statute provides broad discretion in setting the applicable volume requirements for advanced biofuel and total renewable fuel, it also establishes a constraint on the relationship between these two volume requirements, and this constraint has implications for the implied volume requirement for conventional renewable fuel. The CAA provides that the applicable advanced biofuel requirement must ''be at least the same percentage of the applicable volume of renewable fuel as in calendar year 2022,'' [45] meaning that EPA must, at a minimum, maintain the ratio of advanced biofuel to total renewable fuel that was established for 2022 for the years in which EPA sets the applicable volume requirements. In effect, this limits the implied volume of conventional renewable fuel within the

[26] We refer to CAA section 211(o)(2)(B)(ii) as the ''set authority.''

[27] In furtherance of this requirement, we have had periodic discussions with DOE and USDA on this action. These have occurred with agency staff throughout the proposal and final rule process, as well as through the OMB interagency process. An additional memorandum documenting discussions with the Administrator and Secretaries is also available in the docket for this action.

[28] CAA section 211(o)(2)(B)(ii)(I).

[29] CAA section 211(o)(2)(B)(ii)(II).

[30] CAA section 211(o)(2)(B)(ii)(III).

[31] CAA section 211(o)(2)(B)(ii)(IV).

[32] CAA section 211(o)(2)(B)(ii)(V).

[33] CAA section 211(o)(2)(B)(ii)(VI).

[34] See *Nat'l Wildlife Fed'n* v. *EPA,* 286 F.3d 554, 570 (D.C. Cir. 2002) (analyzing factors within the Clean Water Act); accord *Riverkeeper, Inc.* v. *U.S. EPA,* 358 F.3d 174, 195 (2d Cir. 2004) (same); *BP Exploration & Oil, Inc.* v. *EPA,* 66 F.3d 784, 802 (6th Cir. 1995) (same); see also *Brown* v. *Watt,* 668 F.3d 1290, 1317 (D.C. Cir. 1981) (''A balancing of factors is not the same as treating all factors equally. The obligation instead is to look at all factors and then balance the results. The Act does not mandate any particular balance, but vests the Secretary with discretion to weigh the elements . . . .'') (addressing factors articulated in the Out Continental Shelf Lands Act).

[35] See 87 FR 39600 (July 1, 2022).

[36] See 87 FR 39600, 39607–08 (July 1, 2022).

[37] RFS Annual Rules Response to Comments Document at 10.

[38] CAA section 211(o)(2)(B)(ii)(VI).

[39] This also informs our analysis of the statutory factor ''review of the implementation of the program.'' CAA section 211(o)(2)(B)(ii).

[40] This also informs our analysis of the statutory factor ''the expected annual rate of future commercial production of renewable fuels.'' CAA section 211(o)(2)(B)(ii)(III).

[41] This is based on our analysis of the statutory factor the expected annual rate of future commercial production of renewable fuel as well as of downstream constraints on biofuel use, including the statutory factors relating to infrastructure and costs.

[42] Soil quality is closely tied to water quality and is also relevant to the impact of renewable fuels on the environment more generally, such that this analysis also informs our analysis of the statutory factor ''the impact of the production and use of renewable fuels on the environment.'' CAA section 211(o)(2)(B)(ii)(I).

[43] Addressing environmental justice involves assessing the potential for the use of renewable fuels to have a disproportionate and adverse health or environmental effect on minority populations, low-income populations, tribes, and/or indigenous peoples.

[44] The comparison of costs and benefits compares our quantitative analysis of various statutory factors, including costs and energy security.

[45] CAA section 211(o)(2)(B)(iii).

total renewable fuel volume for years after 2022.

The applicable advanced biofuel volume requirement is 5.63 billion gallons for 2022.[46] The total renewable fuel volume requirement for 2022 is 20.63 billion gallons, resulting in an implied conventional volume requirement of 15 billion gallons. For 2022, then, advanced biofuel would represent 27.3 percent of total renewable fuel. The volume requirements we are finalizing in this action for 2023–2025, shown in Table I.A.1–1, all exceed this 27.3 percent minimum, and thus the applicable volume requirements that we are finalizing satisfy this statutory criterion.

2. Cellulosic Biofuel

The statute requires that EPA set the applicable cellulosic biofuel requirement ''based on the assumption that the Administrator will not need to issue a waiver . . . under [CAA section 211(o)](7)(D)'' for the years in which EPA sets the applicable volume requirement.[47] We interpret this requirement to mean that we must establish the cellulosic volume requirement at a level that is achievable and not expected to require us in the future to lower the applicable cellulosic volume requirement using the cellulosic waiver authority under CAA section 211(o)(7)(D).[48] CAA section 211(o)(7)(D) provides that if ''the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B),'' EPA ''shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year.'' Therefore, we are setting the volume requirements such that the mandatory waiver of the cellulosic volume is not anticipated to be triggered in those future years. Operating within this limitation, and in light of our consideration of the statutory factors explained in Section VI, we are setting the cellulosic volumes for 2023, 2024, and 2025 at the projected volume available in each year, respectively, consistent with our past actions in determining the cellulosic biofuel volume.[49] These projections, discussed further in Sections III.B.1 and VI.A, represent our best efforts to project the growth in the volume of these fuels that can be achieved in 2023–2025.

3. Biomass-Based Diesel

EPA has established the BBD requirement under CAA section 211(o)(2)(B)(ii) since 2013 because the statute only provided BBD volume targets through 2012. The statute also requires that the BBD volume requirement be set at or greater than the 1.0 billion gallon volume requirement for 2012 in the statute, but does not provide any other numerical criteria that EPA is to consider.[50] EPA is setting the BBD volume requirement for 2023, 2024, and 2025 at 2.82, 3.04, and 3.35 billion gallons respectively. These volumes are significantly greater than 1.0 billion gallon minimum requirement for these years.

D. Authority To Establish Volumes and Percentage Standards for Multiple Future Years

EPA is finalizing volume and percentage standards for 2023, 2024, and 2025 in this single action. In the proposed rule, we sought comment on volume requirements for 2026, and proposed volumes for 2023, 2024, and 2025. We also proposed corresponding percentage standards for 2023, 2024, and 2025.

In the proposal, we discussed how the number of years for which we might establish standards, and thus the numbers of years for which we must analyze the impacts of those standards, represented a tension between providing certainty for stakeholders of future demand and being able to project renewable fuel supply with reasonable certainty. We discussed how we focused our assessment of renewable fuel supply on the three years immediately following the end of the statutory volume targets (*i.e.,* 2023–2025) as an attempt to find a balance between these opposing concerns. Additionally, we have considered the statutory deadlines from promulgating applicable volumes, two of which have already passed (October 31, 2021, for 2023 applicable volumes, and October 31, 2022, for 2024 applicable volumes). The statutory deadline for promulgating the 2025 applicable volumes is later this year on October 31, 2023. Establishing volume requirements for three years strikes an appropriate balance between these opposing concerns.

We acknowledge that establishing volume targets and the associated percentage standards for a greater number of years would increase market certainty for obligated parties, biofuel producers, and other RIN market participants. However, the uncertainty inherent in making future projections increases for longer timeframes. Moreover, our experience with the RFS program since its inception is that unforeseen market circumstances involving not only renewable fuel supply but also relevant economics mean that fuels markets are continually evolving and changing in ways that cannot be predicted. These facts affect all supply-related elements of biofuel: projections of production capacity, availability of imports, rates of consumption, availability of qualifying feedstocks, and the gasoline and diesel demand projections that provide the basis for the calculation of percentage standards. Greater uncertainty in future projections means a higher likelihood that those future projections could turn out to be inaccurate, leading to the potential need to revise them after they are established through, for instance, one of the statutory waiver provisions. Such actions to revise applicable standards after they have been set could be expected to increase market uncertainty.

Promulgating standards for three years in a single action also increases the likelihood that we can meet the statutory deadline to promulgate applicable volumes by 14 months prior to the beginning of the calendar year. In this action, we are promulgating the 2025 volumes ahead of the statutory deadline of October 2023. Given the extensive analysis required to support the volumes, and the associated length of time necessary for CAA rulemaking actions, promulgating standards for multiple years facilitates compliance with the statutory requirements.

Many of the comments we received from stakeholders supported our proposal to establish standards for three years. While some stakeholders requested that standards be set for fewer than three years, others requested that we set standards for more than three years. Based on our desire to strengthen market certainty by establishing applicable standards for as many years as is practical, tempered by the knowledge that longer time periods increase uncertainty in projected volumes, increasing the potential that applicable standards might need to be waived at a later date, we continue to believe that three years represents an appropriate balance at this time. We are not making a determination in this action that three years is the appropriate number of years to establish standards under all circumstances and in all future actions. Indeed, it may be appropriate in future standard-setting

[46] 87 FR 39601.

[47] CAA section 211(o)(2)(B)(iv).

[48] The cellulosic biofuel waiver applies when the projected volume of cellulosic biofuel production is less than the minimum applicable volume. CAA section 211(o)(7)(D).

[49] See, *e.g.,* 2020–2022 Rule, 87 FR 39600 (July 1, 2022).

[50] CAA Section 211(o)(2)(B)(iv).

actions to establish standards for more or less than three years at a time.

The CAA requires EPA to promulgate regulations that, regardless of the date of promulgation, contain compliance provisions applicable to refineries, blenders, distributors and importers that ensure that the volumes in CAA section 211(o)(2)(B), which includes set volumes, are met.[51] As to setting percentage standards, for years after 2022, the CAA does not expressly direct EPA to continue to implement volume requirements through percentage standards established through annual rulemakings. Furthermore, in establishing volumes for years after 2022, EPA is directed to review ''the implementation of the program'' in years during which Congress provided statutory volumes.[52] Thus, Congress provided EPA discretion as to how to implement the volume requirements of the RFS program in years 2023 and beyond.

CAA section 211(o)(3)(B)(i) provides that by ''November 30 of each of calendar years 2005 through 2021, based on the estimate provided [by EIA], the Administrator . . . shall determine and publish in the **Federal Register**, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.'' [53] The next clause (ii) provides further requirements for the obligation described in clause (i). On its face, this language does not apply to rulemakings establishing obligations for years subsequent to 2022. Therefore, EPA is not bound by this language for those years.

EPA could choose to continue to utilize the same procedures articulated in CAA section 211(o)(3)(B)(i) for establishing percentage standards for years beyond 2022. In that case, EPA would establish standards for 2023 in this rulemaking, and separately set standards for 2024 and 2025 in later actions. However, EPA has chosen to set percentage standards at one time for several future years (*i.e.,* for 2023, 2024, and 2025). Doing so increases certainty for obligated parties, renewable fuel producers, and RIN market participants, as both the applicable volume requirements and the associated percentage standards can be established in advance of the year in which they apply. This also provides certainty for obligated parties in determining compliance deadlines. The regulations at 40 CFR 80.1451(f)(1)(i)(A) provide that compliance will not be required for a given compliance year until after the percentage standards for the following year are established. Thus, establishing the percentage standards through this rulemaking process provides certainty as to the date of the compliance deadlines for 2022–2024. This action properly balances creating certainty for obligated parties, renewable fuel producers, and RIN market participants in establishing percentage standards and limiting the scope of uncertainty in projections of future gasoline and diesel consumption by setting percentage standards only for the next three compliance years.[54]

Several commenters supported EPA's proposal to establish volumes and associated percentage standards for 2023–2025. Other commenters suggested that EPA should only promulgate percentage standards for 2023 and 2024 because EPA could instead finalize the percentage standards for 2025 along with the 2026 volumes and percentage standards given the statutory deadline of October 31, 2024. We discuss responses to these comments in the RTC document.

In this action, we are finalizing applicable volume requirements and the associated percentage standards for 2023–2025, as described further in Sections VI and VII. We believe that establishing both the volume requirements and percentage standards for the next three years strikes an appropriate balance between improving the program by providing increased certainty over a multiple number of years and recognizing the inherent uncertainty in longer-term projections.

E. Considerations for Late Rulemaking

In this rulemaking, we are finalizing applicable volume targets for the 2023 and 2024 compliance years that miss the statutory deadlines.[55] EPA has in the past also missed statutory deadlines for promulgating RFS standards, including the BBD Standards in 2014–2016, which were established under CAA section 211(o)(2)(B)(ii), the same provision under which we are establishing the 2023 and 2024 standards. The U.S. Court of Appeals for the D.C. Circuit found that EPA retains authority to promulgate volumes and annual standards beyond the statutory deadlines, even those that apply retroactively, so long as EPA exercises this authority reasonably.[56] In doing so, EPA must balance the burden on obligated parties of a delayed rulemaking with the broader goal of the RFS program to increase renewable fuel use.[57] In upholding EPA's late and retroactive standards in *ACE,* the court considered several specific factors, including the availability of RINs for compliance, the amount of lead time and adequate notice for obligated parties, and the availability of compliance flexibilities. In addressing rulemakings that were late (*i.e.,* those issued after the statutory deadline) but not retroactive, the court emphasized the amount of lead time and adequate notice for obligated parties.[58] Most relevant here is EPA's action in 2015 that established the BBD volume requirements for 2014–2017.[59] There, EPA missed the statutory deadline, that EPA establish an applicable volume target for BBD no later than 14 months before the first year to which that volume requirement will apply, for all four years.[60] The court found that EPA properly balanced the relevant considerations and had provided sufficient notice to parties in establishing the applicable volume requirements for 2014–2017.[61] A commenter suggested that EPA is further limited on our promulgation of the 2023 and 2024 standards at no greater than the 2022 standards. We disagree for the reasons articulated in the RTC document.

In this rulemaking, we are exercising our authority to set the applicable renewable fuel volume requirements for 2023 and 2024 after the statutory deadline to promulgate volumes no later than 14 months before the first year to which those volume requirements apply.[62] This final rule will also be partly retroactive, as the 2023 standards are being finalized in the middle of the 2023 calendar year. Nevertheless, we believe that the 2023 standards being finalized in this action can be met and that the available RIN generation data from the first quarter of 2023 suggests the market is on track to supply the volumes we are finalizing for 2023 (see Section VI and RIA Chapter 6). We are finalizing the 2024 standards prior to

[51] CAA section 211(o)(A)(i), (iii).

[52] CAA Section 211(o)(2)(B)(ii).

[53] CAA Section 211(o)(3)(b)(i).

[54] *See Growth Energy* v. *Env't Prot. Agency,* 5 F.4th 1, 15 (D.C. Cir. 2021) (acknowledging deference to agency's predictive judgments).

[55] See CAA Section 211(o)(2)(B)(ii), requiring EPA promulgate applicable volume requirements no later than 14 months prior to the first year in which they will apply.

[56] *Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (D.C. Cir. 2017) (*ACE*) (EPA may issue late applicable volumes under CAA section 211(o)(2)(B)(ii)); *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *NPRA* v. *EPA,* 630 F.3d 145, 154–58 (D.C. Cir. 2010).

[57] *NPRA* v. *EPA,* 630 F.3d 145, 164–65.

[58] *ACE,* 864 F.3d at 721–22.

[59] 80 FR 77420, 77427–28, 77430–31 (Dec. 14, 2015).

[60] CAA section 211(o)(2)(B)(ii).

[61] *ACE,* 864 F.3d at 721–23.

[62] CAA section 211(o)(2)(B)(ii).

the beginning of the 2024 calendar year and do not expect those standards to apply retroactively. Additionally, we have provided obligated parties notice as of December 1, 2022 of the proposed 2023 and 2024 standards, a month ahead of when the 2023 standards would apply, and over a year in advance of when the 2024 standards would apply. Additionally, obligated parties will have at least nine months from the time of promulgation of this final rule before they are required to submit associated compliance reports for 2023.[63] There will additionally be approximately 22 months between the promulgation of this rule and the compliance deadline for the 2024 standards.[64] Additionally, all obligated parties will continue to have available compliance flexibilities such as carry forward deficits, and carryover RINs to comply with the 2023 and 2024 standards.

In addition, in completing its response to the *ACE* remand of the 2016 annual rule, we are establishing a supplemental standard for 2023.[65] This supplemental standard is being promulgated after the statutory deadline for the 2016 standards (November 30, 2015). However, the supplemental standard would prospectively apply to gasoline and diesel produced or imported in 2023, therefore is only partly retroactive. We further discuss our response to the *ACE* remand in Section V.

F. Impact on Other Waiver Authorities

While we are establishing applicable volume requirements in this action for future years that are achievable and appropriate based on our consideration of the statutory factors, we retain our legal authority to waive volumes in the future under the waiver authorities should circumstances so warrant.[66] For example, the general waiver authority under CAA section 211(o)(7)(A) provides that EPA may waive the volume targets in ''paragraph (2),'' which provides both the statutory applicable volume tables and EPA's set authority (the authority to set applicable volumes for years not specified in the table). Therefore, similar to our exercise of the waiver authorities to modify the statutory volumes in past annual standard-setting rulemakings, EPA has the authority to modify the applicable volumes for 2023 and beyond in future actions through the use of our waiver authorities to modify the applicable volumes we are setting in this action.

We note that, as described above, CAA section 211(o)(2)(B)(iv) requires that EPA set the cellulosic biofuel volume requirements for 2023 and beyond based on the assumption that the Administrator will not need to waive those volume requirements under the cellulosic waiver authority. Because we are, in this action, establishing the applicable volume targets for 2023–2025 under the set authority, we do not believe we could also waive those requirements using the cellulosic waiver authority in this same action in a manner that would be consistent with CAA section 211(o)(2)(B)(iv), since that waiver authority is only triggered when the projected production of cellulosic biofuel is less than the ''applicable volume established under [211(o)(2)(B)].'' In other words, it does not appear that EPA could use both the set authority and the cellulosic waiver authority to establish volumes at the same time in this action.

Establishing the volume requirements for 2023–2025 using our set authority apart from the cellulosic waiver authority has important implications for the availability of cellulosic waiver credits (CWCs) in these years. When EPA reduces cellulosic volumes under the cellulosic waiver authority, EPA is also required to make CWCs available under CAA section 211(o)(7)(D)(ii). In this rule we are, for the first time, establishing a cellulosic biofuel standard without utilizing the cellulosic waiver authority. We interpret CAA section 211(o)(7)(D)(ii) such that CWCs are only made available in years in which EPA uses the cellulosic waiver authority to reduce the cellulosic biofuel volume. Because of this, cellulosic waiver credits would not be available as a compliance mechanism for obligated parties in these years absent a future action to exercise the cellulosic waiver authority. We recognized this likelihood in the recent rule establishing volume requirements for 2020–2022, where we stated that CWCs were unlikely to be available in 2023 as part of our rationale for not requiring the use of cellulosic carryover RINs in setting the cellulosic volume requirements for 2020–2022. [67] Some commenters suggested that we should make CWCs available even in the absence of exercising our cellulosic waiver authority to provide a price cap on cellulosic volume, or to provide additional flexibility for obligated parties. As we do not find authority to issue cellulosic waiver credits without use of the cellulosic waiver authority, we will not be issuing CWCs absent a future waiver of the cellulosic standard. Despite the absence of CWCs, we expect that obligated parties will be able to satisfy their cellulosic biofuel obligations for these years because we are proposing to establish the cellulosic biofuel volume requirement based on the quantity of cellulosic biofuel we project will be produced and imported in the U.S. each year.

G. Severability

As stated in the proposal, we intend for the volume requirements and percentage standards for each single year covered by this rule (*i.e.,* 2023, 2024, and 2025) to be severable from the volume requirements and percentage standards for the other years. Each year's volume requirements and percentage standards are supported by analyses for that year. Similarly, we intend for the 2023 supplemental standard and percentage standard to be severable from the annual volume requirements and percentage standards.

We also intend for the other regulatory amendments to be severable from the volume requirements and percentage standard. The regulatory amendments are intended to improve the RFS program in general and are not part of EPA's analysis for the volume requirements and percentage standards for any specific year. Further, each of the regulatory amendments in Sections IX and X is severable from the other regulatory amendments because they all function independently of one another.

If any of the portions of the rule identified in the preceding paragraph (*i.e.,* volume requirements and percentage standards for a single year, the 2023 supplemental standard, the individual regulatory amendments) is invalidated by a reviewing court, we intend the remainder of this action to remain effective as described in the preceding paragraph. To further illustrate, if a reviewing court were to invalidate the volume requirements and percentage standards and supplemental standard, we intend the other regulatory amendments to remain effective. Or, as another example, if a reviewing court invalidates the BBD conversion factor provisions, we intend the volume requirements and percentage standards as well as the supplemental standard and other regulatory amendments to remain effective.

[63] EPA expects the 2023 compliance deadline to be March 31, 2024. See 40 CFR 80.1451(f)(1)(A).

[64] The 2024 compliance deadline is March 31, 2025. 40 CFR 80.1451(f)(1)(A).

[65] We also established a supplemental standard for 2022 in a prior action. See, *e.g.,* 87 FR 39600 (July 1, 2022).

[66] See *J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred Intern., Inc.,* 534 U.S. 124, 143–44 (2001) (holding that when two statutes are capable of coexistence and there is not clearly expressed legislative intent to the contrary, each should be regarded as effective).

[67] 87 FR 39616 (July 1, 2022).

III. Candidate Volumes and Baselines

The statute requires that we analyze a specified set of factors in making our determination of the appropriate volume requirements to establish for years after 2022, and further requires that we review implementation of the program in prior years. The statutory factors are listed in Section II.B. Because many of those factors, particularly those related to economic and environmental impacts, are difficult to analyze in the abstract, we have therefore opted to analyze those factors based on specific ''candidate volumes'' for each category of renewable fuel. To accomplish this, we first derived a set of renewable fuel volumes from the statutory factors most closely related to renewable fuel supply and other relevant factors. The development of these candidate volumes helps further our consideration of the statutory factor to analyze the expected annual rate of future commercial production of renewable fuels and provide us with renewable fuel volumes with which to perform the remaining analyses required by the statute. We used these candidate volumes to conduct analyses of the other environmental and economic factors. Finally, we determined, based on the results of all of the analyses (those that went into developing the candidate volumes, described in this section, and the subsequent analyses performed using these candidate volumes, described in Sections IV and VI), the volume requirements that would be appropriate to establish. Our approach can be summarized as a three-step process:

1. Development of candidate volumes (described in this section).
2. Multifactor analysis based on those candidate volumes (described in Section IV).
3. Determination of applicable volume requirements based on a consideration of all factors analyzed (described in Section VI).

We acknowledge that we are taking a different approach to developing candidate volumes in this rule than we did under the reset authority in the 2020–2022 rule. The primary difference is that in the 2020–2022 rule the candidate volumes for non-cellulosic advanced biofuel and conventional renewable fuel were generally in the implied statutory volumes for these fuel types in comparison to the statutory volumes. In this rule we are establishing volumes for 2023–2025, a time period for which there are no statutory targets. We therefore developed the candidate volumes for non-cellulosic biofuel and conventional biofuel based primarily on a consideration of supply-related factors, with a consideration of other relevant factors as noted in the following sections. This approach is generally consistent with the approach we took for developing the candidate cellulosic biofuel volumes in the 2020–2022 rule, as the statutory cellulosic biofuel volumes were far beyond the quantity of these fuels that could be supplied.

For the first step in this process, we analyzed a subset of the statutory factors that are most closely related to supply of and demand for renewable fuel. These supply-and-demand-related factors (hereinafter ''supply-related factors'')[68] include the production and use of renewable fuels (as a necessary prerequisite to analyzing their impacts under CAA section 211(o)(2)(B)(ii)(I), (II), (V), and (VI))), the expected annual rate of future commercial production of renewable fuels (CAA section 211(o)(2)(B)(ii)(III)), and the sufficiency of infrastructure to deliver and use renewable fuel (CAA section 211(o)(2)(B)(ii)(IV)). Consideration of these supply-related statutory factors necessarily included a consideration of imports and exports of renewable fuel, consumer demand for renewable fuel, the availability of qualifying feedstocks, and other relevant factors as discussed in the following sections. Since the statute also requires us to review the implementation of the program in prior years, an analysis of renewable fuel supply includes not just projections for the future but also an assessment of the historical supply of renewable fuel. While we focused on supply-related factors, as discussed further in the following sections we also considered other information such as trends in statutory volumes, GHG reduction implications, and market expectations resulting from our proposed rule.

This section describes the derivation of ''candidate volumes'' based on a consideration of supply-related factors as the first step in our consideration of all factors that we are required to analyze under the statute. The candidate volumes represent those volumes that might be reasonable to require based on the supply-related factors, but which have not yet been evaluated in terms of the other economic and environmental factors. Basing the candidate volumes primarily on supply-related considerations is a reasonable first step because doing so narrows the scope for the multifactor analysis in a commonsense way. This step better enables our analysis of the remaining statutory factors. The candidate volumes we have identified in this final rule are similar to, but slightly higher than the candidate volumes in the proposed rule. Specifically, the candidate cellulosic biofuel volumes are higher for all three years (after accounting for the fact that we are not finalizing the proposed eRIN provisions in this rule). The candidate volumes for non-cellulosic advanced biofuels in this final rule are higher than the candidate volumes from the proposed rule for 2023–2025. Finally, the candidate volumes for conventional biofuel in this final rule are lower than the candidate volumes in the proposed rule for all three years, due to lower projected gasoline consumption. Section VI provides our rationale for the final volume requirements in light of all the analyses that we conducted.

In this final rule we updated the candidate volumes after considering the comments we received on our proposed rule as well as additional data not available at the time the analyses for the proposed rule were completed. We received many comments on the supply-related factors that informed the candidate volumes, including comments related to renewable fuel production capacity, the availability of feedstocks to produce renewable fuel, the quantity of renewable fuel that can be consumed in the transportation sector, and the ability for the incentives provided by the RFS program to incentivize increased renewable fuel production and use. These comments, along with more recent data, led us to increase the candidate volumes for CNG/LNG derived from biogas, ethanol produced from corn kernel fiber, biomass-based diesel, and other advanced biofuels projected to be produced or imported in 2023–2025, and corresponding increases to the candidate volumes for these fuel types relative to the proposal. Our consideration of comments on the proposed rule and additional data also resulted in slight decreases to the candidate volumes of conventional renewable fuel for 2023–2025.

Our updated projections of projected renewable fuel production and imports, including a brief discussion of the

[68] We use this shorthand (''supply-related factors'') only for ease of explanation in the context of identifying candidate volumes for analysis under CAA section 211(o)(2)(B)(ii). We recognize that this shorthand (''supply-related factors'') utilizes the term ''supply'' in a manner that is incongruent with the D.C. Circuit's interpretation of the scope of the term ''supply'' in the general waiver authority provision in CAA section 211(o)(7)(A). *ACE,* 864 F.3d at 710. (holding that the term ''inadequate domestic supply'' under the general waiver authority excludes ''demand-side factors''). References to ''supply-related factors'' in the context of our discussion of the candidate volumes for analysis under CAA section 211(o)(2)(B)(ii) have no bearing on our interpretation of the term ''inadequate domestic supply'' under the general waiver authority under CAA section 211(o)(7)(A).

relevant comments and new data that informed these projections, can be found in Section III.B. Section III.C summarizes the candidate volumes we analyzed. Finally, Sections III.D and III.E describe, respectively, the No RFS baseline that we believe would be the most appropriate point of reference for the analysis of the other statutory factors, and the volume changes calculated in comparison to that baseline.

A. Scope of Analysis

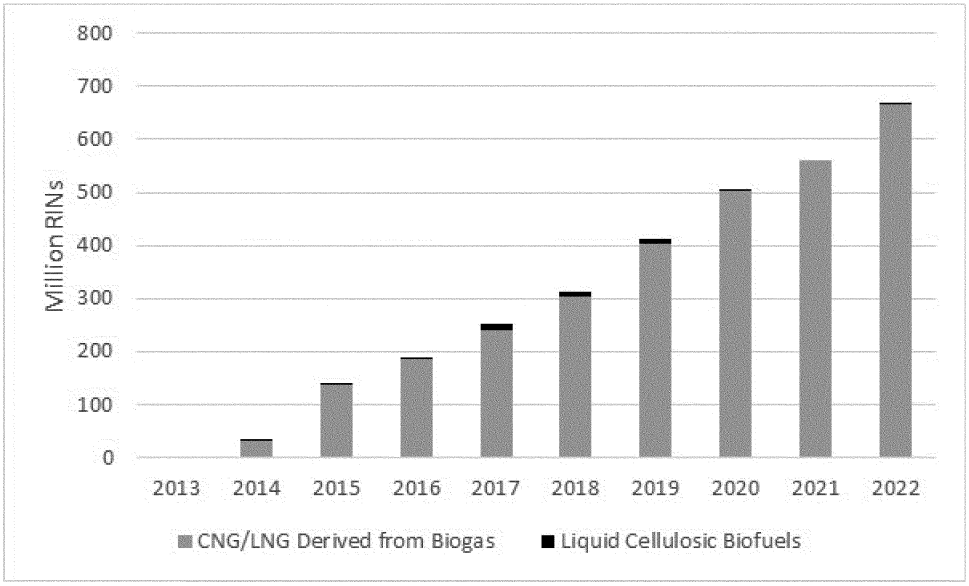
In Section II.D we discuss our statutory authority to establish RFS volumes and percentage standards for multiple years in a single rule. As discussed in that section, in this final rule we are establishing volumes and percentage standards for three years, 2023–2025. Consistent with this decision, Sections III.B and III.C discuss our determination of the candidate volumes for each year covered by this rule.

B. Production and Import of Renewable Fuel

1. Cellulosic Biofuel

Cellulosic biofuel is defined as renewable fuel derived from any cellulose, hemi-cellulose, or lignin that has lifecycle greenhouse gas emissions that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.[69] In the past several years, production of cellulosic biofuel has continued to increase. Cellulosic biofuel production reached record levels in 2022, driven by compressed natural gas (CNG) and liquified natural gas (LNG) derived from biogas. This section describes our assessment of the rate of production of qualifying cellulosic biofuel from 2023 to 2025, and some of the uncertainties associated with these volumes. Further detail on our projections of the rate of cellulosic biofuel production and import can be found in RIA Chapter 6.1.

Figure III.B.1-1: Cellulosic Biofuel RINs Generated (2013–2022)



a. CNG/LNG Derived From Biogas

To be eligible to generate RINs for CNG/LNG derived from biogas, biogas from qualifying sources first must be collected and upgraded to enable its use in CNG/LNG vehicles. This upgrading process involves removing undesirable components and contaminants from biogas. Biogas that has been upgraded and distributed via a closed, private distribution system is called ''treated biogas'' while biogas that has been upgraded and distributed via the natural gas commercial pipeline system is referred to as renewable natural gas (RNG). RNG is essentially indistinguishable from fossil-based natural gas and can be used interchangeably and transported through the same pipelines. While treated biogas is typically used to fuel CNG/LNG vehicles at the site where it is produced, RNG is injected into the natural gas commercial pipeline system. Once injected into the natural gas commercial pipeline system, RNG can be used in a variety of applications, including to fuel CNG/LNG vehicles, for generating electricity, for residential heating, and for other industrial or commercial purposes.

In the proposed rule we projected the use of CNG/LNG produced from RNG[70] in 2023–2025 using an industry-wide projection of the rate of growth calculated from RIN generation over the previous 24 months. While some commenters argued that EPA should project future production of CNG/LNG from RNG based on a facility-by-facility assessment, many supported the proposed methodology of using an industry-wide rate of growth to project production in future years. Many of the commenters who generally supported the rate of growth approach, however, requested that EPA use a higher rate of growth that considered data beyond just the most recent 24 months. These comments are discussed briefly at the end of this section, and in greater detail in the RTC document. In this final rule we are using an industry-wide rate of growth based on RIN generation data

[69] 40 CFR 80.1401.

[70] We note that as described in the biogas regulatory reform provisions in Section IX, we define RNG to mean biogas that has been upgraded to commercial pipeline quality and placed onto the natural gas commercial pipeline system. We also define the term ''treated biogas'' to refer to biogas that has undergone treatment for use as transportation fuel but that is not placed onto the natural gas commercial pipeline system (*i.e.,* it is distributed via a closed, private distribution system). For purposes of this section of the preamble, we use the term RNG to refer collectively to treated biogas and RNG.

from 2015–2022 to project the production and use of RNG as CNG/LNG. As discussed later in this section, we believe the growth rate calculated using data from 2015–2022 better reflects the potential production and use of RNG as CNG/LNG through 2025. This results in a significantly higher rate of grow in the final rule (25.0%) relative to the proposed rule (13.1%), and higher projected volumes of RNG use as CNG/LNG for each year from 2023–2025.

In projecting the production and use of RNG used as CNG/LNG in 2023–2025 we primarily considered two potential limiting factors. The first factor considered was the quantity of RNG we project will be produced from qualifying biogas in 2023–2025. Because biogas must be upgraded to enable its use in CNG/LNG vehicles, the quantity of RNG that we project will be produced sets a maximum for the quantity of biogas that can be used in vehicles as CNG/LNG. The second major factor we consider is the quantity of RNG that is capable of being used as transportation fuel in CNG/LNG vehicles. As discussed above, RNG can be used in many different applications and a variety of factors, including limitations related to the demand for CNG/LNG from vehicles, fueling infrastructure, and demand for RNG from other sectors can all impact the quantity of CNG/LNG used in vehicles. Our projection of the quantity of RNG used as CNG/LNG that will be produced and used in 2023–2025 is described briefly in this section, and in greater detail in RIA Chapter 6.1.3.

To project qualifying RNG production for this final rule we used an industry wide projection approach that is similar, though not identical, to the approach used to project the production of RNG used as CNG/LNG in previous RFS rules as well as in the proposed rule. While the approach we are using to project the production of CNG/LNG is similar to the approach used in previous years and the proposal, we are now using a broader range of data to calculate the growth rate used to project future projection. This reflects our consideration of an appropriate growth rate following engagement with stakeholders and review of both new data and commenter submissions on the proposal. More detail on our consideration of the appropriate rate of growth is provided later in this section. We have successfully used an industry wide projection methodology in previous years and continue to believe it better reflects the projected growth of the industry in light of potential limiting factors (which are more likely to be market based than technology based) than a projection based on an assessment of each potential RNG producer.

To project the production of qualifying RNG we calculated a year-over-year growth rate and applied this growth rate to the total production of RNG used as CNG/LNG in 2022 (the most recent year for which complete data are available). To calculate the year-over-year growth rate we considered RIN generation data for RNG used as CNG/LNG from 2015–2022 instead of just the most recent 24 months for the proposal. We believe a rate of growth based on this larger set of data better reflects the potential for RNG production in 2023–2025. We also note that this rate of growth is within the range of the growth rates suggested by RNG producers in the public comment period (generally 20–30%) and closer to, though still less than, estimated RNG production from the Coalition for Renewable Natural Gas based on their analysis of new RNG facilities under construction and in development.[71] The data used to calculate the projected rate of growth for RNG and the resulting projections of RNG production in 2023–2025 are shown in Table III.B.1.a–1 and Table III.B.1.a–2.

TABLE III.B.1.a–1—GENERATION OF CELLULOSIC BIOFUEL RINS FOR RNG USED AS CNG/LNG

[Ethanol-equivalent gallons]

2015 RIN generation (million RINs)	2022 RIN generation (million RINs)	Year-over-year increase (%)
139.9	666.1	25.0

TABLE III.B.1.a–2—PROJECTED GENERATION OF QUALIFYING RNG

[Ethanol-equivalent gallons]

Year	Date type	Growth rate (%)	Volume (million RINs)
2022	Actual	N/A	665
2023	Projection	25.0	831
2024	Projection	25.0	1,039
2025	Projection	25.0	1,299

We next considered how much of the qualifying RNG produced in 2023–2025 could be used as transportation fuel in the form of CNG/LNG. While the volumes of RNG use as CNG/LNG in Table III.B.1.a–2. appear to be approaching the upper limit (estimated to be 1.4–1.75 billion ethanol-equivalent gallons) of all CNG/LNG capable of being used as transportation fuel in 2023–2025 in CNG/LNG vehicles in the fleet, these 2023–2025 volumes are still below the total quantity of CNG/LNG projected to be used as transportation fuel in 2023–2025.[72] Thus, the entire quantity of qualifying RNG produced in 2023–2025 could still be used as transportation fuel and be able to generate RINs under the RFS program. We therefore used the volumes in Table III.B.1.a–2 as the candidate volumes for RNG use as CNG/LNG in 2023–2025.

We received many comments on our projected volume for RNG used as CNG/LNG in our proposed rule. While some commenters supported the proposed volumes, many stakeholders involved in

[71] Further discussion of the growth rate used to project the production of CNG/LNG derived from biogas, and our reasons for considering data beyond the most recent 24 months, can be found in RTC Section 3.2.2.

[72] See RIA Chapter 6.1.3 for a further discussion of our estimate of CNG/LNG used as transportation fuel in 2023–2025.

the production, distribution, and use of RNG as CNG/LNG stated that the projected volumes were too low. In particular, they stated that the growth in RNG use as CNG/LNG in recent years was significantly impacted by the COVID pandemic and did not reflect projected growth in this industry through 2025. Some commenters also noted significant investment in expanding RNG production which they claimed supported a much higher growth rate in the projected volume of biogas used in CNG/LNG vehicles.[73]

In this final rule we used a growth rate based on a longer time-period (2015–2022) than in both our proposed rule and previous RFS rules. We believe the higher growth rate that results from using additional data better reflects the likely production of RNG use as CNG/LNG in 2023–2025 than using a growth rate based on the last 24 months of data. Using data from 2015–2022 strikes a balance between using the most recent data available and not focusing exclusively on data from the last 24 months, during which the industry may still have been recovering from the impacts of the COVID pandemic. As noted earlier, the growth rate that results from using this additional data is supported by the public comments (which generally requested that EPA use growth rates that ranged from 20 to 30 percent), as well as the data received during the public comment period on the large number of RNG production facilities that are currently under construction or in the project development phase. Finally, we note that the limited data available from early 2023 suggest that 25% growth is achievable in 2023.[74]

b. Ethanol From Corn Kernel Fiber

While there are several different technologies currently being developed to produce liquid fuels from cellulosic biomass, these technologies are by and large highly unlikely to produce significant quantities of cellulosic biofuel by 2025. One exception is the production of ethanol from corn kernel fiber (CKF), for which several different companies have developed processes. Many of these processes involve co-processing of both the starch and cellulosic components of the corn kernel making it difficult to quantify what portion of the ethanol they produce is from cellulosic biomass.

In the proposed rule we noted the potential for the production of cellulosic ethanol from CKF in 2023–2025. We did not, however, project any production of ethanol from CKF in 2023–2025 beyond the few facilities that were currently registered as cellulosic biofuel producers. At the time of the proposal no facilities had yet requested to register as cellulosic biofuel producers using analytical methods consistent with recently published guidance.[75] Since the proposal, however, a number of facilities have approached EPA with registration requests. In this final rule we are now projecting that the production of ethanol from CKF will increase from 7 million gallons in 2023 to 77 million gallons in 2025. These projections, which are described further in the remainder of this section and in greater detail in RIA Chapter 6.1 are based on projections of the number of facilities we expect will register as cellulosic biofuel producers and the expected rate of cellulosic biofuel production at each facility.

To be eligible to generate cellulosic RINs, facilities that are co-processing starch and cellulosic components of the corn kernel must be able to determine the amount of ethanol that is produced from the cellulosic portion of the corn kernel. This requires the ability to accurately and reliably calculate the amount of ethanol produced from the cellulosic portion as opposed to the starch portion of the corn kernel; EPA has to date had significant concerns with facilities' abilities to accurately perform this calculation. In September 2022 EPA published a document providing updated guidance on analytical methods that could be used to quantify the amount of ethanol produced when co-processing corn kernel fiber and corn starch. [76] This guidance highlighted several outstanding critical technical issues that need to be addressed.

Since issuing the proposed rule EPA has continued to have substantive discussions with technology providers intending to use analytical methods consistent with the guidance document and owners of facilities intending to register as cellulosic biofuel producers using these analytical methods. The technology providers have indicated that using analytical methods consistent with those in the guidance document they can demonstrate that approximately 1.5% of the ethanol produced from existing corn ethanol facilities is produced from cellulosic biomass.

Based on the information from the technology providers, we believe that 1.5% of cellulosic ethanol can generally be produced from corn kernel fiber at existing ethanol facilities with few, if any, additional processing units or process changes. We are aware that many ethanol facilities are working with the technology providers in order to register their facilities to produce cellulosic ethanol. We are therefore projecting volumes of ethanol from corn kernel fiber through 2025 that include production from facilities that have not yet registered as cellulosic biofuel producers, but are expected to do so during this time period. The projected production of cellulosic ethanol from CKF, shown in Table III.B.1.b-1, are based on projections of when facilities will register as cellulosic biofuel producers under the RFS program and begin producing fuel. The projection methodology for cellulosic ethanol production from CKF used in this final rule is discussed further in RIA Chapter 6.1.2.

TABLE III.B.1.b–1—PROJECTED PRODUCTION OF ETHANOL FROM CKF

[Ethanol-equivalent gallons]

Year	Volume (million RINs)
2023	7
2024	51
2025	77

c. Other

For the 2023–2025 timeframe, we expect that commercial scale production of cellulosic biofuel in the U.S. beyond CNG/LNG derived from biogas and ethanol produced from CKF will be very limited. There are several cellulosic biofuel production facilities in various stages of development, construction, and commissioning that may be capable of producing commercial scale volumes of cellulosic biofuel by 2025. These facilities generally are focusing on producing cellulosic hydrocarbons that could be blended into gasoline, diesel, and jet fuel from feedstocks such as separated municipal solid waste (MSW) and slash, precommercial thinnings, and tree residue. In light of the fact that no parties have achieved consistent production of liquid cellulosic biofuel

[73] See RTC Section 3.2.2 for a summary of these comments and a more detailed response.

[74] Further discussion of the growth rate used to project the production of CNG/LNG derived from biogas, and our reasons for considering data beyond the most recent 24 months, can be found in RTC Section 3.2.2.

[75] Guidance on Qualifying an Analytical Method for Determining the Cellulosic Converted Fraction of Corn Kernel Fiber Co-Processed with Starch. Compliance Division, Office of Transportation and Air Quality, U.S. EPA. September 2022 (EPA–420–B–22–041).

[76] Guidance on Qualifying an Analytical Method for Determining the Cellulosic Converted Fraction of Corn Kernel Fiber Co-Processed with Starch. Compliance Division, Office of Transportation and Air Quality, U.S. EPA. September 2022 (EPA–420–B–22–041).

in the U.S. or consistently exported liquid cellulosic biofuel to the U.S., production and import of liquid cellulosic biofuel in 2023–2025 is highly uncertain and likely to be relatively small (see RIA Chapter 6.1.4 for more detail on the potential production of liquid cellulosic biofuel through 2025). For the candidate volumes we have projected no production of these fuels in 2023–2025.

d. eRINs

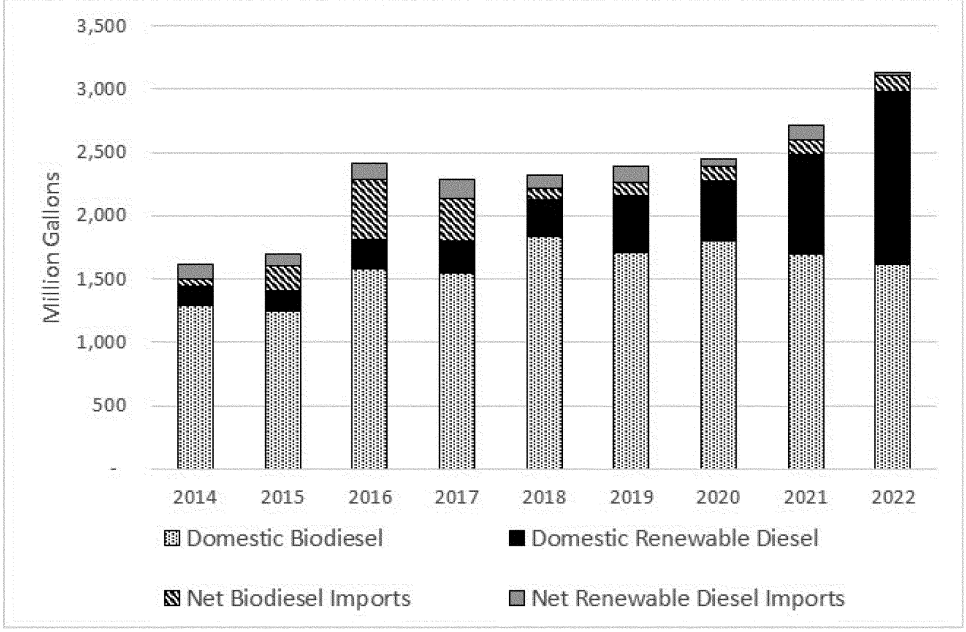
As noted in the Executive Summary, we are not finalizing the proposed revisions to the eRIN program in this rulemaking. We are therefore not including any volume from renewable electricty in our projections of the production and import of cellulosic biofuel. eRINs were projected to be a significant source of cellulosic biofuel in the proposed rule in 2024 and 2025 (representing 600 million and 1.2 billion RINs in 2024 and 2025 respectively). Because we no longer included projected volumes of eRINs, our projections of the production and imports of total cellulosic biofuel for 2024 and 2025 in this final rule are lower than the proposed rule, despite the higher projections for RNG used in vehicles as a renewable form of CNG/LNG and ethanol produced from CKF in this final rule.

2. Biomass-Based Diesel

Since 2010, when the BBD volume requirement was added to the RFS program, production of BBD has generally increased year-on-year. The volume of BBD supplied in any given year is influenced by a number of factors, including: production capacity, feedstock availability and cost, available incentives including the RFS program, the availability of imported BBD, the demand for BBD in foreign markets, and several other economic factors.

The vast majority of fuel that qualifies as BBD is biodiesel and renewable diesel. Both these fuels are produced from animal fat and vegetable oils and are replacements for diesel fuel, however they differ in their production processes and chemical composition. Biodiesel is an oxygenated fuel that is generally produced using a transesterification process. Renewable diesel is a hydrocarbon fuel that closely resembles petroleum diesel that is generally produced by hydrotreating renewable feedstocks. From 2010 through 2015 the vast majority of BBD supplied to the U.S. was biodiesel. While biodiesel is still the largest source of BBD supplied to the U.S., the supply of renewable diesel in 2022 was nearly as large as the supply of biodiesel, and the supply of renewable diesel is projected to exceed the supply of biodiesel in future years as renewable diesel production and imports continue to grow.

Figure III.B.2-1: Biodiesel and Renewable Diesel Supply 2014–2022[a]



[a] Numbers are based data from the EPA Moderated Transaction System (EMTS). This figure does not include the small quantity of jet fuel that was produced (less than 20 million gallons each year) or fuels that did not generate RINs. This figure also does not include advanced (D5) or conventional (D6) biodiesel and renewable diesel, which are discussed in Sections III.B.3 and III.B.4.b and RIA Chapters 6.3 and 6.7.

There are also very small volumes of renewable jet fuel and heating oil that qualify as BBD, and there are currently significant efforts underway to incentivize growth in renewable jet fuel in particular (often referred to as sustainable aviation fuel or SAF).[77] Jet fuel has qualified as a RIN-generating advanced biofuel under the RFS program since 2010, and must achieve at least a 50 percent reduction in GHGs in comparison to petroleum-based fuels. The technology and feedstocks that can be used to produce SAF today are often the same as those currently used to produce renewable diesel. For example, the same process that produces renewable diesel from waste fats, oils, and greases or plant oils generally

[77] According to EMTS data renewable jet fuel supply has ranged from 0–15 million gallons per year from 2014–2022. Jet fuel is eligible to generate RINs per 40 CFR 80.1426(a)(1)(iv), provided all other regulatory requirements are met.

produces hydrocarbons in the distillation range of jet fuel that can be separated and sold as SAF instead of being sold as renewable diesel. While relatively little SAF has been produced since 2010—less than 15 million gallons per year—opportunities for increasing this category of advanced biofuel exist. A new tax credit for SAF, which was included in the Inflation Reduction Act, may result in increasing volumes of SAF produced from existing renewable diesel production facilities. SAF production from existing renewable diesel facilities would increase the amount of renewable fuel available for a transportation sector that may be otherwise particularly difficult to reduce carbon intensity; however, it would likely result in a decrease in renewable diesel production, with little or no net change in their overall production of RIN-generating fuels.[78] In this rule we have not separately projected growth in SAF production, but we recognize that some of the projected growth in renewable diesel production may instead be SAF from the same production facilities. Other SAF production technologies and production facilities also being developed could enable the future production of SAF from new facilities and feedstocks that are not expected to impact renewable diesel production.

In addition, in April 2022 the Biden Administration announced a new Sustainable Aviation Fuel Grand Challenge to inspire the dramatic increase in the production of sustainable aviation fuels to at least 3 billion gallons per year by 2030. This effort is accompanied by new and ongoing funding opportunities to support sustainable aviation fuel projects and fuel producers totaling up to $4.3 billion.

The remainder of this section provides historical data on biodiesel and renewable diesel production and production capacity, briefly discusses potential feedstock limitations for biodiesel and renewable diesel production in future years, and summarizes our assessment of the rate of production and use of qualifying BBD from 2023 to 2025, and some of the uncertainties associated with those volumes. Our assessments of production capacity, available feedstocks, and likely future production of biodiesel and renewable diesel in this final rule reflect our consideration of the comments we received on this rule as well as updated data not available at the time of the proposed rule. Our projections of the likely future production of biodiesel and renewable diesel in this final rule are higher than in the proposed rule, particularly in 2025 due to higher projections of feedstock availability. Further details on these volume projections can be found in RIA Chapter 6.2.

a. Biodiesel

Historically, the largest volumes of biomass-based diesel and advanced biofuel supplied in the RFS program have been biodiesel. Domestic biodiesel production increased from approximately 1.3 billion gallons in 2014 to approximately 1.8 billion gallons in 2018. Since 2018 domestic biodiesel production decreased slightly, to approximately 1.6 billion gallons in 2022. The U.S. has also imported significant volumes of biodiesel in previous years and has been a net importer of biodiesel since 2013. Biodiesel imports reached a peak in 2016 and 2017, with the majority of the imported biodiesel coming from Argentina.[79] In August 2017, the U.S. announced tariffs on biodiesel imported from Argentina and Indonesia.[80] These tariffs were subsequently confirmed in April 2018.[81] Since that time no biodiesel has been imported from Argentina or Indonesia, and net biodiesel imports have been relatively small.

Available data suggests that there is significant unused biodiesel production capacity in the U.S., and thus domestic biodiesel production could grow without the need to invest in additional production capacity. Consistent with comments we received on the rule, we have updated our assessment of domestic biodiesel production capacity using the latest information available from EIA. Data reported by EIA shows that biodiesel production capacity in January 2023 was approximately 2.05 billion gallons per year.[82] According to EIA data biodiesel production capacity grew slowly from about 2.1 billion gallons in 2012 [83] to a peak of approximately 2.5 billion gallons in 2018.[84] EIA reports that domestic biodiesel production capacity was approximately 2.5 billion gallons as recently as October 2021.[85] This facility capacity data is collected by EIA in monthly surveys, which suggests that this capacity represents the production at facilities that are currently producing some volume of biodiesel and likely does not include inactive facilities that are far less likely to complete a monthly survey. EPA separately collects facility capacity information through the facility registration process. This data includes both facilities that are currently producing biodiesel and those that are inactive. EPA's data shows a total domestic biodiesel production capacity of 3.1 billion gallons per year in April 2022, of which 2.8 billion gallons per year was at biodiesel facilities that generated RINs in 2021. These estimates of domestic production capacity strongly suggest that domestic biodiesel production capacity is unlikely to limit domestic biodiesel production through 2025.

b. Renewable Diesel and SAF

Renewable diesel and SAF are currently produced using the same feedstocks and very similar production technologies, and in most cases are produced at the same production facilities. Historically, greater incentives have been available for renewable diesel production, which has caused many of these production facilities to maximize renewable diesel production. In the near term, we expect that any increase in SAF production will result in a corresponding decrease in renewable diesel production.[86] In this section we have focused on renewable diesel production, but we acknowledge that an increasing portion of this fuel may be used as SAF in future years.

Renewable diesel has historically been produced and imported in smaller quantities than biodiesel as shown in Figure III.B.2–1. In recent years, however, domestic production of renewable diesel has increased significantly. Renewable diesel production facilities generally have higher capital costs and production costs relative to biodiesel, which likely accounts for the much higher volumes

[78] The equivalence values for renewable diesel and jet fuel are similar, with renewable diesel generating 1.6–1.7 RINs per gallon depending on the energy content of the fuel and Jet fuel generally generating 1.6 RINs per gallon.

[79] EIA U.S. Imports by Country of Origin,*https://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_EPOORDB_im0_mbbl_a.htm.* According to EIA data, 67 percent of all biodiesel imports in 2016 and 2017 were from Argentina.

[80] 82 FR 40748 (Aug. 28, 2017).

[81] 83 FR 18278 (April 26, 2018).

[82] EIA Monthly Biofuels Feedstock and Capacity Update, *https://www.eia.gov/biofuels/update.* Mar. 31, 2023 ().

[83] EIA Monthly Biodiesel Production Report. February 2013.

[84] EIA Monthly Biodiesel Production Report. February 2019.

[85] EIA Monthly Biofuels Feedstock and Capacity Update. January 31, 2023 (*https://www.eia.gov/biofuels/update*).

[86] We recognize that new technologies are being developed to produce SAF from a wider variety of feedstocks. Production of SAF using these technologies would not negatively impact renewable diesel production. Through 2025, however, we expect that only relatively modest volumes of these fuels might be produced.

of biodiesel production relative to renewable diesel production to date. The higher cost of renewable diesel production can largely be offset through the benefits of economies of scale, since renewable diesel facilities tend to be much larger than biodiesel production facilities. More importantly, because renewable diesel more closely resembles petroleum-based diesel than biodiesel fuel (both renewable diesel and petroleum-based diesel are hydrocarbons while biodiesel is a methyl-ester) renewable diesel can be blended at much higher levels than biodiesel. This allows renewable diesel producers to benefit to a greater extent from the LCFS credits in California and other states in addition to the RFS incentives and the federal tax credit. The greater ability for renewable diesel to generate credits under California's LCFS program provides a significant advantage over biodiesel. Biodiesel blends in California containing 6 to 20 percent biodiesel require the use of an additive to comply with California's Alternative Diesel Fuels Regulations, making the use of higher level biodiesel blends more challenging in California.[87] We expect that an increasing number of states will adopt clean fuels programs, and that these programs could provide an advantage to renewable diesel production relative to biodiesel production in the U.S. See RIA Chapter 6.2 for further discussion.

Total domestic renewable diesel production capacity has increased significantly in recent years from approximately 280 million gallons in 2017 to approximately 2.9 billion gallons in January 2023.[88] Additionally, a number of parties have announced plans to build new renewable diesel production capacity with the potential to begin production by the end of 2025. This new capacity includes new renewable diesel production facilities, expansions of existing renewable diesel production facilities, and the conversion of units at petroleum refineries to produce renewable diesel.

We received numerous comments on the proposed rule related to renewable diesel production capacity. These comments generally cited projections that renewable diesel production capacity will grow significantly through 2025, and many of these comments cited data and projections from EIA. In this final rule we have updated our projection of renewable diesel production capacity through 2025 based on updated information from EIA, consistent with these comments. As in the proposed rule, however, we expect that renewable diesel production through 2025 will be limited to a level below production capacity primarily due to limited feedstock availability, which is further discussed later in Section III.B.2.c.

EIA currently projects that renewable diesel production capacity could reach nearly 6 billion gallons by 2025,[89] though it is possible that not all these announced projects will be completed, and not all of those that are completed will necessarily produce renewable diesel in the 2023–2025 timeframe addressed by this rule.[90] In previous years, domestic renewable diesel production has increased in concert with increases in domestic production capacity, with renewable diesel facilities generally operating at high utilization rates. In future years we expect that feedstock limitations will result in renewable diesel and biodiesel facilities operating below their production capacity. Competition for qualifying feedstocks could also result in reductions in biodiesel production if larger renewable diesel facilities are able to out-compete smaller biodiesel producers for feedstock.

In addition to domestic production of renewable diesel, the U.S. has also imported renewable diesel, with nearly all of it produced from FOG and imported from Singapore.[91] In more recent years, the U.S. has also exported increasing volumes of renewable diesel. Net imports of renewable diesel were approximately 120 million gallons in 2021 and 130 million gallons in 2022. This situation, wherein significant volumes of renewable diesel are both imported and exported, is likely the result of a number of factors, including the design of the biodiesel tax credit (which is available to renewable diesel that is either produced or used in the U.S. and thus eligible for exported volumes as well), the varying structures of incentives for renewable diesel (with the level of incentives varying depending on the feedstocks used to produce the renewable diesel varying as well as by country), and logistical considerations (renewable diesel may be imported and exported from different parts of the country). We are projecting that net renewable diesel imports will continue through 2025 at approximately the levels observed in recent years, as domestic producers export volumes to take advantage of both the U.S. tax incentives and other incentives abroad. However, we also recognize that increasing net imports of renewable diesel could be a significant source of additional renewable fuel supply in future years.

c. BBD Feedstocks

As was highlighted in the proposal, when considering the likely production and import of biodiesel and renewable diesel in future years, the availability of feedstock is a key consideration. We received many comments on our assessment of the availability of BBD feedstocks in the proposed rule. Many of these commenters stated that the data from USDA [92] that EPA used to project domestic soybean oil production through 2025 was not appropriate for this use. For this final rule we have updated our projections of soybean oil production in the U.S. and canola oil production in Canada through 2025. Our current projections of the production of these feedstocks are significantly higher than our projections in the proposed rule (which did not consider increased availability of canola oil from Canada [93]) and are generally in alignment with the projections provided by the commenters and discussions with market experts. As in our proposed rule, however, we continue to believe that the availability of qualifying feedstocks will serve to limit the production of biodiesel and renewable diesel through 2025. We also continue to believe that when evaluating the various statutory factors, the greatest benefits and fewest negative impacts of these fuels occur when increased production of these fuels is consistent with increased production of qualifying feedstocks produced in North America. Our assessment of available feedstocks (including our consideration of

[87] CARB Alternative Diesel Fuels Regulations Frequently Asked Questions. In 2021 nearly all renewable diesel consumed in the U.S. was consumed in California. Together renewable diesel and biodiesel represented approximately 26 percent of all diesel fuel consumed in California in 2021.

[88] 2017 renewable diesel capacity based on facilities registered in EMTS; January 2023 renewable capacity based on EIA March 2023 Monthly Biofuels Feedstock and Capacity Update.

[89] *Domestic renewable diesel capacity could more than double through 2025.* EIA Today in Energy. Feb. 2, 2023.

[90] Reuters. *CVR Pauses Renewable Diesel Plans as Feedstock Prices Surge.* August 3, 2021. Available at: *https://www.reuters.com/business/energy/cvr-pauses-renewable-diesel-plans-feedstock-prices-surge-2021-08-03.*

[91] EIA Monthly Renewable Diesel Imports by Country, available at *https://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_EPOORDO_im0_mbbl_m.htm.*

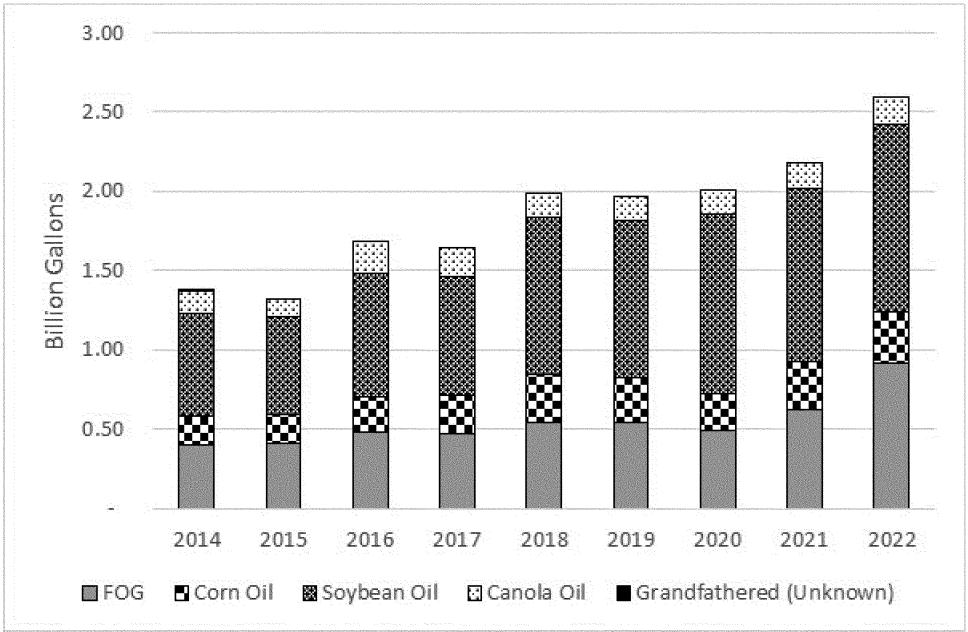
[92] USDA Agricultural Projections to 2031.

[93] Since the analyses for the proposed rule were conducted, EPA approved a pathway for renewable diesel produced from canola oil. In addition, Canadian feedstocks are covered by an aggregate compliance approach and are likely to be sourced from increased production of canola oil rather than diverted from existing uses. For a further discussion of the inclusion of canola oil from Canada in our projection of available feedstocks for biodiesel and renewable diesel production, see RTC Section 4.2.

comments on the proposed rule and data not available at the time of the proposed rule) is discussed briefly in this section, and in greater detail in RIA Chapter 6.2 and the RTC document.

Currently, biodiesel and renewable diesel in the U.S. are produced from a number of different feedstocks, including fats, oils and greases (FOG), distillers corn oil, and virgin vegetable oils such as soybean oil and canola oil. As domestic production of biodiesel has increased since 2014, an increasing percentage of total biodiesel production has been produced from soybean oil, with smaller increases in the use of FOG, distillers corn oil, and canola oil.

Figure III.B.2-2: Feedstocks Used to Produce Biodiesel and Renewable Diesel in the U.S. 2014-2021



Use of soybean oil to produce biodiesel increased from approximately 10 percent of all domestic soybean oil production in the 2009/2010 agricultural marketing year to 42 percent in the 2021/2022 agricultural marketing year.[94] In the intervening years, the total increase in domestic soybean oil production and the increase in the quantity of soybean oil used to produce biodiesel and renewable diesel were very similar, indicating that the increase in oil production was likely driven by the increasing demand for biofuel. However, as the production of renewable diesel has increased in recent years it appears that demand for soybean oil is growing faster than demand for soybean meal. Notably, the percentage of the soybean value that came from the soybean oil (rather than the meal and hulls) had been relatively stable and averaged approximately 33 percent from 2016–2020. The percentage of the soybean value that came from the soybean oil increased significantly starting in 2021, reaching a high of 53 percent in October 2021, before declining slightly to 43 percent in August 2022 (the most recent date for which data are available).

Through 2020, most of the renewable diesel produced in the U.S. was made from FOG and distillers corn oil, with smaller volumes produced from soybean oil. While many biodiesel production facilities are unable to use FOG and distillers corn oil, renewable diesel production facilities are generally able to use them. Additionally, nearly all the renewable diesel consumed in the U.S. is used in California due to the combined value of RFS and LCFS incentives (together with the blenders' tax credit). Under California's LCFS program renewable diesel produced from FOG and distillers corn oil receive more credits than renewable diesel produced from soybean oil.

Available volumes of FOG and distillers corn oil from domestic sources are expected to continue to increase in future years, but these increases are expected to be limited. FOG are the byproducts of other activities (rendering operations, for example), and production of FOG is not responsive to increasing demand for biofuel production. We therefore expect the availability of FOG to increase slowly, consistent with the observed trend in recent years. Similarly, distillers corn oil is a byproduct of ethanol production. Since we do not anticipate significant growth in ethanol production in future years, we do not project significant increases in the production of distillers corn oil for biofuel production, as most ethanol production facilities currently produce distillers corn oil. Therefore, if renewable diesel production in future years increases rapidly as suggested by the large production capacity announcements, it will likely require increased use of vegetable oils such as soybean oil and canola oil, increased use of imported feedstocks, or the use of feedstocks diverted from other markets.

Greater volumes of soybean oil are projected to be produced from new or expanded soybean crushing facilities. Several parties have announced plans to expand existing soybean crushing capacity and/or build new soybean crushing facilities.[95] This new crushing

[94] USDA Oil Crops Yearbook. March 2023.

[95] For example, see Demaree-Saddler, Holly, *Cargill plans US soy processing operations expansion,* World Grain, March 4, 2021; Sanicola, Laura, *Chevron to invest in Bunge soybean crushers*

Continued

capacity is expected to come online in the 2023–2025 timeframe. Increased crushing of soybeans in the U.S. will increase domestic soybean oil production. In this final rule we have updated our projections of domestic soybean oil production through 2025 to better reflect recent investments in domestic soybean crushing facilities that are expected to begin operating by 2025.

If domestic crushing of soybeans increases at the expense of soybean exports, domestic vegetable oil production could be increased without the need for additional soybean production. Alternatively, increased demand for soybeans from new or expanded crushing facilities could result in increased soybean production in the U.S or increasing volumes of qualifying feedstocks such as soybean oil and canola oil may be diverted from existing markets to produce renewable diesel, with non-qualifying feedstocks such as palm oil used in place of soybean and canola oil in food and oleochemical markets.

We also expect that production of canola oil will increase in future years due to expanding canola crushing capacity in Canada. Similar to the investments in soybean crushing in the U.S., a number of companies have announced investment in additional canola crushing capacity, and some of these projects are already under construction. Increasing canola oil production in Canada could provide an opportunity for domestic renewable diesel producers to import canola oil for biofuel production, however we expect that these parties will face competition for this feedstock from Canadian biofuel producers as well as food and other non-biofuel markets. The assessment of feedstock availability for this final rule (discussed in greater detail in RIA Chapter 6.2.3) includes volumes of imported canola oil we project could be available to domestic BBD producers.

d. Projected BBD Production and Imports

We project that the supply of BBD to the U.S. will increase through 2025. Consistent with our updated projections of feedstock availability discussed in the preceding section, our projections of BBD production and imports are higher in this final rule than in the proposed rule, particularly in 2025. We project that the largest increases will come from domestic renewable diesel as new production facilities come online. We project slight decreases in the volume of biodiesel used in the U.S. as new renewable diesel producers are able to out-compete some existing biodiesel producers for limited feedstocks. One significant factor that is likely to negatively impact biodiesel production relative to renewable diesel production is that opportunities for renewable diesel expansion in California are not constrained by blending limits. Renewable diesel can therefore continue to benefit from both LCFS credits and the RFS RIN incentives. In contrast, continued biodiesel expansion in California is expected to be more limited due to requirements for the use of additives in higher level biodiesel blends. Consequently, for biodiesel to continue to expand, it must do so primarily outside of California and without the added financial incentive of the LCFS credits. This provides a significant advantage to renewable diesel in the competition for access to new feedstocks, particularly feedstocks with low carbon intensity (CI) scores in California's LCFS program and Oregon and Washington's Clean Fuels programs. While we project most of the biodiesel and renewable diesel supplied to the U.S. will be produced domestically, we project that imports of both biodiesel and renewable diesel will continue to contribute to the supply of these fuels through 2025. We note that in the first quarter of 2023 imports of biodiesel and renewable diesel, and the feedstocks used to produce these fuels in the U.S., increased substantially on a year-over-year basis, seemingly in response to the proposed volume requirements for 2023–2025. See RIA Chapter 6.2 for more information on the projected supply of biodiesel and renewable diesel to the U.S. in 2023–2025. We take this data into consideration both in our assessment of the candidate volumes of non-cellulosic advanced biofuel (discussed in Section III.C.2) and the final volumes of advanced and total renewable fuel (discussed in Section VI).

3. Other Advanced Biofuel

In addition to BBD, other renewable fuels that qualify as advanced biofuel have been consumed in the U.S. in the past and would be expected to contribute to compliance with applicable volume requirements in the years after 2022. These other advanced biofuels include imported sugarcane ethanol, domestically produced advanced ethanol, biogas that is purified and compressed to be used in CNG or LNG vehicles, heating oil, naphtha, and renewable diesel that does not qualify as BBD.[96] However, these biofuels have been consumed in much smaller quantities than biodiesel and renewable diesel in the past, and/or have been highly variable.

We did not receive a significant number of comments suggesting alternative projections of other advanced biofuel volumes. The comments we did receive generally suggested higher volumes might be appropriate due to expectations of increased production of SAF[97] (which is covered in Section III.B.2) and CNG/LNG produced from food waste or other non-cellulosic feedstocks. For this final rule we used the same general projection methodology as in the proposed rule, but we included data from 2022 that was not available at the time of the proposed rule. The inclusion of this additional data resulted in slightly higher volumes of other advanced biofuels relative to the proposed rule.

In order to estimate the volumes of these other advanced biofuels that may be available in 2023–2025, we used the same general methodology as in the proposed rule. This methodology was originally presented in the annual rulemaking establishing the applicable standards for 2020–2022.[98] This methodology addresses the historical variability in these categories of advanced biofuel while recognizing that consumption in more recent years is likely to provide a better basis for making future projections than consumption in earlier years. Specifically, we applied a weighting scheme to historical volumes wherein the weighting was higher for more recent years and lower for earlier years. The result of this approach is shown in the table below. Details of the derivation of these estimates can be found in RIA Chapter 5.4.

TABLE III.B.3–1—ESTIMATE OF FUTURE CONSUMPTION OF OTHER ADVANCED BIOFUEL

Fuel	Volume (million RINs)
Imported sugarcane ethanol	95
Domestic ethanol	27
CNG/LNG	6
Heating oil	3

to secure renewable feedstock, Reuters, Sept. 2, 2021.

[96] Renewable diesel produced through coprocessing vegetable oils or animal fats with petroleum cannot be categorized as BBD but remains advanced biofuel. See 40 CFR 80.1426(f)(1).

[97] While the existing pathways for SAF qualify as BBD, rather than advanced biofuel, some commenters stated that increasing production of SAF would result in additional volumes of other advanced biofuel.

[98] 87 FR 39600 (July 1, 2022).

TABLE III.B.3–1—ESTIMATE OF FUTURE CONSUMPTION OF OTHER ADVANCED BIOFUEL—Continued

Fuel	Volume (million RINs)
Naphtha	55
Renewable diesel	104
Total	290

As the available data does not permit us to identify an upward or downward trend in the historical consumption of these other advanced biofuels, we have used the volumes in Table III.B.3–1 for all years covered in this final rule (*i.e.,* 2023–2025).

4. Conventional Renewable Fuel

Conventional renewable fuel includes any renewable fuel that is made from renewable biomass as defined in 40 CFR 80.1401, does not qualify as advanced biofuel, and meets one of the following criteria:

- Is demonstrated to achieve a minimum 20 percent reduction in GHGs in comparison to the gasoline or diesel which it displaces; or
- Is exempt (''grandfathered'') from the 20 percent minimum GHG reduction requirement due to having been produced in a facility or facility expansion that commenced construction on or before December 19, 2007, as described in 40 CFR 80.1403.[99]

Under the statute, there is no volume requirement for conventional renewable fuel. Instead, conventional renewable fuel is that portion of the total renewable fuel volume requirement that is not required to be advanced biofuel. In some cases, it is referred to as an ''implied'' volume requirement. However, obligated parties are not required to comply with it per se since any portion of it can be met with advanced biofuel volumes in excess of that needed to meet the advanced biofuel volume requirement.

To estimate candidate volumes of conventional renewable fuel for 2023–2025, we focused primarily on projecting volumes of corn ethanol consumption, which in turn is driven by total ethanol consumption. For this final rule we have updated our projections of total ethanol consumption and corn ethanol consumption based on the comments we received and additional data that was not available for the proposed rule. We also investigated potential volumes of non-advanced biodiesel and renewable diesel.

a. Corn Ethanol

Ethanol made from corn starch has dominated the renewable fuels market on a volume basis in the past and is expected to continue to do so for the time period addressed by this rulemaking.[100] Corn starch ethanol is prohibited by statute from being an advanced biofuel regardless of its GHG performance in comparison to gasoline.[101]

Total domestic corn ethanol production capacity increased dramatically between 2005 and 2010 and increased at a slower rate thereafter. In 2022, production capacity had reached 17.7 billion gallons.[102] [103] Available production capacity was significantly underused in 2020 and to some degree in 2021 because the COVID–19 pandemic depressed gasoline demand in comparison to previous years and thus ethanol demand in the form of E10 (gasoline containing 10% denatured ethanol). Actual production of ethanol in the U.S. reached 15.4 billion gallons in 2022, compared to 16.1 billion gallons in 2018.[104]

The expected annual rate of future commercial production of corn ethanol will continue to be driven primarily by gasoline demand in the 2023–2025 timeframe as most gasoline is expected to continue to contain 10 percent ethanol. Commercial production of corn ethanol is also a function of exports of ethanol and the demand for E0, E15, and E85. We have incorporated projected growth in opportunities for sales of E15 and E85 into our assessment. There is an excess of production capacity of ethanol and corn feedstock in comparison to the ethanol volumes that we estimate will be consumed in the near future given constraints on consumption as described in Section III.B.5. Thus, consistent with the proposed rule, it does not appear that production capacity will be a limiting factor in 2023–2025 for meeting the candidate volumes.

b. Biodiesel and Renewable Diesel

Other than corn ethanol, the only other conventional renewable fuels that have been used at significant levels in the U.S. have been biodiesel and renewable diesel. The vast majority of those volumes were imported, and all of it was grandfathered under 40 CFR 80.1403 and thus was not required to meet the 20 percent GHG reduction requirement. While conventional biodiesel and renewable diesel could be used in 2023–2025, as in the proposed rule we are not projecting any volumes of these fuels will be used in these years.[105]

Actual global production of palm oil biodiesel and renewable diesel was about 4.5 billion gallons in 2021.[106] The U.S. could be an attractive market for this foreign-produced conventional biodiesel and renewable diesel if domestic demand for conventional renewable fuel exceeded domestic supply, *i.e.,* the amount of ethanol that could be consumed combined with domestic production of conventional biodiesel and renewable diesel. While there is no RIN-generating pathway for biodiesel or renewable diesel produced from palm oil in the RFS program, fuels produced at grandfathered facilities from any feedstock meeting the definition of ''renewable biomass'' may be eligible to generate conventional renewable fuel RINs. Total foreign production capacity at grandfathered biodiesel and renewable diesel production facilities is approximately 1 billion gallons, suggesting that significant volumes of grandfathered biodiesel and renewable diesel could be imported under favorable market conditions.

Historical U.S. imports of conventional biodiesel and renewable diesel have been only a small fraction of global production in the past. Conventional biodiesel imports rose between 2012 and 2016, reaching a high of 113 million gallons.[107] After 2016,

[99] CAA section 211(o)(2)(A)(i).

[100] Conventional ethanol from feedstocks other than corn starch have been produced in the past, but at significantly lower volumes. Production of ethanol from grain sorghum reached an historical high of 125 million gallons in 2019, representing just less than 1 percent of all conventional ethanol in that year; grain sorghum ethanol in 2022 was only 77 million gallons. Waste industrial ethanol and ethanol made from non-cellulosic portions of separated food waste have been produced more sporadically and at even lower volumes. These other sources do not materially affect our assessment of volumes of conventional ethanol that can be produced.

[101] CAA section 211(o)(1)(B)(i).

[102] ''2022 Ethanol Industry Outlook—RFA,'' available in the docket.

[103] ''Ethanol production capacity—EIA August 2022,'' available in the docket.

[104] ''EIA Monthly Energy Review, April 2023,'' available in the docket.

[105] Data from EMTS shows some generation of D6 RINs for biodiesel and renewable diesel in recent years, however these RINs were retired using the retirement code ''renewable fuel used or designated to be used in any application that is not transportation fuel, heating oil, or jet fuel.'' These RINs therefore do not represent qualifying fuel under the RFS program.

[106] Total worldwide production of biodiesel and renewable diesel was 55 billion liters in 2021, of which 31 percent was from palm oil. See OECD–FAO Agricultural Outlook 2022–2031, p.236, available at *https://www.oecd.org/development/oecd-fao-agricultural-outlook-19991142.htm.*

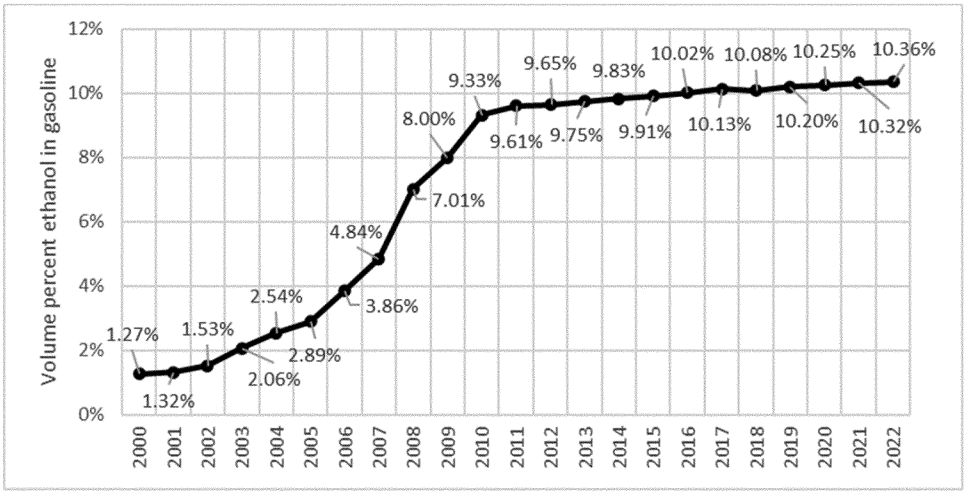
[107] ''RIN supply as of 3–7–23,'' available in the docket.

however, there have been no imports of conventional biodiesel. Small refinery exemptions granted from 2016–2018 decreased demand for renewable fuel in the U.S. and likely had an impact on conventional biodiesel and renewable diesel imports. Imports of conventional renewable diesel have been similarly low, reaching a high of 87 million gallons in 2015 with no conventional renewable diesel imported since 2017.[108] The highest imported volume of total conventional biodiesel and renewable diesel occurred in 2016 with 160 million gallons (258 million RINs).

5. Ethanol Consumption

Ethanol consumption in the U.S. is dominated by E10, with higher ethanol blends such as E15 and E85 being used in much smaller quantities. The total volume of ethanol that can be consumed, including that produced from corn, cellulosic biomass, the non-cellulosic portions of separated food waste, and sugarcane, is a function of these three ethanol blends and demand for E0. The use of these different gasoline blends is reflected in the poolwide ethanol concentration which increased dramatically from 2003 through 2010 and thereafter increased at a considerably slower rate.[109]

Figure III.B.5-1: Poolwide Ethanol Concentration Over Time



Source: Derived from ethanol and gasoline consumption in EIA's Monthly Energy Review

As the average ethanol concentration approached and then exceeded 10 percent, the gasoline pool became saturated with E10, with a small, likely stable volume of E0 and small but increasing volumes of E15 and E85. The average ethanol concentration can exceed 10 percent only insofar as the ethanol in E15 and E85 exceeds the ethanol content of E10 and more than offsets the volume of E0.

We used the same general methodology to project total ethanol consumption in this final rule as in the proposed rule, but we updated the projections of poolwide ethanol concentration and total gasoline consumption using more recent data. This methodology is different than the methodology used in previous RFS rules, which generally looked to EIA projections of ethanol concentration in the gasoline pool. We have used this new methodology to better account for the projected increase in retail stations selling higher level blends such as E15 and E85.[110]

In order to project total ethanol consumption for 2023–2025, we correlated the poolwide average ethanol concentration shown in the figure above with the number of retail service stations offering E15 and E85. Projections of the number of stations offering these blends in the future then provided a basis for a projection of the average ethanol concentration, and thus of total ethanol volumes consumed. In this final rule we updated both the correlations between E15 and E85 stations and poolwide ethanol consumption and our projections of the number of E15 and E85 stations for 2023–2025. The results are shown in Table III.B.5–1. While the projected ethanol concentration in 2023–2025 are similar to the projected concentrations from the proposed rule, projected ethanol consumption for 2023–2025 is significantly lower due to lower projected gasoline demand in these years in EIA's most recent AEO. Details of these calculations can be found in the RIA.

[108] ''RIN supply as of 3–7–23,'' available in the docket.

[109] As discussed in Section VII.B, the gasoline+diesel estimates used to calculate the percentage standards have historically been lower than the gasoline+diesel volumes used by obligated parties to determine their Renewable Volume Obligations (RVO). Relatedly, the historical ethanol concentration values shown in Figure III are likely to be higher than actual values due to some underestimates of total gasoline demand.

[110] See RIA Chapter 6.5.1 for more information on our projections of ethanol concentration in the gasoline pool.

TABLE III.B.5–1—PROJECTED ETHANOL CONSUMPTION

Year	Projected ethanol concentration (%)	Projected ethanol consumption (million gallons)
2023	10.41	13,974
2024	10.46	14,128
2025	10.51	13,978

C. Candidate Volumes for 2023–2025

Based on our analysis of supply-related factors as described in Section III.B above, we developed candidate volumes for 2023–2025 which we then analyzed under the other economic and environmental factors required by the statute. This section describes the candidate volumes, while Section IV summarizes the results of the additional analyses we performed. Relative to the candidate volumes in the proposed rule, the candidate volumes for cellulosic biofuel, BBD, and other advanced biofuels in this final rule are all higher for all three years (after accounting for the fact that we are not finalizing the proposed eRIN provisions in this rule). The candidate volumes for conventional biofuel in this final rule are lower than the volumes from the proposed rule.

We have largely framed our assessment of volumes in terms of the component categories (cellulosic biofuel, non-cellulosic advanced biofuel, and conventional renewable fuel) rather than in terms of the statutory categories (cellulosic biofuel, advanced biofuel, total renewable fuel). The statutory categories are those addressed in CAA section 211(o)(2)(B)(i)–(iii), and cellulosic and advanced biofuel are nested within the overall total renewable fuel category. The component categories are the categories of renewable fuels which make up the statutory categories but which are not nested within one another. They possess distinct economic, environmental, technological, and other characteristics relevant to the factors we must analyze under the statute, making our focus on them rather than the nested categories in the statute technically sound. Finally, an analysis of the component categories is equivalent to analyzing the statutory categories, since doing so would effectively require us to evaluate the difference between various statutory categories (*e.g.,* assessing ''the difference between volumes of advanced biofuel and total renewable fuel'' instead of assessing ''the volume of conventional renewable fuel''), adding unnecessary complexity and length to our analysis. In any event, were we to frame our analysis in terms of the statutory categories, we believe that our substantive approach and conclusions would remain materially the same.

1. Cellulosic Biofuel

In determining the candidate volumes for cellulosic biofuel, we started by considering the statutory volume targets for 2010–2022. The statutory volumes for cellulosic biofuel increased rapidly, from 100 million gallons in 2010 to 16 billion gallons in 2022 with the largest increases in the later years. While notable on its own, it is even more notable in comparison to the implied statutory volumes for the other renewable fuel volumes. Statutory BBD volumes did not increase after 2012, implied conventional renewable fuel volumes did not increase after 2015, and non-cellulosic advanced biofuel volume increases tapered off in recent years with a final increment in 2022. Thus, the clear focus of the statute by 2022 was on growth in cellulosic biofuel volumes, which have the greatest greenhouse gas reduction threshold requirement in the statute.[111] The statutory cellulosic waiver provision,[112] while acknowledging that the statutory cellulosic biofuel volumes may not be met, nevertheless effectively expresses support for the cellulosic biofuel industry in directing EPA to establish the cellulosic biofuel volume at the projected volume available in years when the projected volume of cellulosic biofuel production was less than the statutory volume. This increasing emphasis in the statute on cellulosic biofuel over time is likely due to expectations that cellulosic biofuel has significant potential to reduce GHG emissions (cellulosic biofuels are required to reduce GHG emissions by 60 percent relative to the gasoline or diesel fuel they displace), that cellulosic biofuel feedstocks could be produced or collected with relatively few negative environmental impacts, that the feedstocks would be comparable or cheaper in cost relative to other fuel feedstocks, allowing for lower cost biofuels to be produced than those produced from feedstocks without other primary uses such as food, and that the technological breakthroughs needed to convert cellulosic feedstocks into biofuel were likely imminent.

The candidate volumes discussed in this section represent the volume of qualifying cellulosic biofuel we project will be produced or imported into the U.S. in 2023–2025, after taking into consideration the incentives provided by the RFS program and other available state and federal incentives. The candidate volumes for 2023–2025 are shown in Table III.C.1–1. Because the technical, economic, and regulatory challenges related to cellulosic biofuel production vary significantly between the various types of cellulosic biofuel, we have shown the candidate volumes for liquid cellulosic biofuel and CNG/LNG derived from biogas separately. Relative to the proposed rule the candidate volumes of CNG/LNG derived from biogas are higher in all three years due to the use of a higher growth rate to project these volumes. Similarly, volumes of ethanol from CKF are higher in all three years as we are now projecting additional facilities will register as cellulosic biofuel producers using this pathway. Despite the increase in RNG use as CNG/LNG and the addition of ethanol from CKF, total cellulosic biofuel volumes for 2024 and 2025 are significantly lower in this final rule relative to the proposal because we are not finalizing the eRIN provisions in this rule.

[111] CAA section 211(o)(1)(E). *Cf.* CAA section 211(o)(1)(B)(i), (D), (2)(A)(i). See also definition of ''cellulosic biofuel'' at 40 CFR part 80, section 1401.

[112] CAA section 211(o)(7)(D).

TABLE III.C.1–1—CELLULOSIC BIOFUEL CANDIDATE VOLUMES

[Million RINs]

	2023	2024	2025
RNG use as CNG/LNG	831	1,039	1,299
Ethanol from CKF	7	51	77
Total Cellulosic Biofuel	838	1,090	1,376

2. Non-Cellulosic Advanced Biofuel

Although there are no volume targets in the statute for years after 2022, the statutory volume targets for prior years represent a useful point of reference in the consideration of volumes that may be appropriate for 2023–2025. For non-cellulosic advanced biofuel, the implied statutory requirement increased in every year between 2009 and 2019.[113] It remained at 4.5 billion gallons for three years before finally rising to 5.0 billion gallons in 2022. The candidate volumes for non-cellulosic advanced biofuel in the final rule are higher than the candidate volumes from the proposed rule for 2023–2025. The increases are primarily the result of higher projections of feedstock availability allowing for greater renewable diesel production relative to the proposed rule.

For years after 2022, we anticipate that a key factor in the growth in the production of advanced biodiesel and renewable diesel (the two non-cellulosic advanced biofuels projected to be available in the greatest quantities through 2025) will be the availability of feedstocks as discussed in III.B.2.c. above. We expect small increases in the supply of FOG and distillers corn oil, but we project that the largest increases in feedstock availability in the U.S. will come from increased production of soybean oil. This expectation is largely in line with data and input provided by commenters on the December 2022 proposed rule. Significant investments have been made in recent years that would result in higher domestic soybean crushing capacity and thus soybean oil production, particularly in 2024 and 2025 (see additional discussion of the availability of biodiesel and renewable feedstocks in RIA Chapter 6.2.3). Similar investments have also been made to increase the production of canola oil in Canada, much of which could be supplied to U.S. markets for biofuel production. While advanced biofuels have the potential for significant GHG reductions, if pushing volume requirements beyond the supply of low-GHG feedstocks results in an increased use of higher-GHG feedstocks in non-biofuel markets as low-GHG feedstocks are increasingly used for biofuel production, then it would prove counterproductive.

Based on these considerations, we believe that increases in the volume of non-cellulosic advanced biofuel in the 2023–2025 timeframe should primarily be based on projected increases in the availability of feedstocks from the U.S. and Canada. One potential methodology for projecting the available supply of BBD in 2023–2025 is to base the projected supply for these years solely on the quantity of these fuels supplied in 2022 and the projected increases in feedstock availability in the U.S. and Canada (see RIA Chapter 6.2 for additional detail on our projections of biodiesel and renewable diesel supply for 2023–2025). However, RIN generation data from the first three months of 2023 indicates that the market is supplying greater volumes of non-cellulosic advanced biofuel than we would project based only on the quantity of these fuels used in 2022 plus the projected growth in feedstock production in the U.S. and Canada. The market appears to be responding to the proposed RFS volume requirements for 2023 by drawing upon imports and other sources of feedstock.

The candidate volumes for non-cellulosic advanced biofuel for 2023–2025 attempt to balance the longer-term desire to maximize the benefits (and minimize the potential negative impacts) of non-cellulosic advanced biofuel production by aligning growth in these fuels with the projected growth in feedstock production in North America and the observed data on the quantities of these fuels that have been supplied to the U.S. in the first quarter of 2023 (see Section VI for further discussion of this topic). The candidate volume for 2023 is equal to the quantity of non-cellulosic advanced biofuels to meet the proposed RFS volumes for 2023 (including the projected shortfall in conventional renewable fuel), consistent with the recent market data that indicates that the market is on track to supply this quantity of non-cellulosic advanced biofuel. The candidate volume for 2024 was determined in the same way, but we note that we project that a greater proportion of the increase over the quantity of these fuels supplied in 2022 is project to be supplied with feedstocks from North America (rather than other foreign countries) as soybean and canola crush capacity increases. Finally, the candidate volume for 2025 is primarily based on the projected increase in feedstocks from North America projected to be available to biofuel producers. These candidate volumes are shown in Table III.C.2–1, and the basis for these volumes are discussed in more detail in RIA Chapter 6.

TABLE III.C.2–1—TOTAL NON-CELLULOSIC ADVANCED BIOFUEL CANDIDATE VOLUMES

[Million RINs]

	2023	2024	2025
Advanced biodiesel	2,565	2,500	2,436
Advanced renewable diesel[a]	3,650	3,705	4,445
Other advanced biofuel	290	290	290

[113] See CAA section 211(o)(2)(B).

TABLE III.C.2–1—TOTAL NON-CELLULOSIC ADVANCED BIOFUEL CANDIDATE VOLUMES—Continued

[Million RINs]

	2023	2024	2025
Total	6,505	6,495	7,171

[a] Represents only renewable diesel and jet fuel with a D code of 4. Advanced renewable diesel with a D code of 5 is included in ''Other advanced biofuel.'' See also Table III.B.3–1.

3. Conventional Renewable Fuel

Consistent with the statute, EPA increased the implied conventional renewable fuel volumes every year between 2009 and 2015, after which it remained at 15 billion gallons through 2022.[114] [115] However, since 2017 these standards were set with the expectation that corn ethanol and other conventional biofuel volumes would not be sufficient to meet the standards, and instead advanced biofuel volumes would be required to make up for the shortfall. This is consistent with our observations of the market, in which the total supply of conventional renewable reached a maximum of approximately 14.5 billion gallons in 2016–2018. The candidate volume for conventional renewable in this final rule are based primarily on supply related factors rather than the implied volume requirements for conventional renewable fuel in previous RFS rules.

The amount of conventional ethanol that could be consumed between 2023 and 2025 can be estimated from the total ethanol consumption projections from Table III.B.5–1 and our projections for other forms of ethanol as discussed earlier in this section. Relative to the proposed rule both total ethanol consumption and corn ethanol consumption are significantly lower in all years, primarily due to lower projections of gasoline consumption in EIA's most recent AEO. We do not currently project that non-ethanol conventional renewable fuels will be supplied to the U.S. in 2023–2025. Therefore, our candidate volumes for conventional renewable fuel are equal to our projections of conventional ethanol consumption for 2023–2025.

TABLE III.C.3–1—PROJECTIONS OF ETHANOL CONSUMPTION

[Million gallons]

	2023	2024	2025
Ethanol in all blends	13,974	14,128	13,978
Cellulosic ethanol	7	51	77
Imported sugarcane ethanol	95	95	95
Domestic advanced ethanol	27	27	27
Conventional ethanol	13,845	13,955	13,779

Since conventional ethanol consumption would be about 13.8–14.0 billion gallons, there would need to be about 1.0–1.2 billion ethanol-equivalent gallons of non-ethanol renewable fuel in order for the implied conventional renewable fuel volumes of 15.0 billion gallons to be met.

4. Treatment of Carryover RINs

In our assessment of supply-related factors, we focused on those factors that could directly or indirectly impact the consumption of renewable fuel in the U.S. and thereby determine the number of RINs generated in each year that could be available for compliance with the applicable standards in those same years. However, carryover RINs represent another source of RINs that can be used for compliance. We therefore investigated whether and to what degree carryover RINs should be considered in the context of determining appropriate levels for the candidate volumes and ultimately the final volume requirements (discussed in Section VI).

CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid for obligated parties to show compliance for 12 months as of the date of generation. EPA implemented this requirement through the use of RINs, which are generated for the production of qualifying renewable fuels. Obligated parties can comply by blending renewable fuels themselves, or by purchasing the RINs that represent the renewable fuels from other parties that perform the blending. RINs can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although the RFS regulations limit the use of these carryover RINs to 20 percent of the obligated party's renewable volume obligation (RVO).[116] For the collective supply of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with newer vintage RINs that are then held for use in the next year. For example, vintage 2022 carryover RINs must be used for compliance with 2023 compliance year obligations, or they will expire.

[114] See CAA section 211(o)(2)(B).

[115] While the 2020 implied volume requirement was originally set at 15 billion gallons (85 FR 7016, February 6, 2020), we reduced it to the volume actually consumed due to the significant impacts of the COVID–19 pandemic on demand for renewable fuel and our change to the treatment of exemptions for small refineries (87 FR 39600, July 1, 2022). For 2021, as EPA did not establish applicable standards with sufficient time to influence market behavior, we set the implied volume requirement for conventional renewable fuel at the level actually consumed. In 2016 EPA reduced the implied conventional renewable fuel volume to 14.5 billion gallons under our general waiver authority; this action was subsequently invalidated by the D.C. Circuit Court of Appeals in *ACE*. In this rule we are completing our response to the *ACE* remand by establishing a supplemental volume requirement of 250 million gallons of renewable fuel for 2023. This ''supplemental standard'' follows the implementation of a 250-million-gallon supplement for 2022 in a previous action. These two supplemental actions effectuates the Congressionally determined renewable fuel volume for 2016, modified only by the proper exercise of EPA's waiver authorities, as upheld by the court in *ACE*, as discussed in Section V.

[116] 40 CFR 80.1427(a)(5).

However, vintage 2023 RINs can then be saved for use toward 2024 compliance.

As noted in past RFS annual rules, carryover RINs are a foundational element of the design and implementation of the RFS program.[117] Carryover RINs are important in providing a liquid and well-functioning RIN market upon which success of the entire program depends, and in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace.[118] Carryover RINs enable parties ''long'' on RINs to trade them to those ''short'' on RINs, instead of forcing all obligated parties to comply through physical blending. Carryover RINs also provide flexibility and reduce spikes in compliance costs in the face of a variety of unforeseeable circumstances—including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel—that could limit the availability of RINs.

Just as the economy as a whole is able to function efficiently when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program is able to function when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be too few RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could result in deficits and/or noncompliance by parties without RIN reserves. Moreover, because carryover RINs are individually and unequally held by market participants, a non-zero but nevertheless small number of available carryover RINs may negatively impact the RIN market, even when the market overall could satisfy the standards. In such a case, market disruptions could force the need for a retroactive waiver of the standards, undermining the market certainty so critical to the RFS program. For all of these reasons, carryover RINs provide a necessary programmatic buffer that helps facilitate compliance by individual obligated parties, provides for smooth overall functioning of the program to the benefit of all market participants, and is consistent with the statutory provision requiring the generation and use of credits.

Carryover RINs have also provided flexibility when EPA considered the need to use its waiver authorities to lower previously established volumes. For example, in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[119]

a. Projected Number of Available Carryover RINs

The projected number of available carryover RINs after compliance with the 2021 standards (*i.e.,* the number of carryover RINs available for compliance with the 2022 standards) are summarized in Table III.C.4.a–1.[120]

TABLE III.C.4.a–1—PROJECTED 2021 CARRYOVER RINS

[Million RINs]

RFS standard	RIN type	Absolute 2021 carryover RINs[a]	Effective 2021 carryover RINs[b]
Cellulosic Biofuel	D3+D7	25	0
Non-Cellulosic Advanced Biofuel[c]	D4+D5	61	0
Conventional Renewable Fuel[d]	D6	1,047	494

[a] Represents the absolute number of 2021 carryover RINs that are available for compliance with the 2022 standards and does not account for deficits carried forward from 2021 into 2022.

[b] Represents the effective number of 2021 carryover RINs that are available for compliance with the 2022 standards after accounting for deficits carried forward from 2021 into 2022. Standards for which deficits exceed the number of available carryover RINs are represented as zero.

[c] Non-cellulosic advanced biofuel is not an RFS standard category but is calculated by subtracting the number of cellulosic RINs from the number of advanced RINs.

[d] Conventional renewable fuel is not an RFS standard category but is calculated by subtracting the number of advanced RINs from the number of total renewable fuel RINs.

Assuming that the market exactly meets the 2022, 2023, and 2024 standards with new RIN generation, these are also the number of carryover RINs that would be available for 2023, 2024, and 2025 (including the 2023 supplemental standard). However, the standards we established for 2022 (including the 2022 supplemental standard) were significantly higher than the volume of renewable fuel used in previous years, and the candidate volumes would represent increases for 2023–2025. While we project that the volume requirements in 2022 and the candidate volumes for 2023–2025 could be achieved without the use of carryover RINs, there is nevertheless some uncertainty about how the market would choose to meet the applicable standards.[121] The result is that there remains some uncertainty surrounding the ultimate number of carryover RINs that will be available for compliance with the 2023, 2024, and 2025 standards (including the 2023 supplemental standard). In particular, as discussed in RIA Chapter 1.11, the percentage standards established for 2020 and 2021 were more stringent than EPA anticipated (*i.e.,* the volume of gasoline and diesel reported by obligated parties for these compliance years was higher than volume used by EPA to set the standards), resulting in an unexpected drawdown of the number of available

[117] See, *e.g.,* 72 FR 23904 (May 1, 2007).

[118] See 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), 82 FR 58493–95 (December 12, 2017), 83 FR 63708–10 (December 11, 2018), 85 FR 7016 (February 6, 2020), 87 FR 39600 (July 1, 2022).

[119] 79 FR 49793–95 (August 15, 2013).

[120] The calculations performed to project the number of available carryover RINs can be found in RIA Chapter 1.10.

[121] Per 40 CFR 80.1451(f)(1)(i)(B)(*4*), the compliance deadline for the 2022 standards will be the first quarterly reporting deadline after the effective date of this action. We expect this deadline is likely to be December 1, 2023.

carryover RINs as a result of compliance with the 2020 and 2021 standards. In addition, a number of small refineries have elected to defer compliance with their 2020 obligations by opting-in to the alternative RIN retirement schedule for small refineries.[122] This flexibility allows small refineries to use any valid RIN (including 2023 and 2024) to comply with their 2020 RVOs as part of a quarterly RIN retirement schedule and effectively reduces the number of 2021–2024 carryover RINs available to comply with the 2022–2025 standards. Furthermore, we note that there have been enforcement actions in past years that have resulted in the retirement of carryover RINs to make up for the generation and use of invalid RINs and/or the failure to retire RINs for exported renewable fuel. To the extent that there are enforcement actions in the future, they could have similar results and require that obligated parties or renewable fuel exporters settle past enforcement-related obligations in addition to complying with the annual standards. In light of these uncertainties, the number of available carryover RINs could be larger or smaller than the number projected in Table III.C.4.a–1.

We acknowledge that the effective number of cellulosic and non-cellulosic advanced biofuel carryover RINs is zero, and that the effective number of conventional renewable fuel carryover RINs is significantly lower than it has been in recent years. We have recently taken actions to preserve the number of carryover RINs, and to ensure the continued functioning of the RIN market, and continue to believe that carryover RINs serve a vital programmatic function.[123] We have monitored RIN prices as a proxy for RIN market functioning, and given current RIN prices, we continue to believe the RIN market is liquid and fungible. Moreover, we note that the demand for RINs has been somewhat reduced and dispersed across a broad range of RIN vintages as a result of several actions related to small refineries: (1) The use of the alternative RIN retirement schedule in 40 CFR 80.1444, which gives small refineries additional time and opens a broader range of RIN vintages to acquire and retire the RINs needed to demonstrate compliance for the 2020 compliance year; and (2) The requests by several small refineries, granted by three different U.S. Circuit Courts of Appeals, to stay their RFS compliance obligations as part of the pending litigation challenging the EPA's April 2022 [124] and June 2022 [125] SRE Denial Actions.[126] We will continue to monitor RIN prices and the market, and retain our ability to modify future volumes through the use of our waiver authorities as discussed in Section II.F.

Even though carryover RIN levels are low, we believe that the standards we are finalizing in this action, including the supplemental standard, can be met through additional production of renewable fuel in the market. Additionally, should the market fall short of the volumes we are finalizing, obligated parties will continue to be able to carry forward a RIN deficit from one year into the next, although they may not carry forward a deficit for consecutive years. Conversely, should the market over-comply with the standards we are finalizing, the number of available carryover RINs could again grow.

b. Treatment of Carryover RINs for 2023–2025

We evaluated the volume of carryover RINs projected to be available and considered whether we should include any portion of them in the determination of the candidate volumes that we analyzed or the volume requirements that we finalized for 2023–2025 (including the 2023 supplemental volume). Doing so would be equivalent to intentionally drawing down the number of available carryover RINs in setting those volume requirements. We do not believe that this would be appropriate. In reaching this determination, we considered the functions of carryover RINs, the projected number available, the uncertainties associated with this projection, the potential impact of carryover RINs on the production and use of renewable fuel, the ability and need for obligated parties to draw on carryover RINs to comply with their obligations (both on an individual basis and on a market-wide basis), and the impacts of drawing down the number of available carryover RINs on obligated parties and the fuels market more broadly. As previously described, carryover RINs provide important and necessary programmatic functions—including as a cost spike buffer—that will both facilitate individual compliance and provide for smooth overall functioning of the program. We believe that a balanced consideration of the possible role of carryover RINs in achieving the volume requirements, versus maintaining an adequate number of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under its statutory authorities.

Furthermore, as discussed in the previous section and in RIA Chapter 1.10, the number of available carryover RINs has been significantly and unexpectedly drawn down as a result of 2020 and 2021 compliance, including effectively depleting the number of available cellulosic and non-cellulosic advanced carryover RINs. Moreover, as noted earlier, the advanced biofuel and total renewable fuel standards established for 2022 are significantly higher than the volume of renewable fuel used in previous years. As we explained in the 2020–2022 final rule, while we believed that the market could make sufficient renewable fuel available to meet the 2022 standards, there may be some challenges.[127] In addition, in this action we are for the first time prospectively establishing volume requirements for multiple years. This inherently adds uncertainty and makes it more challenging to project with accuracy the number of carryover RINs that will actually be available for each of these years. Given these factors, and the uneven holding of carryover RINs among obligated parties, we believe that further increasing the volume requirements after 2022 with the intent to draw down the number of available carryover RINs could lead to significant deficit carryforwards and noncompliance by some obligated parties that own relatively few or no carryover RINs. We do not believe this would be an appropriate outcome. Therefore, consistent with the approach we have taken in recent annual rules, we are not including carryover RINs in the candidate volumes, nor setting the 2023, 2024, and 2025 volume requirements (including the 2023 supplemental standard) at levels that would intentionally draw down the number of available carryover RINs.

We are not determining that the number of carryover RINs projected in Table III.C.4.a–1 is a bright-line threshold for the number of carryover

[122] 40 CFR 80.1444.

[123] See 87 FR 39600 (July 1, 2022), See also, ''April 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,'' EPA–420–R–22–006, April 2022; and ''June 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,'' EPA–420–R–22–012, June 2022.

[124] ''April 2022 Denial of Petitions for RFS Small Refinery Exemption,'' EPA–420–R–22–005, April 2022 (''April 2022 SRE Denial Action'').

[125] ''June 2022 Denial of Petitions for RFS Small Refinery Exemption,'' EPA–420–R–22–011, June 2022 (''June 2022 SRE Denial Action'').

[126] See, *e.g., Hunt Refining Co.* v. *EPA,* No. 22–12535–A, Document 33 (11th Cir.), *Calumet Shreveport Refining, et al.* v. *EPA,* No. 22–60266, Documents 209–1, 304–1 (5th Cir.), *Sinclair Wyoming, et. al.* v. *EPA,* No. 22–1073, Document 1992426 (D.C. Cir.).

[127] 87 FR 39600 (July 1, 2022).

RINs that provides sufficient market liquidity and allows carryover RINs to play their important programmatic functions. As in past years, we are instead evaluating, on a case-by-case basis, the number of available carryover RINs in the context of the RFS standards and the broader transportation fuel market at this time. Based upon this holistic, case-by-case evaluation, we are concluding that it would be inappropriate to intentionally reduce the number of carryover RINs by establishing higher volumes than what we anticipate the market is capable of achieving in 2023–2025. Conversely, while a larger number of available carryover RINs may provide greater assurance of market liquidity, we do not believe it would be appropriate to set the standards at levels specifically designed to increase the number of carryover RINs available to obligated parties.

5. Summary

Based on our analysis of supply-related factors, we identified a set of candidate volumes for each of the component categories that we believe represent achievable levels of supply related factors and other relevant considerations. These volumes are summarized in Table III.C.5–1.

TABLE III.C.5–1—CANDIDATE VOLUME COMPONENTS DERIVED FROM SUPPLY-RELATED FACTORS

[Million RINs] [a]

	2023	2024	2025
Cellulosic biofuel (D3 & D7)	838	1,090	1,376
Biomass-based diesel (D4)	6,215	6,205	6,881
Other advanced biofuel (D5)	290	290	290
Conventional renewable fuel (D6)	13,845	13,955	13,779

[a] The D codes given for each component category are defined in 40 CFR 80.1425(g). D codes are used to identify the statutory categories which can be fulfilled with each component category according to 40 CFR 80.1427(a)(2).

These are the candidate volumes that we further analyzed according to the other economic and environmental factors required under the statute in CAA 211(*o*)(2)(B)(ii). Those additional analyses are described in Section IV. Details of the individual biofuel types and feedstocks that make up these candidate volumes are provided in the RIA Chapter 3. These candidate volumes represent our assessment of the volume of renewable fuels we project could be used in the U.S. based on the expected annual rate of future commercial production of renewable fuels (one of the statutory factors), potential constraints on the domestic consumption of renewable fuels, and other relevant factors. We considered these candidate volumes when conducting the analyses of the additional statutory factors, which are summarized in Section IV and discussed in greater detail in the RIA. In Section VI, we discuss the final applicable volume targets based on a consideration of all of the factors that we analyzed—both the supply-related factors that were considered in developing the candidate volumes (discussed in this section) and the additional statutory factors discussed in Section IV.

Note that the volumes shown in Table III.C.5–1 represent the total candidate volumes for each component category of renewable fuel, not the volume requirements. The volumes of non-cellulosic advanced biofuel having a D code of 4 or 5, for instance, represent volumes that could be used to satisfy the BBD volume requirement, the advanced biofuel volume requirement, and the total renewable fuel volume requirement, including that portion of the implied volume for conventional renewable fuel that cannot be met with ethanol.

D. Baselines

In order to estimate the impacts of the candidate volumes, we must identify an appropriate baseline. The baseline reflects the alternative collection of biofuel volumes by feedstock, production process (where appropriate), biofuel type, and use which would be anticipated to occur in the absence of applicable standards, and acts as the point of reference for assessing the impacts. To this end, we have developed a ''No RFS'' scenario that we used as the baseline for analytical purposes. Many of the same supply-related factors that we used to develop the candidate volumes were also relevant in developing the No RFS baseline.

We also considered other possible baselines that, as described in the proposal, we did not use to assess the impacts of the candidate volumes. We discuss the alternative baselines here in an effort to describe our reasoning for the public and interested stakeholders, and because we understand there are differing, informative baselines that could be used in this type of analysis. Ultimately, we concluded that the No RFS scenario is the most appropriate to use.

1. No RFS Program

Broadly speaking, the RFS program is designed to increase the use of renewable fuels in the transportation sector beyond what would occur in the absence of the program. It is appropriate, therefore, to use a scenario representing what would occur if the RFS program did not exist as the baseline for estimating the costs and impacts of the candidate volumes. Such a ''No RFS'' baseline is consistent with the Office of Management and Budget's Circular A–4, which says that the appropriate baseline would normally ''be a 'no action' baseline: what the world will be like if the proposed rule is not adopted.''

Importantly, a ''No RFS'' baseline would not be equivalent to a market scenario wherein no biofuels were used at all. Prior to the RFS program, both biodiesel and ethanol were used in the transportation sector, whether due to state or local incentives, tax credits, or a price advantage over conventional petroleum-based gasoline and diesel. This same situation would exist in 2023–2025 in the absence of the RFS program. Federal, state, and local tax credits, incentives, and support payments will continue to be in place for these fuels, as well as state programs such as blending mandates and Low Carbon Fuel Standard (LCFS) programs. Furthermore, now that capital investments in renewable fuels have been made and markets have been oriented towards their use, there are strong incentives in place for continuing their use even if the RFS program were to disappear. As a result, it would be improper and inaccurate to attribute all use of renewable fuel in 2023–2025 to the applicable standards under the RFS program.

To inform our assessment of the volume of biofuels that would be used in the absence of the RFS program for the years 2023 through 2025, we began by analyzing the trends in the economics for biofuel blending in prior years. Assessing these trends is important because the economics for blending biofuels changes from year to year based on biofuel feedstock and petroleum product prices and other factors which affect the relative economics for blending biofuels into petroleum-based transportation fuels. A biofuel plant investor and the financiers who fund their projects will review the historical (*e.g.,* did they lose money in a previous year), current, and perceived future economics of the biofuel market when deciding whether to continue to operate their biofuel plants, and our analysis attempted to account for these factors.

The No RFS Baseline analysis for 2023–2025 compares the biofuel cost with the fossil fuel it displaces, at the point that the biofuel is blended with the fossil fuel, to assess whether the biofuel provides an economic advantage to blenders. If the biofuel is lower cost than the fossil fuel it displaces, it is assumed that the biofuel would be used absent the RFS standards (within the constraints described below). The economic analysis that we conducted to assess the volume of biofuel that would likely be produced and consumed in the absence of the RFS program mirrors the cost analysis described in Section IV.C, but there is one primary difference and a number of other differences. The primary difference is that the economic analysis relative to the No RFS baseline assesses whether the fuels industry would find it economically advantageous to blend the biofuel into the petroleum fuel in the absence of the RFS program, whereas the social cost analysis reflects the overall impacts on society at large (see Section IV.C and RIA Chapter 10 for descriptions of the social cost analysis). The primary example of a social cost not considered for the No RFS economic analysis is the fuel economy effect due to the lower energy density of the biofuel, as this cost is generally borne by consumers, not the fuels industry. Other ways that the No RFS economic analysis is different from the social cost analysis include:

- In the context of assessing production costs, we amortized the capital costs at a higher rate of return more typical for industry investment instead of the rate of return used for social costs.
- We assessed biofuel distribution costs to the point where it is blended into fossil fuel, not all the way to the point of use that is necessary for estimating the fuel economy cost.
- While we generally do not account for the fuel economy disadvantage of most biofuels for the No RFS economic analysis, the exception is E85 where the lower fuel economy of using E85 is so obvious to vehicle owners that they demand a lower price to make up for this loss of fuel economy. As a result, retailers must price E85 lower than the primary alternative E10 to account for this bias and they must consider this in their decisions to blend and sell E85. A similar situation exists with E15, although it is not clear what the factors are for E15 and this is discussed in more detail in the No RFS Baseline discussion in RIA Chapter 2.

We added these various cost components (*i.e.,* production cost, distribution cost, any blending cost, retail cost, applicable tax subsidies) together to reflect the cost of each biofuel.

We conducted a similar cost estimate for the fossil fuels being displaced since their relative cost to biofuels is used to estimate the net cost of using biofuels. Unlike for biofuels, we did not calculate production costs for the fossil fuels. Instead, we projected their production costs based solely on wholesale price projections by the Energy Information Administration in its Annual Energy Outlook (AEO).

We also considered any applicable federal or state programs, incentives, or subsidies that could reduce the apparent blending cost of the biofuel at the terminal. An important subsidy is the $1 federal tax incentives for blending biodiesel and other biofuels into diesel fuel which was extended in the IRA.[128] In the case of higher ethanol blends, the retail cost associated with the equipment and/or use of compatible materials needed to enable the sale of these newer fuels is assumed to be reduced by 50 percent due to the Federal Higher Blends Infrastructure Incentive Program (HBIIP) program administered by the United States Department of Agriculture.

In addition, there are a number of state programs that create subsidies for biodiesel and renewable diesel fuel, the largest being offered by California and Oregon through their LCFS programs. We accounted for state and local biodiesel mandates by including their mandated volume regardless of the economics. Several states offer tax credits for blending ethanol at 10 volume percent. Other states offer tax credits for E85, of which the largest is in New York. We are not aware of any state tax credits or subsidies for E15.[129] To account for the various state assumptions, it was necessary to model the cost of using these biofuels on a state-by-state basis.

For most biofuels, the economic analysis provided consistent results, indicating that they are either economical in all years or are not economical in any year. However, this was not true for biodiesel and renewable diesel, where the results varied from year to year. Such swings in the economic attractiveness of biodiesel and renewable diesel confound efforts on the part of investors to project future returns on their investments to determine whether to continue to operate their plants, or shutdown. Thus, to smooth out the swings in the economics for using biodiesel and renewable diesel and look at it the way plant operators and their investors would have in the absence of the RFS program, we made two different key assumptions. First, the economics for biodiesel and renewable diesel were modeled starting in 2009 and the trend in its use was made dependent on the relative economics in comparison to petroleum diesel over distinct four-year periods. As a result, the first 4-year modeled period was actually 2012. Second, the estimated biodiesel and renewable diesel volumes were limited in the analysis to no greater volume than what occurred under the RFS program in any year, since the existence of the RFS program would be expected to create a much greater incentive for using these biofuels than if no RFS program were in place.

An economic analysis was also conducted for cellulosic biofuels, including cellulosic ethanol, corn kernel fiber ethanol, and biogas. Since the volumes of these biofuels were much smaller, a more generalized approach was used in lieu of the detailed state-by-state analysis conducted for corn ethanol, biodiesel, and renewable diesel fuel.

The No RFS baseline for 2023–2025 is summarized in Table III.D.1–1. A more complete description of the No RFS baseline and its derivation is provided in RIA Chapter 2. The projected consumption of cellulosic biofuel and

[128] H.R. 5376—The Inflation Reduction Act of 2022

[129] In light of the fluid situation with respect to a 1-psi RVP waiver for E15 or actions to remove the 1 psi wavier for E10 in eight midwestern states, our analysis did not specifically assume either of these potential changes. These assumptions can affect the relative cost of E15, however, adopting these assumptions would not have impacted the overall conclusions with respect to blending E15 in the absence of the RFS program.

other advanced biofuel in this final rule is similar to the volumes for these fuel types projected in the proposed rule, with slight variations based on updated data. The projected BBD volumes for the No RFS baseline are significantly higher in all years, primarily because the significantly higher crude oil prices from the most recent AEO make BBD more cost competitive with petroleum diesel, after accounting for the available non-RFS incentives such as the federal tax credit for BBD and the incentives offered by California's LCFS program. Finally, the conventional renewable fuel volumes for the No RFS baseline are significantly lower in all years, relative to the volumes in the proposed rule, primarily due to lower projected gasoline consumption in 2023–2025 from EIA.

TABLE III.D.1–1—BIOFUEL CONSUMPTION IN 2023–2025 UNDER a NO RFS BASELINE

[Million RINs]

	2023	2024	2025
Cellulosic biofuel (D3 & D7)	343	402	444
Biomass-based diesel (D4)	2,796	3,139	3,496
Other advanced biofuel (D5)	226	226	226
Conventional renewable fuel (D6)	13,185	13,224	12,992

Our analysis shows that corn ethanol is economical to use in 10 percent blends (E10) without the presence of the RFS program. Conversely, higher ethanol blends would generally not be economic without the RFS program, except for some small volume of E85 in the state of New York which offers a large E85 blending subsidy. Higher-level ethanol blends are not as economical as ethanol blended as E10 because the octane value of ethanol is generally not realized in these blends, and the infrastructure cost for dispensing these fuels are high (see RIA Chapter 10). Some volume of biodiesel is estimated to be blended based on state mandates in the absence of the RFS program, and some additional volume of both biodiesel and renewable diesel is estimated to be economical to use without the RFS program, primarily in California due to the LCFS incentives. The volume of CNG from biogas and imported ethanol from sugarcane are projected to be consumed in California due to the economic support provided by their LCFS.

2. Alternative Approaches to the No RFS Baseline

We also considered several other ways to identify a No RFS baseline. However, we do not believe they would be appropriate as they would be unlikely to represent the world in 2023–2025 as it would likely be in the absence of the RFS program. For instance, the RFS program went into effect in 2006 with a default percentage standard specified in the statute. As 2005 represents the most recent year for which the RFS requirements did not apply, it could be used as the baseline in assessing costs and impacts of the candidate volumes. However, a significant number of changes to other factors that significantly affect the fuels sector have occurred between 2005 and the 2023–2025 period to which this action applies, including changes in state requirements, tax subsidies, tariffs, international supply, total fuel demand, crude oil prices, feedstock prices, and fuel economy standards. All of these have influenced the economical use of renewable fuel during the intervening period, and it is infeasible to model all these interactions. As a result, using 2005 as the baseline would lead to a highly speculative assessment of costs and impacts that neglect important market and regulatory realities. Therefore, we do not believe that a 2005 baseline would be appropriate for this rulemaking.

In the 2010 RFS2 rulemaking that created the RFS2 regulatory program that was required by EISA, one of the baselines that we used was the 2007 version of EIA's AEO which provided projections of transportation fuel use, including the use of renewable fuel, out to 2030.[130] This is the most recent version of the AEO that projected fuel use in the absence of the statutory volume targets specified in the Energy Independence and Security Act of 2007; all subsequent versions of the AEO have included the current RFS program in their projections. While the 2007 version of the AEO includes projections for the timeframe of interest in this action, 2023–2025, it suffers from the same drawbacks as using fuel use in 2005 as the baseline. Namely, a significant number of other changes have occurred between 2007 when the projections were made and the 2023–2025 period to which this action applies. For the same reasons, then, we do not believe that the projections in AEO 2007 would be an appropriate baseline.

3. Previous Year Volumes

The applicable volume requirements established for one year under the RFS program do not roll over automatically to the next, nor do the volume requirements that apply in one year become the default volume requirements for the following year in the event that no volume requirements are set for that following year. Nevertheless, the volume requirements established for the previous year represent the most recent set of volume requirements that the market was required to meet, and the fuels industry as a whole can be expected to have adjusted its operations accordingly. Since the previous year's volume requirements represent the starting point for any adjustments that the market may need to make to meet the next year's volume requirements, they represent another informational baseline for comparison, and we have used previous year standards as a baseline in previous annual standard-setting rulemakings.

The 2022 volume requirements were finalized on July 1, 2022, and are shown in Table III.D.3–1.[131]

TABLE III.D.3–1—FINAL 2022 VOLUME REQUIREMENTS

Category	Volume (billion RINs)
Cellulosic biofuel	0.63
Biomass based diesel[a]	2.76
Advanced biofuel	5.63
Total renewable fuel	20.63

[a] The BBD volumes are in physical gallons (rather than RINs).

In the final rule that established these 2022 volume requirements, we discussed the fact that the preferable baseline would have been a No RFS baseline, but that it could not be developed in the time available. Therefore, we used actual data on 2020

[130] 75 FR 14670 (March 26, 2010).

[131] 87 FR 39600 (July 1, 2022).

biofuels consumption as the primary baseline in that rule.

In the Set rule proposal, we used the 2022 volume requirements as an informational case in addition to the No RFS baseline, but we did so only for costs to allow for a comparison to the analysis and results presented in recent annual rules. We continue to believe that this is appropriate in this final rule. However, we now have data on how the market responded to the applicable 2022 standards, and we believe that this data on actual market performance is a better point of reference than the 2022 volume requirements established in the July 1, 2022 final rule. Therefore, we have used actual 2022 biofuel consumption as a baseline in the estimation of costs for this final rule, in addition to the No RFS baseline. This approach is consistent with the approach we took in the rulemaking which established the volume requirements for 2020, 2021, and 2022,[132] as well as the rulemaking which established the volume requirements for 2014, 2015, and 2016.[133] In that rule, the impacts of the volume requirements for 2015 were compared to the actual volumes consumed in 2014, and the impacts of the volume requirements for 2016 were compared to the actual volumes consumed in 2015.[134]

The volumes of biofuel consumption for 2022 are shown below. More details on 2022 biofuel consumption can be found in RIA Chapter 2.

TABLE III.D.3–2—2022 BIOFUEL CONSUMPTION

	Volume (million RINs)
Cellulosic biofuel (D3 & D7)	667
Biomass-based diesel (D4) ..	4,956
Other advanced biofuel (D5)	318
Conventional renewable fuel (D6)	14,034

E. Volume Changes Analyzed

In general, our analysis of the economic and environmental impacts of the candidate volumes derived and discussed above was based on the differences between our assessment of how the market would respond to those candidate volumes (summarized in Table III.C.5–1) and the No RFS baseline (summarized in Table III.D.1–1). Those differences are shown below. Details of this assessment, including a more precise breakout of those differences, can be found in RIA Chapter 2. Note that this approach is squarely focused on the differences in volumes between the No RFS baseline and the candidate volumes; our analysis does not, in other words, assess impacts from total biofuel use in the United States. As noted above, we also consider the impacts of this rule relative to a 2022 baseline for some of our analyses, such as the cost of the rule. The changes in biofuel consumption in the transportation sector relative to the 2022 baseline are shown in in Table III.E–2.

TABLE III.E–1—CHANGES IN BIOFUEL CONSUMPTION IN THE TRANSPORTATION SECTOR IN COMPARISON TO THE NO RFS BASELINE

[Million RINs]

	2023	2024	2025
Cellulosic biofuel (D3 & D7)	495	688	932
Biomass-Based Diesel (D4)	3,169	3,066	3,385
Other Advanced Biofuel (D5)	64	64	64
Conventional Renewable Fuel (D6)	660	731	787

TABLE III.E–2—CHANGES IN BIOFUEL CONSUMPTION IN THE TRANSPORTATION SECTOR IN COMPARISON TO THE 2022 BASELINE

[Million RINs]

	2023	2024	2025
Cellulosic biofuel (D3 & D7)	172	424	710
Biomass-Based Diesel (D4)	1,271	1,511	2,187
Other Advanced Biofuel (D5)	−28	−28	−28
Conventional Renewable Fuel (D6)	−189	−79	−255

The volumes shown in Table III.D.1–1 and the volume changes shown in Tables III.E–1 and 2 include the volume of renewable fuel projected to be supplied to meet the supplemental volume requirements in 2023. For purposes of analyzing the environmental and economic impacts (discussed in Section IV), we treat the 2023 supplemental volume requirement separately as discussed in RIA Chapter 3.3. We project that the supplemental volume will be met with 147 million gallons (250 million RINs) of renewable diesel produced from soybean oil. Our analyses of the statutory factors described in Section IV generally do not include the impacts of the supplemental volume requirement, except where noted.

IV. Analysis of Candidate Volumes

As described in Section II.B, the statute specifies a number of factors that EPA must analyze in making a determination of the appropriate volume requirements to establish for years after 2022 (and for BBD, years after 2012). A full description of the analysis for all factors is provided in the RIA. In this section, we provide a summary of the analysis of a selection of factors for the candidate volumes derived from supply-related factors as described in the previous section (see Table III.C.5–1 for the candidate volume, and Table III.E–1 for the corresponding volume changes in comparison to the No RFS baseline),

[132] 87 FR 39600 (July 1, 2022).

[133] 80 FR 77420 (Dec. 14, 2015).

[134] The 2015 volumes were based on actual consumption data for January–September and a projection for October–December.

along with some implications of those analyses. In Section VI we provide a summary of our consideration of all factors in determining the volume requirements that we have determined are appropriate for 2023–2025.

A. Climate Change

This section begins with a description of our analysis of the climate change impacts of the candidate volumes. Following this, in Section IV.A.2, is a description of a model comparison exercise that was not conducted for the purpose of evaluating the candidate volumes, nor does it inform the volumes in this final rule.

1. Climate Change Analysis Supporting Rule

CAA section 211(o)(2)(B)(ii) states that the basis for setting applicable renewable fuel volumes after 2022 must include, among other things, ''an analysis of . . . the impact of the production and use of renewable fuels on the environment, including on . . . climate change.'' While the statute requires that EPA base its determinations, in part, on an analysis of the climate change impact of renewable fuels, it does not require a specific type of analysis. The CAA requires evaluation of lifecycle greenhouse gas (GHG) emissions as part of the RFS program,[135] and GHG emissions contribute to climate change.[136] Thus, in the proposed rule we used lifecycle GHG emissions estimates as a proxy for climate change impacts.[137] We continue to believe this approach is reasonable and appropriate for the final rule.

To support the GHG emission reduction goals of EISA, Congress required that biofuels used to meet the RFS obligations achieve certain GHG reductions based on a lifecycle analysis (LCA). To qualify as a renewable fuel under the RFS program, a fuel must be produced from approved feedstocks and have lifecycle GHG emissions that are at least 20 percent less than the baseline petroleum-based gasoline and diesel fuels. The CAA defines lifecycle emissions in section 211(o)(1)(H) to include the aggregate quantity of significant direct and indirect emissions associated with all stages of fuel production and use. Advanced biofuels and biomass-based diesel are required to have lifecycle GHG emissions that are at least 50 percent less than the baseline fuels,[138] while cellulosic biofuel is required to have lifecycle emissions at least 60 percent less than the baseline fuels.[139] Congress also allowed for facilities that existed or were under construction when the EISA was enacted to be grandfathered into the RFS program and exempt from the lifecycle GHG emission reduction requirements.[140]

In the proposed rule, we presented biofuel LCA estimates from a range of published values from the scientific/technical literature. We are using the same approach as the proposed rule, whereby we multiply the lifecycle emissions value for each individual fuel by the change in the volume of that fuel to quantify the GHG impacts. We repeat this process for each fuel (*e.g.,* corn ethanol, soybean biodiesel, landfill biogas CNG) to estimate the overall GHG impacts of the candidate volumes. We provide a high and low estimate of the potential GHG impacts of each pathway (combination of biofuel type, feedstock, and production process) based on the range of published LCA estimates from the scientific literature. We then use this range of values for considering the GHG impacts of the renewable fuel volumes that change relative to the No RFS baseline described in Section III. Specifically, we use the LCA ranges to develop an illustrative scenario of the GHG impacts, which is described and presented in RIA Chapter 4.2.3.[141]

To develop the range of LCA values, we conducted a high-level review of relevant literature for the biofuel pathways that would be most likely to satisfy the candidate renewable fuel volumes, as well as the petroleum-based fuels they are used to replace or reduce. Based on our review, we compiled the LCA estimates in the literature for each pathway. We include estimates from peer-reviewed journal articles, authoritative governmental reports, and other credible publications, such as studies by non-governmental organizations. Given that all LCA studies and models have particular strengths and weaknesses, as well as uncertainties and limitations, our goal for this compilation of literatures estimates is to consider the ranges of published estimates, not to adjudicate which particular studies, estimates or assumptions are most appropriate. Reflecting the many approaches to LCA and associated assumptions and uncertainties, our review is intentionally broad and inclusive of a wide range of estimates based on a variety of study types and assumptions. We focused on LCA estimates for the average type of each fuel produced in the United States.[142] For example, for corn ethanol, we focused on estimates for average corn ethanol production from natural gas-fired dry mill facilities, as that is the predominant mode of corn ethanol production in the United States.[143]

We made minor changes to the LCA ranges used in the proposed rule. We reviewed the public comments and searched the literature to identify new or additional studies to add to our review. However, public commenters did not identify any additional LCA estimates that we had not already considered. Likewise, our updated search of the literature did not identify any additional estimates. The one update we made was replacing estimates from the 2021 version of the Greenhouse gases, Regulated Emissions, and Energy use in Technologies (GREET) Model with estimates from the

[135] See CAA section 211(*o*)(1)(H) (empowering the Administrator to determine lifecycle greenhouse gas emissions) and CAA section 211(*o*)(2)(A)(i) (requiring the Administrator to ''ensure that transportation fuel sold or introduced into commerce in the United States . . . contains . . . renewable fuel . . . [that] achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.,'' where the 20 percent reduction threshold applies to renewable fuel ''produced from new facilities that commence construction after December 19, 2007.'')

[136] Extensive additional information on climate change is available in other EPA documents, as well as in the technical and scientific information supporting them. See 74 FR 66496 (December 15, 2009) (finding under CAA section 202(a) that elevated concentrations of six key well-mixed GHGs may reasonably be anticipated to endanger the public health and welfare of current and future generations); 81 FR 54421 (August 15, 2016) (making a similar finding under CAA section 231(a)(2)(A)).

[137] This is consistent with EPA's analysis of the same statutory factor in the 2020–2022 Rule. See ''Renewable Fuel Standard (RFS) Program: RFS Annual Rules—Regulatory Impact Analysis,'' EPA–420–R–22–008, June 2022, pp 65–96.

[138] CAA Sections 211(o)(1)(B)(i) and 211(o)(1)(D).

[139] CAA Section 211(o)(1)(E).

[140] CAA Section 211(o)(2)(A)(i).

[141] To be more precise, for the crop-based biofuel pathways we use the range of LCA estimates that include an annual stream of emissions, which are based on the modeling for the March 2010 RFS2 rule.

[142] We note that lifecycle GHG emissions are also influenced by the use of advanced technologies and improved production practices. For example, corn ethanol produced with the adoption of advanced technologies or climate smart agricultural practices can lower LCA emissions. Corn ethanol facilities produce a highly concentrated stream of CO_2 that lends itself to carbon capture and sequestration (CCS). CCS is being deployed at ethanol plants and has the potential to reduce emissions for corn-starch ethanol, especially if mills with CCS use renewable sources of electricity and other advanced technologies to lower their need for thermal energy. Climate smart farming practices are being gradually adopted at the feedstock production stage and can lower the GHG intensity of biofuels. For example, reducing tillage, planting cover crops between rotations, and improving nutrient use efficiency can build soil organic carbon stocks and reduce nitrous oxide emissions.

[143] Lee, U., et al. (2021). ''Retrospective analysis of the US corn ethanol industry for 2005–2019: implications for greenhouse gas emission reductions.'' Biofuels, Bioproducts and Biorefining.

2022 version. Some of the public comments recommended removing some of the studies considered in the proposed rule. We considered these comments carefully but decided not to remove any of the studies considered in the proposed rule as they meet the broad criteria for our compilation of published estimates. We discuss these comments and our reasoning in the summary and analysis of comments document that is part of this rulemaking package.

The ranges of values in our compilation vary considerably for different types of renewable fuels, particularly for crop-based biofuels. The ranges of estimates for non-crop based biofuel pathways tend to be narrower relative to the crop-based pathways (See Table IV.A–1).

TABLE IV.A–1—LIFECYCLE GHG EMISSIONS RANGES BASED ON LITERATURE REVIEW

[gCO_2e/MJ]

Pathway	LCA range
Petroleum Gasoline	84 to 98
Petroleum Diesel	84 to 94
Natural Gas CNG	73 to 81
Corn Starch Ethanol	38 to 116
Soybean Oil Biodiesel	14 to 73
Soybean Oil Renewable Diesel.	26 to 87
Used Cooking Oil Biodiesel	12 to 32
Used Cooking Oil Renewable Diesel.	12 to 37
Tallow Biodiesel	16 to 58
Tallow Renewable Diesel	14 to 81
Distillers Corn Oil Biodiesel	14 to 37
Distillers Corn Oil Renewable Diesel.	12 to 46
Landfill Gas CNG	6 to 70
Manure Biogas CNG	−533 to 52

2. Description of Separate Model Comparison Exercise

This section describes a model comparison exercise that we conducted for the purpose of advancing our understanding of available models and science related to the GHG impacts of biofuel consumption. We requested comment on a number of issues related to the model comparison exercise, including the approach for conducting the model comparison. At the time of proposal, we were contemplating using the model comparison exercise to inform the final rule.[144] However, we did not ultimately rely on the model comparison exercise to evaluate the candidate volumes or to inform the volumes in this final rule. The model comparison exercise highlighted areas of uncertainty across the models used, a wide range of estimated GHG impacts, and areas for further research. Work to refine models to inform future rulemakings is ongoing. We want to engage with stakeholders and receive feedback on the MCE before deciding how to use any results in a rulemaking context. While we did not ultimately rely on the model comparison exercise to evaluate the candidate volumes or to inform the volumes in this final rule, we describe it here solely for informational purposes, as readers of Section IV.A may be interested in the technical information provided through this separate exercise.

In the March 2010 RFS2 rule (75 FR 14670) and in subsequent agency actions, EPA estimated the lifecycle GHG emissions from different biofuel production pathways; that is, the emissions associated with the production and use of a biofuel, including indirect emissions, on a per-unit energy basis. Since the existing LCA methodology was developed for the March 2010 RFS2 rule, there has been more research on the lifecycle GHG emissions associated with transportation fuels. While our existing LCA estimates for the RFS program remain within the range of more recent estimates, we acknowledge that the biofuel GHG modeling framework EPA has previously relied upon is old, and that a better understanding of these newer models and data is needed. In the proposed rule, we did not propose to reopen the related aspects of the 2010 RFS2 rule or any prior EPA lifecycle greenhouse gas analyses, methodologies, or actions, as that is beyond the scope of this rulemaking. While updating our LCA methodology is beyond the scope of this rulemaking, to make this information available to the public we are including the outcome of a model comparison exercise by placing it in the docket for this rulemaking in the document titled, ''Model Comparison Exercise Technical Document.''

The model comparison exercise has three main goals: (1) Advance the science in the area of analyzing the lifecycle greenhouse gas emissions impacts from increasing use of biofuel; (2) Identify and understand differences in scope, coverage, and key assumptions in each model, and to the extent possible the impact that those differences have on the appropriateness of using a given model to evaluate the GHG impacts of biofuels; and (3) Understand how differences between models and data sources lead to varying results. As we designed and conducted the model comparison exercise, we consulted with our colleagues within the USDA and DOE.

Following the proposed rule, the National Academies of Sciences, Engineering, and Medicine (NASEM) published a report titled ''Current Methods for Life Cycle Analyses of Low-Carbon Transportation Fuels in the United States.'' The conclusions and recommendations from the NASEM report support our motivations for conducting the model comparison. In particular, recommendation 4–2 from the report states, ''Current and future LCFS [low carbon fuel standard] policies should strive to reduce model uncertainties and compare results across multiple economic modeling approaches and transparently communicate uncertainties.'' Consistent with this and other recommendations in the NASEM report, our model comparison exercise compares results from multiple models, and we strive to transparently consider parameter, scenario and model uncertainties.

LCA plays several diverse roles in the context of the RFS program. Under Section 211(o)(2)(B)(ii)(I) of the CAA, EPA is required to analyze the climate change impacts of this rule and other RFS rules that establish the renewable fuel standards subject to the requirements of CAA section 211(o)(2)(B)(ii). This work is related to, but distinct from, EPA's responsibility to determine which biofuel pathways satisfy the lifecycle GHG reduction thresholds corresponding with the four categories of renewable fuel. The model comparison exercise does not support these analytical needs at this time, but the insights on modeling and science from this exercise may inform future analytical efforts on both of these topics. Our work related to biofuel GHG modeling and lifecycle analysis will continue after this rulemaking.

For the model comparison exercise we selected five models, listed below in alphabetical order, that provide different insights into the climate change impacts of crop-based biofuel production. First, the Applied Dynamic Analysis of the Global Economy (ADAGE) model, is an economic model that includes all sectors of the economy, including agriculture, bioenergy, and transportation. Second, the Global Change Analysis Model (GCAM), simulates the world's energy, water, agriculture, land, climate and economic systems. Third, the Global Biosphere Management Model (GLOBIOM) is an economic model of the agricultural, forest and bioenergy sectors. Fourth, the Greenhouse gases, Regulated Emissions, and Energy use in Technologies (GREET) Model is a lifecycle analysis model that estimates the well-to-wheels impacts of transportation technologies.

[144] See 87 FR 80582, 80611 (December 30, 2022).

Finally, the Global Trade Analysis Project (GTAP) model is a general equilibrium model of all sectors of the economy. We selected these models based on our many years of experience with biofuel GHG modeling and based on stakeholder input, including the proceedings and public comments associated with the biofuel GHG modeling workshop that we hosted on February 28–March 1, 2022 (86 FR 73756).[145]

In order to facilitate a comparison of the five models, we ran common scenarios through each of them. We defined a purely hypothetical reference case, for modeling purposes only, with U.S. biofuel consumption volumes from 2020–2050 set at their average level from 2016–2019 (*e.g.,* approximately 14.8 billion gallons of corn ethanol and 1.2 billion gallons of soybean oil biodiesel). We then simulated a corn ethanol shock scenario in which the U.S. consumes an additional one billion gallons of corn ethanol in 2030 and in each year after that through 2050, with all other U.S. biofuel volumes set at the reference scenarios levels. We also simulated a similar soy biodiesel shock scenario where the U.S. consumes an additional one billion gallons of soybean oil biodiesel in the same time frame. For the dynamic models (*i.e.,* ADAGE, GCAM, GLOBIOM), we simulated the shocks as increasing linearly from 2020 to 2030, and then held the shocks constant at their 2030 levels through 2050.

While the details of the model comparison results are discussed in the Model Comparison Exercise Technical Document, we conclude this section by summarizing some of our broad conclusions from this exercise. Supply chain LCA models, such as GREET, produce a fundamentally different analysis than economic models. Supply chain LCA models evaluate the GHG emissions emanating from a particular supply chain, whereas economic models evaluate the GHG impacts of a change in biofuel consumption. Estimates of land use change vary significantly among the models used in this study. Drivers of variation in these estimates include differences in assumptions related to trade, the substitutability of food and feed products, and land conversion, as well as structural differences in how models represent land categories. Economic modeling of the energy sector may be required to avoid overestimating the emissions reduction from fossil fuel consumption. Model trade structure and assumed flexibility influence the modeled emissions results. The degree to which other vegetable oils replace soybean oil diverted to fuel production from other markets can impact GHG emissions associated with soybean oil biodiesel. The ability to endogenously consider tradeoffs between intensification and extensification is an important capability for estimating the emissions associated with an increase in biofuel consumption. Models included in the model comparison exercise produced a wider range of LCA GHG estimates for soybean oil biodiesel than corn ethanol. The models show much greater diversity in feedstock sourcing strategies for soybean oil biodiesel than they do for corn ethanol, and this wider range of options contributes to greater variability in the GHG results. Sensitivity analysis, which considers uncertainty within a given model, can help identify which parameters influence model results. However, pinpointing the direct causes of why one estimate differs from another would require additional research.

B. Energy Security

Another factor that we are required under the statute to analyze is energy security. Changes in the required volumes of renewable fuel can affect the financial and strategic risks associated with U.S. imports of petroleum, which in turn would have a direct impact on the U.S.' national energy security.

The candidate volumes for the years 2023–2025 would represent increases in comparison to previous years and, also, increases in comparison to a No RFS baseline. Increasing the use of renewable fuels in the U.S. displaces domestic consumption of petroleum-based fuels, which results in a reduction in U.S. imports of petroleum and petroleum-based fuels. A reduction of U.S. petroleum imports reduces both financial and strategic risks caused by potential sudden disruptions in the supply of imported petroleum to the U.S., thus increasing U.S. energy security.

Energy security and energy independence are distinct but related concepts. U.S. energy security is commonly defined as the continued availability of energy sources at an acceptable price.[146] The goal of U.S. energy independence is the elimination of all U.S. imports of petroleum and other foreign sources of energy, or more broadly, reducing the sensitivity of the U.S. economy to energy imports and foreign energy markets.[147] Most discussions of U.S. energy security revolve around the topic of the economic costs of U.S. dependence on oil imports.

The U.S.' oil consumption had been gradually increasing in recent years (2015–2019) before dropping dramatically as a result of the COVID–19 pandemic in 2020.[148] Domestic oil consumption in 2022 rebounded to pre-COVID–19 levels and is expected to modestly decline during the timeframe of this final rule, 2023–2025.[149] The U.S. has increased its production of oil, particularly ''tight'' (*i.e.,* shale) oil, over the last decade.[150] Mainly as a result of this increase, the U.S. became a net exporter of crude oil and petroleum-based products in 2020 and is now projected to be a net exporter of crude oil and petroleum-based products during the time frame of this final rule, 2023–2025.[151] [152] This is a significant reversal of the U.S.' net export position since the U.S. had been a substantial net importer of crude oil and petroleum-based products starting in the early 1950s.[153]

In the beginning of 2022, world oil prices rose fairly rapidly. For example, as of January 3rd, 2022, the West Texas Intermediate (WTI) crude oil price was roughly $76 per barrel.[154] The WTI oil price increased to roughly $124 per barrel on March 8th, 2022, a 63 percent increase.[155] High and volatile oil prices in the first half of 2022 were a result of oil supply concerns with Russia's invasion of Ukraine on February 24th, 2022 contributing to crude oil price increases.[156] Russia's invasion of Ukraine came during eight consecutive

[145] Because the biofuel GHG modeling workshop was not used in any way to inform this rulemaking, we have not included any of the documents from that event as part of the record for this rulemaking.

[146] IEA. Energy Security: Reliable, affordable access to all fuels and energy sources. 2019. December.

[147] Greene, D. 2010. Measuring energy security: Can the United States achieve oil independence? *Energy Policy* 38. pp. 164–1621.

[148] U.S. Energy Information Administration. 2023. Total Energy. *Monthly Energy Review.* Table 3.1. Petroleum Overview. March.

[149] U.S. Energy Information Administration. 2023. *Annual Energy Outlook* 2023. Reference Case. Table A11. Petroleum and Other Liquids Supply and Disposition.

[150] *https://www.eia.gov/energyexplained/oil-and-petroleum-products/images/u.s.tight_oil_production.jpg.*

[151] *https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php.*

[152] U.S. Energy Information Administration. 2023. *Annual Energy Outlook* 2023. Reference Case. Table A11. Petroleum and Other Liquids Supply and Disposition.

[153] EIA *https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php.*

[154] U.S. Energy Information Administration. 2022. *Petroleum and Other Liquids: Spot Prices. https://www.eia.gov/dnav/pet/pet_pri_spt_s1_d.htm.*

[155] Id.

[156] U.S. Energy Information Administration. Today in Energy. Crude oil prices increased in the first half of 2022 and declined in the second half of 2022. January.

quarters (from the third quarter of 2020 to the second quarter of 2022) of global crude oil inventory decreases.[157] The lower inventory of crude oil stocks were the result of rising economic activity after COVID–19 pandemic restrictions were eased. Oil prices drifted downwards throughout the second half of 2022 and early 2023. As of March 13th, 2023, the WTI crude oil price was roughly $75/barrel.[158]

Geopolitical disruptions that occurred in 2022 are likely to continue to affect global trade of crude oil and petroleum products in 2023 and beyond. In response to Russia's invasion of Ukraine in late February 2022, the U.S. and many of its allies, particularly in Europe, announced various sanctions against Russia's petroleum industry.[159] For the European Union (EU), petroleum from Russia had accounted for a large share of all energy imports, but the EU banned imports of crude oil from Russia starting in December 2022 and imports of petroleum products starting in February 2023.[160] Given recent oil market trends, the U.S. set a new record for petroleum product exports in 2022, up 7% from 2021.[161] It is not clear to what extent the current oil price volatility will continue, increase, or be transitory in the 2023–2025 time period addressed by this rule.

Although the U.S. is projected to be a net exporter of crude oil and petroleum-based products over the 2023–2025 timeframe, energy security remains a concern. U.S. refineries still rely on significant imports of heavy crude oil which could be subject to supply disruptions. Also, oil exporters with a large share of global production have the ability to raise or lower the price of oil by exerting their market power through the Organization of Petroleum Exporting Countries (OPEC) to alter oil supply relative to demand. These factors contribute to the vulnerability of the U.S. economy to episodic oil supply shocks and price spikes, even when the U.S. is projected to be an overall net exporter of crude oil and petroleum-based products.

In order to understand the energy security implications of reducing U.S. oil imports, EPA has worked with Oak Ridge National Laboratory (ORNL), which has developed approaches for evaluating the social costs/impacts and energy security implications of oil use, labeled the oil import or oil security premium. ORNL's methodology estimates two distinct costs/impacts of importing petroleum into the U.S., in addition to the purchase price of petroleum itself: first, the risk of reductions in U.S. economic output and disruption to the U.S. economy caused by sudden disruptions in the supply of imported oil to the U.S. (*i.e.,* the macroeconomic disruption/adjustment costs); and secondly, the impacts that changes in U.S. oil imports have on overall U.S. oil demand and subsequent changes in the world oil price (*i.e.,* the ''demand'' or ''monopsony'' impacts).[162]

For this final rule, as has been the case for past EPA rulemakings under the RFS program, we consider the monopsony component estimated by the ORNL methodology to be a transfer payment, and thus exclude it from the estimated quantified benefits of the candidate volumes.[163] Thus, we only consider the macroeconomic disruption/adjustment cost component of oil import premiums (*i.e.,* labeled macroeconomic oil security premiums below), estimated using ORNL's methodology.

For this final rule, EPA and ORNL have worked together to revise the oil import premiums based upon recent energy security literature and the most recently available oil price projections and energy market and economic trends from EIA's 2023 Annual Energy Outlook.[164] We do not consider military cost impacts from reduced oil use from the candidate volumes due to methodological issues in quantifying these impacts. A discussion of the difficulties in quantifying military cost impacts is in RIA Chapter 5.

To calculate the energy security benefits of the candidate volumes, we are using the ORNL macroeconomic oil security premiums combined with estimates of annual reductions in aggregate net U.S. crude oil imports/petroleum product imports as a result of the candidate volumes. A discussion of the methodology used to estimate changes in U.S. annual net crude oil imports/petroleum product imports from the candidate volumes is provided in RIA Chapter 5. Table IV.B–1 below presents the macroeconomic oil security premiums and the total energy security benefits for the candidate volumes for 2023–2025.

TABLE IV.B–1—MACROECONOMIC OIL SECURITY PREMIUMS AND TOTAL ENERGY SECURITY BENEFITS FOR 2023–2025 [a]

Year	Macroeconomic oil security premiums (2022$/barrel of reduced imports)	Total energy security benefits (millions 2022$)
2023 (Including the supplemental standard)	$3.75	$192
	($0.86–$6.81)	($44–$349)
2023 (Excluding the supplemental standard)	$3.75	$180
	($0.86–$6.81)	($41–$326)
2024	$3.70	$173
	($0.69–$6.87)	($32–$321)
2025	$3.67	$187
	($0.65–$6.87)	($33–$350)

[a] Top values in each cell are the mean values, while the values in parentheses define 90 percent confidence intervals.

[157] Id.

[158] EIA. *Petroleum and Other Liquids Spot Prices. https://www.eia.gov/dnav/pet/pet_pri_spt_s1_d.htm.*

[159] U.S. Energy Information Administration. 2023. Today in Energy. U.S. Petroleum product exports set a record high in 2022. March.

[160] Id.

[161] Id.

[162] Monopsony impacts stem from changes in the demand for imported oil, which changes the price of all imported oil.

[163] See the RIA for more discussion of EPA's assessment of monopsony impacts of this final rule. Also, see the previous EPA GHG vehicle rule for a discussion of monopsony oil security premiums, *e.g.,* Section 3.2.5, Oil Security Premiums Used for this Rule, RIA, Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards, December 2021, EPA–420–F–21–077.

[164] See RIA Chapter 5.4.2 for how the macroeconomic oil security premiums have been updated based upon a review of recent energy security literature on this topic.

C. Costs

We assessed the cost impacts for the renewable fuels expected to be used for the candidate volumes relative to a No RFS baseline, described in Section III.D.1. Table III.E–1 provides a summary of the volume changes that we project would occur if the candidate volumes were to be established as applicable volume requirements for 2023–2025, and it is these volume changes relative to the No RFS baseline which we analyzed for costs.

1. Methodology

This section provides a brief discussion of the methodology used to estimate the costs of the candidate volume changes over the years of 2023–2025. A more detailed discussion of how we estimated the renewable fuel costs, as well as the fossil fuel costs being displaced, is contained in RIA Chapter 10.

The cost analysis compares the cost of an increase in biofuel to the cost of the fossil fuel it displaces. There are various components to the cost of each biofuel:

- Production cost: biofuel feedstock cost is usually the prominent factor.
- Distribution cost: Because the biofuel often has a different energy density, the distribution costs are estimated all the way to the point of use to capture the full fuel economy effect of using these fuels.
- Blending value: In the case of ethanol blended as E10, there is a blending value that mostly incorporates ethanol's octane value realized by lower gasoline production costs, but also a volatility cost that accounts for ethanol's blending volatility in RVP controlled gasoline.
- Retail infrastructure cost: In the case of higher ethanol blends, there is a retail cost since retail stations usually need to add equipment or use compatible materials to enable the sale of these newer fuels.
- Fuel economy cost: different fuels have different energy content leading to different fuel economy which impacts the relative fossil fuel volume being displaced and the cost to the consumer.

We added these various cost components together to reflect the cost of each biofuel.

We conducted a similar cost estimate for the fossil fuels being displaced since their relative cost to the biofuels is used to estimate the net cost of the increased use of biofuels. Unlike for biofuels, however, we did not calculate production costs for the fossil fuels since their production costs are inherent in the wholesale price projections provided by the Energy Information Administration in its Annual Energy Outlook 2023.

2. Estimated Cost Impacts

In this section, we summarize the overall results of our cost analysis based on changes in the use of renewable fuels which displace fossil fuel use. The renewable fuel costs presented here do not reflect any tax subsidies for renewable fuels which might be in effect, since such subsidies are transfer payments which are not relevant under a societal cost analysis.[165] A detailed discussion of the renewable fuel costs relative to the fossil fuel costs is contained in RIA Chapter 10.

For each year for which we are finalizing volumes, Table IV.C.2–1 provides the total annual cost of the candidate volumes while Table IV.C.2–2 provides the per-unit cost (per gallon or per thousand cubic feet) of the biofuel. For the year 2023 costs, the estimated costs are shown both without and with the costs associated with the Supplemental Standard renewable fuel volume. For both the total and per-unit cost, the cost of the total change in renewable fuel volume is expressed over the gallons of the respective fossil fuel in which it is blended. For example, the costs associated with corn ethanol relative to that of gasoline are reflected as a cost over the entire gasoline pool, and biodiesel and renewable diesel costs are reflected as a cost over the diesel fuel pool. Biogas displaces natural gas use as CNG in trucks, so it is reported relative to natural gas supply.

TABLE IV.C.2–1—TOTAL SOCIAL COSTS

[Million 2022 dollars] [a]

	2023	2023 with supplemental standard	2024	2025
Gasoline	445	445	423	458
Diesel	7,610	8,238	6,775	7,769
Natural Gas	55	55	137	228
Total	8,110	8,738	7,352	8,455

[a] Total cost of the renewable fuel expressed over the fossil fuel it is blended into.

TABLE IV.C.2–2—PER-GALLON OR PER-THOUSAND CUBIC FEET COSTS

[2022 dollars]

	Units	2023	2023 with supplemental standard	2024	2025
Gasoline	¢/gal	0.33	0.33	0.31	0.34
Diesel	¢/gal	13.56	14.68	12.70	14.69
Natural Gas	¢/thousand ft^3	0.175	0.175	0.455	0.765
Gasoline and Diesel	¢/gal	4.26	4.59	3.90	4.55

[a] Per-gallon or per thousand cubic feet cost of the renewable fuel expressed over the fossil fuel it is blended into; the last row expresses the cost over the obligated pool of gasoline and diesel fuel.

[165] Note that in developing the No RFS baseline we did consider available subsidies other than those provided by the RFS program in determining the volume of renewable fuels that would be used in the absence of the RFS program.

The biofuel costs are higher than the costs of the gasoline, diesel, and natural gas that they displace as evidenced by the increases in fuel costs shown in the above table associated with the candidate volumes. The estimated costs estimated for this final rulemaking are much lower than that estimated for the proposed rulemaking due to two primary factors. The first is that crude oil prices from Annual Energy Outlook 2023, which we used to estimate costs for the FRM, are much higher than that of the proposal which was based on the previous version of the AEO. Higher crude oil prices reduce the relative cost of renewable fuels. The second reason is because of the higher crude oil prices, greater volume of biodiesel and renewable diesel is found to be economic for the No RFS baseline, and so the candidate volumes present a smaller increase in renewable fuels volume relative to the No RFS baseline. As described more fully in RIA Chapter 10, our assessment of costs did not yield a specific threshold value below which the incremental costs of biofuels are reasonable and above which they are not. In Section VI we consider these directional inferences along with those for the other factors that we analyzed in the context of our discussion of the volumes for 2023–2025.

3. Cost To Transport Goods

We also estimated the impact of the candidate volumes on the cost to transport goods. However, it is not appropriate to use the social cost for this analysis because the social costs are effectively reduced by the cellulosic and biodiesel subsidies and other market factors. The per-unit costs from Table IV.C.2–2 are adjusted with estimated RIN prices that account for the biofuel subsidies and other market factors, and the resulting values can be thought of as retail costs. Consistent with our assessment of the fuels markets, we have assumed that obligated parties pass through their RIN costs to consumers and that fuel blenders reflect the RIN value of the renewable fuels in the price of the blended fuels they sell. More detailed information on our estimates of the fuel price impacts of this rule can be found in RIA Chapter 10.5. Table IV.C.3–1 summarizes the estimated impacts of the candidate volumes on gasoline and diesel fuel prices at retail when the costs of each biofuel is amortized over the fossil fuel it displaces.

TABLE IV.C.3–1—ESTIMATED EFFECT OF BIOFUELS ON RETAIL FUEL PRICES

[¢/gal]

	2023	2024	2025
Relative to No RFS Baseline:			
Gasoline	2.4	3.2	4.3
Diesel	10.1	10.1	11.1
Relative to 2022 Baseline:			
Gasoline	0.0	0.0	0.0
Diesel	0.0	−0.4	−0.1

For estimating the cost to transport goods, we focus on the impact on diesel fuel prices since trucks which transport goods are normally fueled by diesel fuel. Reviewing the data in Table IV.C.3–1, the largest projected price increase is 11.1¢ per gallon for diesel fuel in 2025 for the No RFS baseline.

The impact of fuel price increases on the price of goods can be estimated based upon a study conducted by the United States Department of Agriculture (USDA) which analyzed the impact of fuel prices on the wholesale price of produce.[166] Applying the price correlation from the USDA study would indicate that the 11.1¢ per gallon diesel fuel cost increment associated with the 2025 RFS volumes which increases retail prices by about 2.8 percent, would then increase the wholesale price of produce by about 0.7 percent. If produce being transported by a diesel truck costs $3 per pound, the increase in that product's price would be $0.02 per pound.[167] If the estimated program price impacts are averaged over the combined gasoline and diesel fuel pool, the impact on produce prices would be proportionally lower based on the lower per-gallon cost.

D. Comparison of Impacts

As explained in Section III of this rule, for those factors for which we quantified the impacts of the candidate volumes for 2023–2025, the impacts were based on the difference in the volumes of specific renewable fuel types between the candidate volumes and the No RFS baseline. The No RFS baseline assumes the RFS program remains intact through 2022 but ceases to exist thereafter. As explained in Section VI, we then go on to finalize these candidate volumes after evaluating them against the statutory factors. Congress provided EPA flexibility by enumerating factors to consider without rigidly mandating the specific steps or manner of analysis that EPA should undertake, including whether the assessment must be quantitative or qualitative. For two of the statutory factors (fuel costs and energy security benefits) we were able to quantify and monetize the expected impacts of the candidate volumes.[168] Information and specifics on how fuel costs are calculated are presented in RIA Chapter 10, while energy security benefits are discussed in RIA Chapter 5. Summaries of the fuel costs and energy security benefits are shown in Tables IV.D–1 and 2. Impacts on other factors, such as job creation and the price and supply of agricultural commodities, are quantified but have not been monetized. Further information and the quantified impacts of the candidate volumes on these factors can be found in the RIA. We were not able to quantify many of the impacts of the candidate volumes, including impacts on many of the statutory factors such as the environmental impacts (water quality and quantity, soil quality, etc.) and rural economic development.

[166] Volpe, Richard; How Transportation Costs Affect Fresh Fruit and Vegetable Prices; United States Department of Agriculture; November 2013.

[167] Comparing Prices on Groceries; May 4, 2021: *http://www.coupons.com/thegoodstuff/comparing-prices-on-groceries.*

[168] Due to the uncertainty related to the GHG emission impacts of the volumes (discussed in further detail in RIA Chapter 4.2) we have not included a quantified projection of the GHG emission impacts of this rule.

TABLE IV.D–1—FUEL COSTS OF THE 2023–2025 VOLUMES

[2022 dollars, millions] [a]

Year	Discount rate		
	0%	3%	7%
2023:			
Excluding Supplemental Standard	$8,110	$8,110	$8,110
Including Supplemental Standard	8,738	8,738	8,738
2024	7,352	7,138	6,871
2025	8,455	7,970	7,385
Cumulative Discounted Costs:			
Excluding Supplemental Standard	23,917	23,218	22,366
Including Supplemental Standard	24,545	23,846	22,994

[a] These costs represent the costs of producing and using biofuels relative to the petroleum fuels they displace. They do not include other factors, such as the potential impacts on soil and water quality or potential GHG reduction benefits.

TABLE IV.D–2—ENERGY SECURITY BENEFITS OF THE 2023–2025 VOLUMES

[2022 dollars, millions]

Year	Discount rate		
	0%	3%	7%
2023:			
Excluding Supplemental Standard	$180	$180	$180
Including Supplemental Standard	192	192	192
2024	173	168	162
2025	187	177	164
Cumulative Discounted Benefits:			
Excluding Supplemental Standard	540	524	505
Including Supplemental Standard	552	536	517

All of the statutory factors were taken under consideration, as is required by the statute, regardless of whether or not we were able to quantify or monetize the impact of the candidate volumes on each of the statutory factors.

E. Assessment of Environmental Justice

Although the statute identifies a number of environmental factors that we must analyze as described in Section I, environmental justice is not explicitly included in those factors. Nonetheless as explained in Section II.B, EPA has discretion under the statute to consider environmental justice, and has chosen to do so. Specifically, EPA views consideration of environmental justice as an aspect of our consideration of the statutory factors ''the impact of the production and use of renewable fuels on the environment,'' ''the impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods,'' and ''the impact of the use of renewable fuels on other factors, including . . . food prices.'' (CAA section 211(o)(2)(B)(ii)(I), (V), (VI)). Our consideration of environmental justice is authorized by and supports our analysis of these statutory factors. However, Executive Orders 12898 (Federal Actions to Address Environmental Justice in Minority Populations, and Low-Income Populations) and 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All) establish federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities with environmental justice concerns in the United States. EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.[169] To the extent that environmental justice (EJ) considerations played a role in our analysis of the candidate volumes and volume requirements, we considered EJ only as it affected the statutory factors in CAA section 211(o)(2)(B)(ii).

[169] E.O. 12898, E.O. 14008, and EPA's guidances do not serve as the legal basis for EPA's consideration of environmental justice in this action. As explained above, the legal basis for EPA's consideration of environmental justice is found in the CAA.

Executive Order 14008 (86 FR 7619; February 1, 2021) also calls on federal agencies to make achieving environmental justice part of their missions ''by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.'' It also declares a policy ''to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure and health care.'' EPA also released its ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' (U.S. EPA, 2016) to provide recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance.

When assessing the potential for disproportionately high and adverse health or environmental impacts of regulatory actions on communities with environmental justice concerns, EPA strives to answer three broad questions:

• Is there evidence of potential environmental justice (EJ) concerns in the baseline (the state of the world absent the regulatory action)? Assessing the baseline allows EPA to determine whether pre-existing disparities are associated with the pollutant(s) under consideration (*e.g.,* if the effects of the pollutant(s) are more concentrated in some population groups).

• Is there evidence of potential EJ concerns for the regulatory option(s) under consideration? Specifically, how are the pollutant(s) and its effects distributed for the regulatory options under consideration?

• Do the regulatory option(s) under consideration exacerbate or mitigate EJ concerns relative to the baseline?

It is not always possible to quantitatively assess these questions, though it may still be possible to describe them qualitatively.

EPA's 2016 Technical Guidance does not prescribe or recommend a specific approach or methodology for conducting an environmental justice analysis, though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating the baseline and regulatory options. Where applicable and practicable, EPA endeavors to conduct such an analysis. Going forward, EPA is committed to conducting environmental justice analysis for rulemakings based on a framework similar to what is outlined in EPA's Technical Guidance, in addition to investigating ways to further weave environmental justice into the fabric of the rulemaking process.

In accordance with Executive Orders 12898 and 14008, as well as EPA's 2016 Technical Guidance, we have assessed demographics near biofuel and petroleum-based fuel facilities to identify populations that may be affected by changes to fuel production volumes that result in changes to air quality. The displacement of fuels such as gasoline and diesel by biofuels has positive GHG benefits which disproportionately benefit EJ communities. We have also considered the effects of the RFS program on fuel and food prices, as low-income populations often spend a larger percentage of their earnings on these commodities compared to the rest of the U.S.

1. Air Quality

There is evidence that communities with EJ concerns are impacted by non-GHG emissions. Numerous studies have found that environmental hazards such as air pollution are more prevalent in areas where racial/ethnic minorities and people with low socioeconomic status (SES) represent a higher fraction of the population compared with the general population.[170] [171] [172] [173] Consistent with this evidence, a recent study found that most anthropogenic sources of $PM_{2.5}$, including industrial sources, and light- and heavy-duty vehicle sources, disproportionately affect people of color.[174] There is also substantial evidence that people who live or attend school near major roadways are more likely to be of a minority race, Hispanic ethnicity, and/or low socioeconomic status.[175] [176] [177] As this rulemaking would displace petroleum-based fuels with biofuels, we have examined near-facility demographics of biodiesel, renewable diesel, RNG, ethanol, and petroleum facilities.

Emissions of non-GHG pollutants associated with the candidate volumes, including, for example, PM, NOx, CO, SO_2, and air toxics, occur during the production, storage, transport, distribution, and combustion of petroleum-based fuels and biofuels.[178] EJ communities may be located near petroleum and biofuel production facilities as well as their distribution systems. Given their long history and prominence, petroleum refineries have been the focus of past research which has found that vulnerable populations near them may experience potential disparities in pollution-related health risk from that source.[179]

RIA Chapter 4.1 summarizes what is known about potential air quality impacts of the candidate volumes assessed for this rule. We expect that small increases in non-GHG emissions from biofuel production and small reductions in petroleum-based emissions would lead to small changes in exposure to these non-GHG pollutants for people living in the communities near these facilities. We do not have the information needed to understand the exact magnitude and direction of travel (*i.e.,* how these potential pollutants drift into nearby areas) of facility-specific emissions associated with the candidate volumes, and therefore we are unable to evaluate impacts on air quality in the specific communities with environmental concerns near biofuel and petroleum facilities. However, modeled averaged facility emissions for biodiesel, ethanol, gasoline, and diesel production do offer some insight into the differences these near-facility populations may experience, as seen in RIA Table 4.1.1–1.

Both biofuel facilities and petroleum refineries could see changes to their production output as a result of candidate volumes analyzed in this proposed rule, and as a result the air quality near these facilities may change. We examined demographics based on 2020 American Community Survey data near both registered biofuel facilities and petroleum refineries to identify any disproportionate impacts these volume changes may have on nearby communities with EJ concerns.[180] Information on these populations and potential impacts upon them are further discussed in RIA Chapter 9. Several regional disparities have been identified in near-refinery populations. For example, people of color and other minority groups near petroleum and renewable diesel facilities are more likely to be disproportionately affected by production emissions from these facilities, especially in EPA Regions 3–7 and Region 9, where a greater proportion of minorities live within a 5

[170] Mohai, P.; Pellow, D.; Roberts Timmons, J. (2009) Environmental justice. Annual Reviews 34: 405–430. *https://doi.org/10.1146/annurev-environ-082508-094348.*

[171] Rowangould, G.M. (2013) A census of the near-roadway population: public health and environmental justice considerations. Trans Res D 25: 59–67. *http://dx.doi.org/10.1016/j.trd.2013.08.003.*

[172] Marshall, J.D., Swor, K.R.; Nguyen, N.P (2014) Prioritizing environmental justice and equality: diesel emissions in Southern California. Environ Sci Technol 48: 4063–4068. *https://doi.org/10.1021/es405167f.*

[173] Marshall, J.D. (2000) Environmental inequality: air pollution exposures in California's South Coast Air Basin. Atmos Environ 21: 5499–5503. *https://doi.org/10.1016/j.atmosenv.2008.02.005.*

[174] C. W. Tessum, D. A. Paolella, S. E. Chambliss, J. S. Apte, J. D. Hill, J. D. Marshall (2021). $PM_{2.5}$ polluters disproportionately and systemically affect people of color in the United States. Sci. Adv. 7, eabf4491.

[175] Rowangould, G.M. (2013) A census of the U.S. near-roadway population: public health and environmental justice considerations. Transportation Research Part D; 59–67.

[176] Tian, N.; Xue, J.; Barzyk. T.M. (2013) Evaluating socioeconomic and racial differences in traffic-related metrics in the United States using a GIS approach. J Exposure Sci Environ Epidemiol 23: 215–222.

[177] Boehmer, T.K.; Foster, S.L.; Henry, J.R.; Woghiren-Akinnifesi, E.L.; Yip, F.Y. (2013) Residential proximity to major highways—United States, 2010. Morbidity and Mortality Weekly Report 62(3): 46–50.

[178] U. S. EPA (2023) Health and environmental effects of pollutants discussed in chapter 4 of regulatory impact analysis (RIA) supporting RFS standards for 2023–2025. Memorandum from Margaret Zawacki to Docket No. EPA–HQ–OAR–2021–0427.

[179] Final Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, *https://www.epa.gov/sites/default/files/2016-06/documents/2010-0682_factsheet_overview.pdf.*

[180] U.S. EPA (2014). Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Petroleum Refineries. Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina. Jan. 6, 2014.

kilometer radius of these facilities, compared to the regional averages. Some regions are also characterized by a higher proportion of minority populations near facilities, though none more consistently than Regions 4, 6, 7, and 9, which are regions that contain the majority of petroleum facilities and the majority of facilities that are near large population centers. Ethanol and RNG facilities are seen as lower risk compared to soy biodiesel from a demographic perspective, as many ethanol and RNG facilities are in sparsely populated areas or have lower impacts on air quality. RNG facilities introduced to the RFS program may also reduce production emissions by processing otherwise flared biogas in some cases, making the effect of facility production emissions on nearby populations unclear. The candidate volumes by and large would not result in significantly greater production of corn ethanol or biogas than exists already, and therefore we would not expect appreciable adverse impacts on communities with EJ concerns near facilities that are currently producing ethanol or upgrading biogas to RNG during the timeframe of this rule.

2. Other Environmental Impacts

As discussed in RIA Chapter 4.5, the increases in renewable fuel volumes—particularly corn ethanol and soy renewable diesel—that may result from the candidate volumes can impact water and soil quality, which could in turn have disproportionate impacts on communities of concern. In addition, biogas used that is upgraded to RNG may have localized soil or water impacts. The associated manure collection and agricultural anaerobic digesters may decrease pathogen risk in water, but without proper treatment, excess nutrient pollution can also be a concern.

3. Economic Impacts

The candidate volumes could have an impact on food and fuel prices nationwide, as discussed in RIA Chapters 8.5 and 10.5. We estimate that the candidate volumes would result in food prices that are 0.72 percent higher in 2023, 0.63 percent higher in 2024, and 0.55 percent higher in 2025, than the food prices we project with the No RFS baseline. The impacts on food prices decline with the projected decline in commodity prices in future years. These food price impacts are in addition to the higher costs to transport all goods, including food, discussed in Section IV.C.3. These impacts, while generally small, are borne more heavily by low-income populations, as they spend a disproportionate amount of their income on goods in these categories. For instance, those in the bottom two quintiles of consumer income in the U.S. are more likely to be black, women, and people with a high school education or less, while also spending a proportionally larger fraction of their income on food and fuel. The lowest quintile of consumer units by income will spend 16 percent of their income on food as a result of the RFS program, up from 15.8 percent currently, while the second lowest quintile of consumer units by income will spend 13.4 percent of their income on food as a result of the RFS program, up from 13.2 percent currently. These absolute values can be seen in Table IV.E.3–1.

TABLE IV.E.3–1—IMPACT ON TOTAL EXPENDITURES OF FOOD AND FUEL [181]

	2023	2024	2025
All Consumer Units			
Food Expenditures	$8,289	$8,289	$8,289
Percent Impact on Food Expenditures	0.61%	0.50%	0.44%
Projected Food Expenditure Increase	$50.56	$41.45	$36.59
Fuel Expenditures	$2,148	$2,148	$2,148
Percent Impact on Fuel Expenditures	0.79%	1.23%	1.73%
Projected Fuel Expenditure Increase	$16.97	$26.42	$37.24
Lowest Quintile Income Consumer Units			
Food Expenditures	$4,875	$4,875	$4,875
Percent Impact on Food Expenditures	0.61%	0.50%	0.44%
Projected Food Expenditure Increase	$29.74	$24.38	$21.52
Fuel Expenditures	$1,111	$1,111	$1,111
Percent Impact on Fuel Expenditures	0.79%	1.23%	1.73%
Projected Fuel Expenditure Increase	$8.78	$13.67	$19.22
Second-Lowest Quintile Income Consumer Units			
Food Expenditures	$5,808	$5,808	$5,808
Percent Impact on Food Expenditures	0.61%	0.50%	0.44%
Projected Food Expenditure Increase	$35.43	$29.04	$25.63
Fuel Expenditures	$1,702	$1,702	$1,702
Percent Impact on Fuel Expenditures	0.79%	1.23%	1.73%
Projected Fuel Expenditure Increase	$13.45	$20.93	$29.44

V. Response to Remand of 2016 Rulemaking

In this action, we are completing the process of addressing the remand of the 2014–2016 annual rule by the U.S. Court of Appeals for the D.C. Circuit in *ACE*.[182] [183] As discussed in the final rule

[181] Bureau of Labor and Statistics Consumer Expenditure Survey, 2022. *https://www.bls.gov/cex/tables/calendar-year/aggregate-group-share/cu-income-quintiles-before-taxes-2020.pdf.*

[182] 80 FR 77420 (December 14, 2015). In the 2014–2016 rule, for year 2016 EPA lowered the cellulosic biofuel requirement by 4.02 billion gallons and the advanced biofuel and total renewable fuel requirements each by 3.64 billion gallons pursuant to the cellulosic waiver authority. CAA section 211(o)(7)(D). In the same rule, EPA further lowered the 2016 total renewable fuel requirement by 500 million gallons under the general waiver authority for inadequate domestic supply. CAA section 211(o)(7)(A).

[183] In 2017, the D.C. Circuit vacated EPA's use of the general waiver authority for inadequate

establishing applicable standards for 2020–2022,[184] our approach to address the *ACE* remand is to impose a 500-million-gallon supplemental volume requirement for renewable fuel over two years. This is equivalent to the volume of renewable fuel waived from the 2016 statutory volume requirement using a waiver which was subsequently vacated by the D.C. Circuit.[185] We required the first 250-million-gallon supplement in 2022. We are now requiring a second 250-million-gallon supplement to be complied with in 2023. This 2023 supplemental volume requirement, in combination with the 2022 supplement, constitutes a meaningful remedy and completes our response to the *ACE* vacatur and remand.

In the final rule establishing applicable standards for 2020–2022, we discussed the original 2016 renewable fuel standard, the *ACE* court's ruling, and our responsibility on remand in detail.[186] We also discussed our consideration of alternative approaches to respond to the remand.[187] We maintain the same views on the alternatives, including the alternatives identified by commenters, discussed in that rulemaking, and since that rulemaking have not identified any additional alternative approaches to addressing the *ACE* vacatur and remand. In particular, because we have already begun our response by imposing a 250-million-gallon supplemental standard in 2022, consideration of any other alternatives is evaluated in light of that partial response.

A. Supplemental 2023 Standard

We are completing the process of addressing the *ACE* remand by applying a supplemental volume requirement of 250 million gallons of renewable fuel in 2023, on top of and in addition to the other 2023 volume requirements.

Under this approach, the original 2016 standard for total renewable fuel will remain unchanged and the compliance demonstrations that obligated parties made for it will likewise remain in place. A supplemental standard for 2023 avoids the difficulties associated with reopening 2016 compliance, as discussed in detail in the 2020–2022 proposed rulemaking.[188] This supplemental standard has the same practical effect as increasing the 2023 total renewable fuel volume requirement by 250 million gallons, as compliance will be demonstrated using the same RINs as used for the 2023 standard. The percentage standard for the supplemental standard is calculated the same way as the 2023 percentage standards (*i.e.,* using the same gasoline and diesel fuel projections), such that the supplemental standard is additive to the 2023 total renewable fuel percentage standard. This approach provides a meaningful remedy in response to the court's vacatur and remand in *ACE* and effectuates the Congressionally determined renewable fuel volume for 2016, modified only by the proper exercise of EPA's waiver authorities, as upheld by the court in *ACE* and in a manner that can be implemented in the near term. We are treating such a supplemental standard as a supplement to the 2023 standards, rather than as a supplement to standards for 2016, which has passed. In order to comply with the supplemental standard, obligated parties will need to retire available RINs; it is thus logical to require the retirement of available RINs in the marketplace at the time of compliance with this supplemental standard. As discussed below, it is no longer possible for obligated parties to comply with a 500-million-gallon 2016 obligation using 2015 and 2016 RINs as required by our regulations. Thus, compliance with a supplemental standard applied to 2016 would be impossible barring EPA reopening compliance for all years from 2016 onward. By applying the supplemental standard to 2023 instead of 2016, RINs generated in 2022 and 2023 can be used to comply with the 2023 supplemental standard. Additionally, as provided by our regulations, RINs generated in 2015 and 2016 could only be used for 2015 and 2016 compliance demonstrations,[189] and obligated parties had an opportunity at that time to utilize those RINs for compliance or sell them to other parties, while holding RINs that could be utilized for future compliance years.

In applying a supplemental standard to 2023, we are treating it like all other 2023 standards in all respects. That is, producers and importers of gasoline and diesel that are subject to the 2023 standards are subject to the supplemental standard. The applicable deadlines for attest engagements and compliance demonstrations that apply to the 2023 standards also apply to the supplemental standard. The gasoline and diesel volumes used by obligated parties to calculate their obligation is their 2023 gasoline and diesel production or importation. Additionally, obligated parties can use 2022 RINs for up to 20 percent of their 2023 supplemental standard.

Stakeholders provided comments on this approach, with some supporting EPA's approach to the remand, and others suggesting that EPA should take an alternative response. We respond to those comments in the RTC document.

1. Demonstrating Compliance With the 2023 Supplemental Standard

As we did for the 2022 supplemental standard, we are prescribing formats and procedures as specified in 40 CFR 80.1451(j) for how obligated parties will demonstrate compliance with the 2023 supplemental standard that simplifies the process in this unique circumstance. Although the proposed 2023 supplemental standard is a regulatory requirement separate from and in addition to the 2023 total renewable fuel standard, obligated parties will submit a single annual compliance report for both the 2023 annual standards and the supplemental standard and will only report a single number for their total renewable fuel obligation in the 2023 annual compliance report. Obligated parties will also only need to submit a single annual attest engagement report for the 2023 compliance period that covers both the 2023 annual standards and the 2023 supplemental standard.

To assist obligated parties with this special compliance situation, we will issue guidance with instructions on how to calculate and report the values to be submitted in their 2023 compliance reports, similar to how we intend to do so for 2022.

2. Calculating a Supplemental Percentage Standard for 2023

The formulas in 40 CFR 80.1405(c) for calculating the applicable percentage standards were designed explicitly to associate a percentage standard for a particular year with the volume requirement for that same year. The formulas are not explicitly designed to address the use of a 2016 volume requirement to calculate a 2023 percentage standard. Nonetheless, in light of EPA's and obligated parties' familiarity with this approach and the benefits of consistency within the structure of RFS regulations, we find it appropriate to apply the same general approach to calculating a supplemental

domestic supply to reduce the 2016 total renewable fuels standard by 500 million gallons and remanded the 2014–2016 rule. 864 F.3d 691 (2017).

[184] 87 FR 39600, 39627–39631 (July 1, 2022).

[185] 864 F.3d at 691.

[186] 87 FR 39600, 39627–39628 (July 1, 2022).

[187] 87 FR 39600, 39628–39629 (July 1, 2022). We also responded to alternative ideas provided by commenters. See also Renewable Fuel Standard (RFS) Program: RFS Annual Rules Response to Comments, EPA–420–R–22–009 at 151–154.

[188] 86 FR 72436, 72459–72460 (Dec. 21, 2022).

[189] 2016 RINs could also have been used for up to 20 percent of an obligated party's 2017 compliance demonstrations.

percentage standard for 2023. Utilizing the same principles and general terms allows for a formula that properly utilizes the 250 million gallon supplemental volume, but the same values used to calculate the 2023 percentage standards, such that the supplemental percentage standard is still properly additive.

The numerator in the formula in 40 CFR 80.1405(c) is the supplemental volume of 250 million gallons of total renewable fuel. The values in the denominator are the same as those used to calculate the 2023 percentage standards, which can be found in Table VII.C–1. As described in Section VII, the resulting supplemental total renewable fuel percentage standard for the 250-million-gallon volume requirement in 2023 is 0.14 percent.

The supplemental standard for 2023 is a requirement for obligated parties separate from and in addition to the 2023 standard for total renewable fuel. The two percentage standards are listed separately in the regulations at 40 CFR 80.1405(a), but in practice obligated parties will demonstrate compliance with both at the same time.

B. Authority and Consideration of the Benefits and Burdens

In establishing the 2016 total renewable fuel standard, EPA waived the required volume of total renewable fuel by 500 million gallons using the inadequate domestic supply general waiver authority. The use of that waiver authority was vacated by the court in *ACE* and the rule was remanded to EPA. In order to remedy our improper use of the inadequate domestic supply general waiver authority, we find that it is appropriate to treat our authority to establish a supplemental standard at this time as the same authority used to establish the 2016 total renewable fuel volume requirement—CAA section 211(o)(3)(B)(i)—which requires EPA to establish percentage standard requirements by November 30 of the year prior to which the standards will apply and to ''ensure'' that the volume requirements ''are met.'' [190] EPA exercised this authority for the 2016 standards once already. However, the effect of the *ACE* vacatur is that there remain 500 million gallons of total renewable fuel from the 2016 statutory volumes that were not included under the original exercise of EPA's authority under CAA section 211(o)(3)(B)(i). We are now utilizing the same authority to correct our prior action, and ''ensure'' that the volume requirements ''are met,'' and we are doing so significantly after November 30, 2015. Therefore, we have considered how to balance benefits and burdens and mitigate hardship by our late issuance of this standard. We recognize that we used the same authority to establish the 2022 supplemental standard. As noted in that action, we had only provided a partial response to the *ACE* court's remand and vacatur. This action now completes our response. Additionally, as we have in the past, we rely on our authority in CAA section 211(o)(2)(A)(i) to promulgate late standards.[191] CAA section 211(o)(2)(A)(i) requires that EPA ''ensure'' that ''at least'' the applicable volumes ''are met.'' [192] Because the D.C. Circuit vacated our waiver of 500 million gallons of total renewable fuel from the original 2016 standards, we are now taking action to ensure that at least the applicable volumes from 2016 are ultimately met. We have determined that the appropriate means to do so is through the use of two 250-million-gallon supplemental standards, one in 2022, as finalized in a prior action, and one in 2023, as we are finalizing in this action.

As noted elsewhere, we are finalizing this action during the 2023 compliance year. Thus, our action is partly retroactive as to the compliance with the supplemental standard by obligated parties. In analyzing the benefits and burdens attendant to this approach, we have also considered the partially retroactive nature of the rule. The issuance of the supplemental standard is thus a late standard, in that we are acting beyond the statutory deadline for a standard associated with the 2016 volume requirements, and it is partially retroactive as it is being finalized partway through the compliance year during which it applies.

In *ACE* and two prior cases, the court upheld EPA's authority to issue late renewable fuel standards, even those applied retroactively, so long as EPA's approach is reasonable.[193] EPA must consider and mitigate the burdens on obligated parties associated with a delayed rulemaking.[194] When imposing a late or retroactive standard, we must balance the burden on obligated parties of a retroactive standard with the broader goal of the RFS program to increase renewable fuel use.[195] The approach in this action implements a late standard, with partially retroactive effects, as described in these cases. Obligated parties made their RIN acquisition decisions in 2016 based on the standards as established in the 2014–2016 standards final rule, and they may have made different decisions had we not reduced the 2016 total renewable fuel standard by 500 million gallons using the general waiver authority. Were EPA to create a supplemental standard for 2016 designed to address the use of the general waiver authority in 2016, we would be imposing a wholly retroactive standard on obligated parties, but because obligated parties will comply with the supplemental standard in 2023, it would instead be a late standard applied in 2023, with partially retroactive effects. Pursuant to the court's direction, we have carefully considered the benefits and burdens of our approach and considered and mitigated the burdens to obligated parties caused by the lateness.[196]

We believe that the approach we are finalizing provides benefits that outweigh potential burdens. Consistent with the 2016 renewable fuel volume requirement established by Congress, the supplemental standards for 2022 and 2023 are together equivalent to the volume of total renewable fuel that we inappropriately waived for the 2016 total renewable fuel standard. The use of these supplemental standards phased across two compliance years provides a meaningful remedy to the D.C. Circuit's vacatur of EPA's use of the general waiver authority and remand of the 2016 rule in *ACE.* While this action cannot result in additional renewable fuel used in 2016, it can result in additional fuel use in 2023. We believe that while the additional volume in 2023 will put some moderate degree of increased pressure on the market, it is nevertheless feasible and achievable.

We have carefully considered and designed this approach to mitigate any burdens on obligated parties. First, we have considered the availability of RINs to satisfy this additional requirement. As explained earlier, there are insufficient 2015 and 2016 RINs

[190] EPA acknowledges that CAA section 211(o)(3)(B)(i) does not apply to the standards for 2023–2025. EPA cites this authority for the supplemental standard which is a 2016 standard with compliance aligned with calendar year 2023.

[191] In promulgating the 2009 and 2010 combined BBD standard, upheld by the D.C. Circuit in *NPRA* v. *EPA,* 630 F.3d 145 (2010), we utilized express authority under section 211(o)(2). 75 FR 14670, 14718.

[192] See also CAA section 211(o)(2)(A)(iii)(I), requiring that ''regardless of the date of promulgation,'' EPA shall promulgate ''compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met.''

[193] See *ACE,* 864 F.3d at 718; *Monroe Energy, LLC* v. *EPA,* 750 F.3d at 920; *NPRA,* 630 F.3d at 154–58.

[194] *ACE,* 864 F.3d at 718.

[195] *NPRA,* 630 F.3d at 154–58.

[196] As we also did for the 2022 supplemental standard. 87 FR 39629–31 (July 1, 2022).

available to satisfy the proposed 250-million-gallon volume requirement. Instead, we are finalizing a supplemental volume requirement to the 2023 standards that applies prospectively, in part. Doing so allows 2022 and 2023 RINs to be used for compliance with the 2023 supplemental standard, in keeping with existing RFS regulations. We believe there will be a sufficient number of 2023 RINs to satisfy the 2023 supplemental standard through a combination of domestic production and importation of renewable fuel, as described more fully in Section VI. In Section VI and RIA Chapter 6.2.6, we considered the feasibility and achievability of the 2023 supplemental standard alongside the other volume standards for 2023. We believe that compliance through the use of carryover RINs will not be necessary, but nevertheless remains available as an option for obligated parties for compliance.[197]

Second, we provided significant lead-time for obligated parties by proposing this supplemental standard for 2023 no less than 12 months prior to the 2023 compliance deadline.[198] Moreover, we initially provided obligated parties notice of the 250-million-gallon supplemental standard for 2022 in December of 2021,[199] no less than 24 months prior to the 2023 compliance deadline, and indicated our intention to similarly apply a 250-million-gallon supplemental standard to 2023. Given this December 2021 statement of intent, parties have had notice of a 250-million-gallon supplemental standard in 2023 for longer than they had notice of the 2023 standards for renewable fuel, advanced biofuel, and total renewable fuel. We are also finalizing this action approximately 9 months prior to the 2023 compliance deadline.

Third, we are finalizing multiple mechanisms to mitigate the potential compliance burden caused by a late rulemaking. One step is to designate that the response to the *ACE* remand is a supplement to the 2023 standards. This approach not only allows the use of 2022 and 2023 RINs for compliance with the 2023 standard, as described earlier, but it also avoids the need for obligated parties to revise their 2016 (and potentially 2017, 2018, 2019, etc.) compliance demonstrations, which would be a burdensome and time-consuming process. In addition, obligated parties can satisfy both the 2023 standards and the supplemental standard in a single set of compliance and attest engagement demonstrations. We are also extending the same compliance flexibility options already available for the 2023 standards to the 2023 supplemental standard, including allowing the use of carryover RINs and deficit carry forward subject to the conditions of 40 CFR 80.1427(b)(1). With this action we are also spreading out the 500-million-gallon obligation over two compliance years. As explained in the 2020–2022 final rule, this is designed to allow obligated parties and renewable fuel producers additional lead time to meet the standard, thus providing almost a year for the market to prepare for compliance with the second 250-million-gallon requirement.[200]

Lastly, we carefully considered alternatives, including retaining the 2016 total renewable fuel volume as described in the 2020 proposal,[201] reopening 2016 compliance and applying a supplemental standard to the 2016 compliance year,[202] and, as suggested by commenters on the 2020–2022 rule, using our cellulosic or general waiver authority to retroactively lower 2016 volumes such that 2022 and 2023 supplemental standards would be smaller.[203]

On balance, we find that requiring an additional 250 million gallons of total renewable fuel to be complied with through a supplemental standard in 2023 in addition to that already applied in 2022 is an appropriate response to the court's vacatur and remand of our use of the general waiver authority to waive the 2016 total renewable fuel standard by 500 million gallons.

VI. Volume Requirements for 2023–2025

As required by the statute, we have reviewed the implementation of the program in prior years and have analyzed a specified set of factors.[204] As described in Section III, we did this by first deriving a set of ''candidate volumes'' based on a consideration of supply-related factors and other relevant factors, and then using those candidate volumes to analyze the remaining economic and environmental factors as discussed in Section IV. Details of all analyses are provided in the RIA. We have coordinated with the Secretary of Energy and the Secretary of Agriculture, including through the interagency review process, and their input is reflected in this final rule. We have also considered all information provided through comments from stakeholders and any other information that has become available since release of the proposal.

In this section, we summarize and discuss the implications of all our analyses and any other information that has become available as it applies to each of the three different component categories of biofuel: cellulosic biofuel, non-cellulosic advanced biofuel, and conventional renewable fuel. These three components combine to produce the statutory categories: the volume requirement for advanced biofuel is equal to the sum of cellulosic biofuel and non-cellulosic advanced biofuel, while the volume requirement for total renewable fuel is equal to the sum of advanced biofuel and conventional renewable fuel.[205]

We note that while we do not separately discuss each of the statutory factors for each component category in this section, we have analyzed all the statutory factors. However, it was not always possible to precisely identify the implications of the analysis of a specific factor for a specific component category of renewable fuel. For instance, while we analyzed ethanol use in the context of the review of the implementation of the program in prior years, ethanol can be used in all biofuel categories except BBD and our analysis therefore does not apply to a single standard. Air quality impacts are driven primarily by biofuel type (*e.g.,* ethanol, biodiesel, etc.) rather than by biofuel category, and energy security impacts are driven solely by the amount of fossil fuel energy displaced. Moreover, with the exception of CAA section 211(*o*)(2)(ii)(III), the statute does not require that the requisite analyses be specific to each category of renewable fuel. Rather, the statute directs EPA to analyze certain factors, without specifying how that analysis must be conducted. In addition, the statute directs EPA to analyze the ''program'' and the impacts of ''renewable fuels'' generally, further indicating that Congress intended to provide to EPA the discretion to decide how and at what level of specificity to analyze the statutory factors. This section

[197] See Section III.C.4 for further discussion of carryover RINs.

[198] See 40 CFR 80.1427. See also *Nat'l Petrochemical & Refiners Ass'n* v. *EPA,* 630 F.3d 145, 166 (D.C. Cir.), acknowledging 11 months from issuance of standards to the compliance deadline as sufficient time, and *ACE* at 722–23 acknowledging ''very extensive extensions of the normal compliance demonstration deadlines'' of approximately 8 months after signature.

[199] 86 FR 72436 (December 21, 2021).

[200] 87 FR 39600 (July 1, 2022).

[201] 84 FR 36762, 36787–36789 (July 29, 2019).

[202] 86 FR 72459–60.

[203] 87 FR 39600 (July 1, 2022). See also Chapter 8 of the Response to Comments document for this action.

[204] CAA section 211(o)(2)(B)(ii).

[205] These combinations are set forth in the statute. See CAA section 211(o)(2)(B)(i)(I)–(III). In addition, the determination of the appropriate volume requirements for BBD is treated separately in Section VI.C.

supplements the analyses discussed in Sections III and IV by providing a narrative summary of the key criteria that apply distinctively to each component category insofar as we have deemed appropriate.

A. Cellulosic Biofuel

In EISA, Congress established escalating targets for cellulosic biofuel, reaching 16 billion gallons in 2022. After 2015, all of the growth in the statutory volume of total renewable fuel was advanced biofuel, and of the advanced biofuel growth, the vast majority was cellulosic biofuel. This indicates that Congress intended the RFS program to provide a significant incentive for cellulosic biofuels and that the focus for years after 2015 was to be on cellulosic. While cellulosic biofuel production has not reached the levels envisioned by Congress in 2007, EPA remains committed to supporting the development and commercialization of cellulosic biofuels. Cellulosic biofuels, particularly those produced from waste or residue materials, have the potential to significantly reduce GHG emissions from the transportation sector. In many cases cellulosic biofuel can be produced without impacting current land use and with little to no impact on other environmental factors, such as air and water quality. The cellulosic biofuel volumes we are finalizing are intended to provide the necessary support for the ongoing development and commercial scale deployment of cellulosic biofuels, and to continue to build towards the Congressional target of 16 billion gallons of cellulosic biofuel established in EISA, and are supported by our consideration of the specified statutory factors.

As discussed in Section III.B.1, we developed candidate volumes for cellulosic biofuel based on a consideration of statutory supply-related factors. This process included a consideration not only of production and import of the different possible forms of cellulosic biofuel, but also of constraints on consumption (*i.e.,* the number of CNG/LNG vehicles) and of the availability of qualifying feedstocks, primarily but not exclusively biogas. With an eye towards estimating candidate volumes based on the supply-related statutory factors that reflect the projected growth in cellulosic biofuel production from 2023–2025, we estimated the following candidate volumes:

TABLE VI.A–1—CANDIDATE VOLUMES OF CELLULOSIC BIOFUEL

[Million RINs]

	2023	2024	2025
CNG/LNG Derived from Biogas	831	1,039	1,299
Ethanol from CKF	7	51	77
Total Cellulosic Biofuel	838	1,090	1,376

We then analyzed these candidate volumes according to the other statutory factors. These analyses are discussed briefly here and described in greater detail in the RIA. Our assessment of those factors suggests that cellulosic biofuels have multiple benefits, including the potential for very low lifecycle GHG emissions that meet or exceed the statutorily-mandated 60 percent GHG reduction threshold for cellulosic biofuel.[206] Many of these benefits stem from the fact that nearly all of the feedstocks projected to be used to produce the candidate cellulosic biofuel volumes are either waste materials (as in the case of CNG/LNG derived from biogas) or residues (as in the case of cellulosic diesel and heating oil from mill residue). The use of many of the feedstocks currently being used to produce cellulosic biofuel and those expected to be used through 2025 (primarily biogas to produce CNG/LNG) are not expected to cause significant land use changes that might lead to adverse environmental impacts.

None of the cellulosic biofuel feedstocks expected to be used to produce liquid cellulosic biofuels through 2025 (including agricultural residues such as corn kernel fiber, mill residue, and separated MSW) are produced with the intention that they be used as feedstocks for cellulosic biofuel production. Moreover, many of these feedstocks have limited uses in other markets.[207] Because of this, using these feedstocks to produce liquid cellulosic biofuel is not expected to have significant adverse impacts related to several of the statutory factors, including the conversion of wetlands, ecosystems and wildlife habitat, soil and water quality, the price and supply of agricultural commodities, and food prices through 2025.

Despite the fact that both liquid cellulosic biofuels and CNG/LNG derived from biogas are projected to be produced from feedstocks that are wastes or by-products, there are also significant differences between liquid cellulosic biofuels and CNG/LNG derived from biogas. In particular, the cost of producing liquid cellulosic biofuel is generally high. These high costs are generally the result of low yields (*e.g.,* gallons of fuel per ton of feedstocks) and the high capital costs of liquid cellulosic biofuel production facilities. In the near term (through 2025), the production of these fuels is likely to be dependent on relatively high cellulosic RIN prices (in addition to state level programs such as California's LCFS) in order for them to be economically competitive with petroleum-based fuels.

In contrast to liquid cellulosic biofuels, cellulosic biofuels derived from biogas, most notably CNG/LNG, can be more cost-competitive with the fuels they displace. Some biogas from qualifying sources such as landfills, wastewater treatment facilities, and agricultural digesters are already injected into natural gas pipelines.[208] In some situations, such as at larger landfills, CNG/LNG derived from biogas may be able to be produced at a price comparable to fossil natural gas. In most cases, however, some financial incentive is needed to enable these fuels to compete economically with the fuels they displace. Because of the low cost of production relative to liquid cellulosic biofuels and the relatively mature state of this technology, CNG/LNG from biogas is expected to remain as the dominant type of cellulosic biofuel through 2025.

[206] CAA section 211(o)(1)(E).

[207] One potential exception is corn kernel fiber. Corn kernel fiber is a component of distillers grains, which is currently sold as animal feed. Depending on the type of animal to which the distillers grain is fed, corn kernel fiber removed from the distillers grain through conversion to cellulosic biofuel may need to be replaced with additional feed.

[208] See Landfill Gas Energy Project Data from EPA's Landfill Methane Outreach Program.

Despite the relatively low cost of production for CNG/LNG derived from biogas, the combination of the relatively high cellulosic biofuel RIN price and the significant volume potential for CNG/LNG derived from biogas used as transportation fuel could have an impact on the price of gasoline and diesel. We project that together these fuels could add about $0.01 per gallon to the price of gasoline and diesel in 2023, and that this price impact could rise to about $0.02 per gallon in 2025.[209]

Based on our analyses of all of the statutory factors, we find that the benefits of higher volumes of cellulosic biofuel outweigh the potential negative impacts. We therefore believe that to realize the benefits associated with increasing cellulosic biofuel production it is reasonable to establish cellulosic biofuel volume requirements through 2025 at the candidate levels that reflect the projected growth in cellulosic biofuel production from 2023–2025 based on available data. The volumes for 2023–2025 we are finalizing in this rule are based on the data available at the time of this rule and reflect our consideration of the public comments received on the proposed rule. These volumes represent our best efforts to project the potential for growth in the volume of these fuels that can be achieved in 2023–2025. We believe these volumes will continue to provide substantial support for investment in and development of cellulosic biofuels and yet are consistent with statutory requirements for the cellulosic biofuel volumes (including CAA 211(o)(2)(B)(iv)).

TABLE VI.A–2—FINAL CELLULOSIC BIOFUEL VOLUMES

[Million RINs]

	2023	2024	2025
CNG/LNG Derived from Biogas	831	1,039	1,299
Ethanol from CKF	7	51	77
Total Cellulosic Biofuel	838	1,090	1,376

We note that the final cellulosic biofuel volumes are higher than the proposed volumes, after accounting for the decision not to finalize eRIN provisions in this rule. There are several reasons for these higher volumes, which are discussed briefly here and in more detail in Section III.B and RIA Chapter 6. The addition of projected volume of cellulosic ethanol from CKF relative to the proposed rule is largely the result of the significant progress several facilities and technology providers have made towards facility registration since the release of the updated guidance of producing ethanol from corn kernel fiber.[210] As discussed in RIA Chapter 6.1, since the proposed rule EPA has received registration requests from facilities intending to register to generate cellulosic biofuel RINs for ethanol from CKF, and have had substantive technical discussions with technology providers who intend to provide testing results consistent with EPA's current guidance. The increases in CNG/LNG derived from biogas are due to our belief that growth from 2023–2025 can be more in line with the average growth from 2015–2022 rather than just the most recent 24 months.

We recognize that with this Set rule Congress has instructed us to begin a new phase of the RFS program, one in which there are no statutory volume targets. This has important implications for the use of our cellulosic waiver authority and the availability of cellulosic waiver credits in future years (see Section II.F for a further discussion of the availability of cellulosic waiver credits). In the proposed rule we noted several important changes in EPA's statutory authority in years after 2022, and we sought input from commenters on how these changes can or should impact the required cellulosic biofuel volumes. These comments, and our responses to them, are discussed briefly here, and in greater detail in RTC Sections 2.3.2 and 3.1.

Perhaps most importantly EPA proposed volumes for multiple years in one action in an effort to provide the consistent market signals that the cellulosic biofuel industry needs to develop. At the same time, we recognized that there is increased uncertainty in any cellulosic biofuel projections due to the multi-year nature of this rule and the potential for the development and deployment of new cellulosic biofuel production pathways. The increasing cellulosic biofuel volumes that we are establishing in this rule should also provide increased stability in the cellulosic RIN market, as they allow greater volumes of cellulosic RINs to be used for compliance in the following year if excess cellulosic RINs are generated. We believe that despite the uncertainty associated with cellulosic biofuel production through 2025 it is appropriate to finalize cellulosic biofuel volumes for 2023–2025 in this rule, and that the cellulosic biofuel volumes we are finalizing are reasonable based on the available data for making future projections.

In the proposed rule we noted that several stakeholders had stated that despite the incentive provided by the RFS program, variability and uncertainty in cellulosic RIN prices and future cellulosic biofuel requirements are hindering investment in the cellulosic biofuel industry. These parties generally expressed concerns related to the potential impacts on the cellulosic biofuel and cellulosic RIN markets if EPA's projections of cellulosic biofuel are significantly and consistently lower than the actual production of cellulosic biofuel. While many stakeholders acknowledged that EPA has tools to reduce the cellulosic biofuel volumes if necessary, they noted that EPA has a limited ability to increase the cellulosic biofuel volume if production and imports of cellulosic biofuel exceed the required volumes. In such a case the stakeholders expressed concern that the price of cellulosic RINs could fall to a level at or approaching the advanced biofuel RIN price, which might then negatively impact their investment in cellulosic biofuel production.

We agree with these commenters that it is important to maintain proper incentives for investment in and growth

[209] See RIA Chapters 1.9.2 and 10 for a further discussion of the expected impact of RINs generated for CNG/LNG derived from biogas on the price of gasoline and diesel and the impact of CNG/LNG derived from biogas on the cost of this rule.

[210] Guidance on Qualifying an Analytical Method for Determining the Cellulosic Converted Fraction of Corn Kernel Fiber Co-Processed with Starch. Compliance Division, Office of Transportation and Air Quality, U.S. EPA. September 2022 (EPA–420–B–22–041). See RIA Chapter 6.1 for a further discussion of ethanol produced form corn kernel fiber.

of cellulosic biofuels. Their potential for greater GHG emission reductions and typically limited negative environmental impacts make them attractive options for displacing petroleum fuels. Since 2015, the incentives provided by the RFS program have supported significant growth in cellulosic biofuel production (see Figure III.B.1–1). During this time, cellulosic biofuel production has grown at an annual rate of 25% per year, greater than any other category of cellulosic biofuel. In response to comments received on the proposed rule and more recent data we have adjusted our approach to projecting the potential production of CNG/LNG derived from biogas (by far the largest source of cellulosic biofuel) to better reflect the potential for the growth of these fuels through 2025. This higher growth rate resulted in significantly higher, yet still achievable, projections for CNG/LNG derived from biogas.

We believe that the most effective and direct way to respond to the concerns the commenters raised with respect to the negative impacts related to a potential surplus of cellulosic biofuel RINs is to establish cellulosic biofuel volume requirements that reflect the projected growth of the cellulosic biofuel industry based on available data, as we have done in this final rule.

Nevertheless, in their comments on the proposed rule these stakeholders requested that EPA modify our historical standard setting process for cellulosic biofuel to also commit to a mechanism for increasing the cellulosic biofuel volume requirements if actual production and imports exceeded the volumes we are finalizing in this rule by a specified amount, either by adopting regulatory provisions that would automatically increase the volume requirement or by committing to adjusting the cellulosic biofuel volume requirements in a subsequent rule. The most common mechanism requested by commenters was that EPA would finalize a formula that would be used annually to adjust the required volume of cellulosic biofuel for a subsequent year.[211] For example, many parties suggested that EPA should calculate the difference between (1) the total number of cellulosic RINs generated in each year plus any remaining cellulosic RINs from the previous year not used for compliance and (2) the required cellulosic biofuel volume for that year. If the quantity of cellulosic RIN generation plus carryover RINs exceeded the required volume for that year, these parties stated that EPA should automatically increase the required cellulosic volume for a subsequent year.[212] By doing so the commenters believed that cellulosic biofuel RIN values would be assured of remaining high, reducing their investment risk. If the quantity of cellulosic RIN generation plus carryover RINs was less than the required volume for that year creating a concern for obligated parties, then the commenters suggested EPA should automatically decrease the required cellulosic volume for a subsequent year.

Several commenters opposed the adoption of a mechanism that would automatically adjust the cellulosic volumes.[213] These comments generally focused on the statutory requirements that the RFS volume requirements be based on an evaluation of the statutory criteria (rather than a simple calculation) and that the volume requirements be set 14 months in advance of the applicable year. One commenter additionally noted that EPA should not use any adjustment mechanism to reduce the available carryover RINs, which they claimed were allowed by Congress. Another commenter stated that any formula that could result in adjusting the cellulosic volume requirements downward would strip the RFS program of its market forcing power and result in only requiring the quantity of cellulosic biofuel actually used in the market.

We acknowledge that in theory a mechanism could be developed and implemented in a way that might be able to reduce, and potentially even eliminate, the investment risk associated with a potential surplus of cellulosic RINs causing RIN price volatility or lower RIN prices. Nevertheless, after reviewing these comments, EPA is not committing to such a mechanism at this time for the following reasons and as discussed more fully in RTC Section 2.3.

First, as discussed above, we believe that the most effective and direct way to respond to the concerns the commenters raised with respect to the negative impacts related to a potential surplus of cellulosic biofuel RINs is to establish cellulosic biofuel volume requirements that reflect the projected growth of the cellulosic biofuel industry based on available data.

Second, it is not yet clear how such a mechanism could or should be implemented. For example, the public data many of the commenters suggested could be used in these calculations are not clearly suitable for this purpose. With the new biogas regulatory reform provisions (discussed in Section IX) that we are finalizing in this rule, not all D3 biogas RINs generated will represent cellulosic fuel used as transportation fuel. Under the new provisions, these RINs may be retired if the RNG is used for a non-transportation use (*e.g.,* heating or renewable electricity generation), thus altering the ultimate amount of cellulosic RINs available to meet the RFS standards.

Third, EPA also has an obligation to provide public notice and an opportunity for comment prior to establishing the RFS volume requirements. While we sought comment on an adjustment mechanism in general, and commenters provided input on potential mechanisms at a high level, there was little specificity associated with how such a mechanism could or would be implemented in practice. Notably we did not propose regulations for public comment that would implement an adjustment mechanism. While some commenters acknowledged this notice and comment obligation, these commenters did not adequately address the potential public notice concerns that finalizing this approach may now raise. While EPA could in theory promulgate a supplemental notice and opportunity for comment on this change, doing so would further and significantly delay this rulemaking, which would be inconsistent with the lead-time provisions in the statute and would itself undermine the market certainty integral to success of the entire RFS program.

Fourth, as stated in the proposed rule, the carryover RIN provisions in the existing RFS regulations already represent a mechanism to help stabilize demand for cellulosic biofuel and cellulosic RINs in the event of a RIN surplus. In the event of a surplus of RINs in a current year, the fact that these RINs will still be of value in the

[211] For an example of this requested approach, see comments by the Coalition for Renewable Natural Gas (Docket Item No. EPA–HQ–OAR–2021–0427–0756).

[212] Several parties noted that EPA need not increase the required cellulosic volume for the subsequent year by the entire amount that cellulosic RIN generation and carryover RINs exceeded the required volume for that year, but that instead EPA could increase the required volume by a lesser amount to preserve some level of carryover RINs. Further, some parties explicitly stated that any increase to the required volume of cellulosic biofuel should occur 2 years after the observed RIN surplus. For example, if cellulosic RIN generation plus carryover RINs was greater than the required volume for 2023, EPA should increase the required volume for 2025 to meet the statutory requirements that the volumes be set 14 months in advance of the year to which they apply.

[213] For example, see comments from AFPM (EPA–HQ–OAR–2021–0427–0812) and Growth Energy (EPA–HQ–OAR–2021–0427–0796).

following year when RINs may be in short supply helps to stabilize the value of RINs, including D3 RINs, over time. We further address these comments in the RTC document.

EPA will continue to closely monitor the generation of all cellulosic RINs in future years and, if appropriate, will consider adjusting the cellulosic biofuel volume requirements.

B. Non-Cellulosic Advanced Biofuel

The volume targets established by Congress through 2022 anticipated volumes of advanced biofuel beyond what would be needed to satisfy the cellulosic standard. The statutory target for advanced biofuel in 2022 (21 billion gallons) allowed for up to five billion gallons of non-cellulosic advanced biofuel to be used towards the advanced biofuel volume target, and the applicable standards for 2022 similarly include five billion gallons of non-cellulosic advanced biofuel. As discussed in Sections III.B.2 and III.B.3, we developed candidate volumes for non-cellulosic advanced biofuel based on a consideration of supply-related factors and other relevant factors. This process included a consideration not only of production and import of non-cellulosic advanced biofuels, but also of the availability of qualifying feedstocks, a consideration of the supply of these fuels in the first quarter of 2023, and a desire to maximize benefits and limit potential negative consequences associated with the production of these fuels by focusing future growth on increases in feedstock production in North America. Based on this analysis of these factors, the candidate volumes for non-cellulosic biofuel represent significant growth relative to the volumes of these fuels supplied in 2022 (see Table III.C.2–1). We then analyzed these candidate volumes according to the other statutory factors.

To date, the vast majority of non-cellulosic advanced biofuel in the RFS program has been biodiesel and renewable diesel, with relatively small volumes of sugarcane ethanol and other advanced biofuels. Our assessment of the impact of non-cellulosic advanced biofuels on each of the statutory factors can be found in the RIA, that assessment is summarized briefly in this section. While the impacts of non-cellulosic advanced biofuels on the statutory factors can vary depending on the fuel type, production process, where the fuel is produced, and the feedstock used to produce the fuel, all advanced biofuels have the potential to provide significant GHG reductions as they are required to achieve at least 50 percent GHG reductions relative to the petroleum fuels they displace.[214] These potential GHG reductions suggest that non-cellulosic advanced biofuel volumes that meet or exceed those established by Congress for 2022 (5.0 billion RINs) may be appropriate.

Advanced biodiesel and renewable diesel together comprised 95 percent or more of the total supply of non-cellulosic advanced biofuel over the last several years, and together the two fuels are expected to continue to do so through 2025 due to the limited production and import of other types of non-cellulosic advanced biofuels (see RIA Chapters 6.2 through 6.4). We have therefore focused our attention on the impacts of these fuels in relation to the statutory factors in determining appropriate levels of non-cellulosic advanced biofuel for 2023–2025.[215]

As explained in Section III.B.2, we identified candidate volumes for non-cellulosic advanced biofuels based on the supply-related factors and other relevant factors. We also considered the supply of these fuels through March 2023 (the most recent month for which data were available at the time the analyses for this rule were completed). We concluded that domestic production capacity and availability of imports indicate that volumes of non-cellulosic advanced biofuel through 2025 could exceed the implied statutory target for 2022 (5 billion ethanol-equivalent gallons). Similarly, the feedstocks used to make advanced biodiesel and renewable diesel (such as soy oil, canola oil, and corn oil, as well as waste oils such as white grease, yellow grease, trap grease, poultry fat, and tallow) currently exist in sufficient quantities globally to supply increasing volumes. While there is potential for increasing growth in the production of some of these feedstocks, these feedstocks also have many existing uses and may require replacement with suitable substitutes if increasing quantities are used for biofuel production.

Beyond the supply-related statutory factors considered in determining the candidate volumes, our assessment of the impact of biodiesel and renewable diesel on the remaining statutory factors found that some of these factors would suggest that volumes higher than the candidate volumes are appropriate. For example, we observe also that higher implied volume requirements for non-cellulosic advanced biofuel may have energy security benefits and result in increases in domestic employment in the biofuels industry and increases in income for biofuel feedstock producers. Benefits to domestic employment are only likely to occur if increasing volumes of biodiesel and renewable diesel are produced domestically. Similarly, benefits to domestic feedstock producers are significantly more likely if these fuels are produced from domestic feedstocks. Our assessment of these factors therefore suggests it is appropriate to focus the volume requirements for these fuels on volumes that can be produced in the U.S. from North American feedstocks.[216]

Some of the statutory factors, however, suggest that lower volumes of non-cellulosic advanced biofuel would be appropriate. For instance, as described in RIA Chapter 10, the cost of biodiesel and renewable diesel is significantly higher than petroleum-based diesel fuel and is expected to remain so over the next several years. Even if biodiesel and renewable diesel blends are priced similarly to petroleum diesel at retail after accounting for the applicable federal and state incentives (including the RIN value), the higher relative costs of biodiesel and renewable diesel are still borne by society as a whole. Moreover, the fact that sufficient feedstocks exist to produce increasing quantities of advanced biodiesel and renewable diesel does not mean that those feedstocks are readily available or could be diverted to biofuel production without adverse consequences.

Further, we expect only limited quantities of fats, oils, and greases and distillers corn oil to be available for increased biodiesel and renewable diesel production in future years (see RIA Chapter 6.2). We expect that the primary feedstock available to biodiesel and renewable diesel producers through 2025 (beyond those currently used to produce biodiesel and renewable diesel) will be soybean oil and canola oil whose primary markets are for food, with lesser contributions from FOG and distillers corn oil. Increased demand for soybean oil and canola oil could incentivize increased production of these vegetable oils (through increased oilseed crushing), however if the use of soybean and canola oil for biofuel production increases faster than the projected

[214] CAA section 211(o)(1)(B)(i).

[215] We have also considered the potential for increasing volumes of renewable jet fuel. Given its similarity to renewable diesel, for purposes of projecting appropriate volume requirements for 2023–2025, in most cases we consider renewable jet fuel to be a component of renewable diesel.

[216] While biofuels produced from Canadian feedstocks do not increase employment in feedstock production, these feedstocks are often converted to biofuels in the U.S., which increases domestic employment in biofuel production. For a further discussion of our decision in this final rule to include canola oil imported from Canada in the feedstocks projected to be available to U.S. biofuel producers see RTC Section 4.2.

increase in production we project the result to be a diversion of feedstocks from food and other current uses and/or increasing imports of soybean oil, canola oil, or other products that can be used as a substitute. This would have a number of implications warranting caution on growing volumes further, including potentially reduced GHG benefits. Increased production of soybean oil and canola oil could also result in increasing soybean and canola production in the U.S. and abroad, and in turn could result in greater conversion of wetlands, adverse impacts on ecosystems and wildlife habitat, adverse impacts on water quality and supply, and increased prices for agricultural commodities and food prices.

Based on our analyses of all of the statutory factors, we believe that the candidate volumes derived in Section III.C.2 and shown in in Table III.C.2–1 would be reasonable and appropriate to require. These volumes reflect our consideration of the potential for GHG reductions that may result from their use, balanced with the projected increases in related feedstock production through 2025, the current high prices for vegetable oils that indicate high demand for vegetable oils relative to previous years, and the potential negative impacts associated with diverting some feedstock from existing uses to biofuel production. These numbers also reflect our assessment that non-cellulosic biofuels produced in the U.S. from domestic feedstocks (or imported Canadian canola oil) are likely to provide benefits (domestic jobs in biofuel and feedstock production, support for rural economic growth) and/or are less likely to have adverse impacts (*e.g.,* conversion of natural lands to crop production and high GHG emissions associated with land conversion) than imported fuels or fuels produced from imported feedstocks. The volumes we are finalizing are intended to reflect the projected increases in feedstock production in the U.S and Canada, particularly in 2025, while also providing continued support for biodiesel and renewable diesel producers.

While we have determined that it is reasonable to require the use of the candidate volumes of non-cellulosic advanced biofuel for 2023–2025, we are not establishing the advanced biofuel volume requirements for 2023–2025 at a level equal to the sum of the candidate volumes for cellulosic biofuel and non-cellulosic advanced biofuel. As discussed in greater detail in Section VI.D, we are establishing RFS volume requirements in this rule that reflect an implied conventional renewable fuel requirement of 15.0 billion gallons in each year.[217] Since we project that the quantity of conventional renewable fuel available in these years will be limited, significant volumes of non-ethanol biofuels will be needed to meet an implied conventional renewable fuel volume of 15.0 billion gallons. We project that the most likely source of non-ethanol biofuel will be biodiesel and renewable diesel that qualifies as BBD. Biodiesel and renewable diesel cannot be used to satisfy the projected shortfall in conventional renewable fuel if we already require the use of these fuels to meet the implied non-cellulosic advanced biofuel volume requirement. Therefore, the RFS volume requirements we are establishing in this rule reflect implied volumes for non-cellulosic advanced biofuel that are equal to the candidate volumes of these fuels less the volume projected to be needed to meet the shortfall in the implied conventional renewable fuel category (plus the 250 million gallon supplemental volume for 2023). The implied non-cellulosic advanced biofuel volumes for 2023–2025 we are finalizing in this rule are summarized in Table VI.B–1.

TABLE VI.C–1—NON-CELLULOSIC ADVANCED BIOFUEL

[Million RINs]

	2023	2024	2025
Candidate Volume (Total supply)	6,505	6,495	7,171
Needed to meet the implied Conventional Volume	1,155	1,045	1,221
Needed to meet the Supplemental Volume Requirement	250	0	0
Available for the Advanced Standard	5,100	5,450	5,950

C. Biomass-Based Diesel

As described in the preceding section, we are establishing advanced biofuel volumes that represent increases of 100 million, 350 million, and 500 million ethanol-equivalent gallons per year in the implied non-cellulosic advanced biofuel volume requirement from 2023 through 2025. In concert, we are also finalizing BBD volume requirements by an energy-equivalent amount; 65 million physical gallons (100 million ethanol-equivalent gallons), 220 million physical gallons (350 million ethanol-equivalent gallons), and 310 million gallons (500 million ethanol-equivalent gallons) for 2023 through 2025 respectively. This approach is consistent with our policy in previous annual rules, where we also set the BBD volume requirement in concert with the change, if any, in the implied non-cellulosic advanced biofuel volume requirement. In reviewing the implementation of the RFS program to date we determined that this approach successfully balanced a desire to provide support for BBD producers with an increasing guaranteed market, while at the same time maintaining an opportunity for other advanced biofuels to compete within the advanced biofuel category. Our assessment of the impacts of BBD on the statutory factors is discussed further in the RIA.

As in recent years, we believe that excess volumes of BBD beyond the BBD volume requirements will be used to satisfy the advanced biofuel volume requirement within which the BBD volume requirement is nested. Historically, the BBD standard has not independently driven the use of BBD in the market. This is due to the nested nature of the standards and the competitiveness of BBD relative to other advanced biofuels. Instead, the advanced biofuel standard has driven the use of BBD in the market. Moreover, BBD can also be driven by the implied conventional renewable fuel volume requirement as an alternative to using increasing volumes of corn ethanol in higher level ethanol blends such as E15 and E85. We believe these trends will continue through 2025.

[217] In 2023, the implied volume for conventional renewable fuel would be 15.00 billion gallons, but the inclusion of the supplemental standard of 250 million gallons makes the implied conventional renewable fuel volume effectively 15.25 billion gallons. We sometimes refer to 15.25 billion gallons in 2023 as the effective volume requirement for conventional renewable fuel.

We also believe it is important to maintain space for other advanced biofuels to participate in the RFS program. Although the BBD industry has matured over the past decade, the production of advanced biofuels other than biodiesel and renewable diesel continues to be relatively low and uncertain. Maintaining this space for other advanced biofuels can in the long-term facilitate increased commercialization and use of other advanced biofuels, which may have superior environmental benefits, avoid concerns with food prices and supply, and have lower costs relative to BBD. Conversely, we do not think increasing the size of this space is necessary through 2025 given that only small quantities of these other advanced biofuels have been used in recent years relative to the space we have provided for them in those years.

D. Conventional Renewable Fuel

Although Congress had intended cellulosic biofuel to become the most widely used renewable fuel by 2022, instead, conventional renewable fuel has remained as the majority of renewable fuel supply since the RFS program began in 2005. The favorable economics of blending corn ethanol at 10 percent into gasoline caused it to quickly saturate the gasoline supply shortly after the RFS program began and it has remained in nearly every gallon of gasoline used for transportation in the United States ever since.

The implied statutory volume target for conventional renewable fuel rose annually between 2009 and 2015 until it reached 15 billion gallons where it remained through 2022. EPA has used 15 billion gallons of conventional renewable fuel in calculating the applicable percentage standards for several recent years, most recently for 2022.[218] [219]

As discussed in Section III.B.5, constraints on ethanol consumption have made reaching 15 billion gallons with ethanol alone infeasible, even with the incentives provided by the RFS program and after accounting for the projected increase in the availability of higher-level ethanol blends such as E15 and E85. We expect these constraints to continue through 2025. The difficulty in reaching 15 billion gallons with ethanol is compounded by the fact that gasoline demand for 2023–2025 is not projected to recover to pre-pandemic levels, and moreover is expected to be lower by 2025 than it was in 2022. These constraints are reflected in the candidate volumes for conventional renewable fuel, which ranged from approximately 13.8 to 14.0 billion gallons from 2023–2025 (see Table III.C.3–1).

Nevertheless, we do not believe that constraints on ethanol consumption should be the single determining factor in the appropriate level of conventional renewable fuel to establish for 2023–2025. The implied volume requirement for conventional renewable fuel is not a requirement for ethanol, nor even for conventional renewable fuel. Instead, conventional renewable fuel is that portion of total renewable fuel which is not required to be advanced biofuel. The implied volume requirement for conventional renewable fuel can also be satisfied by non-ethanol advanced biofuel, such as conventional biodiesel and renewable diesel or advanced biodiesel and renewable diesel beyond what is required by the advanced biofuel volume requirement.

Higher-level ethanol blends such as E15 and E85 are one avenue through which higher volumes of renewable fuels can be used in the transportation sector to reduce GHG emissions and improve energy security over time, and the incentives created by the implied conventional renewable fuel volume requirement contribute to the economic attractiveness of these fuels. Moreover, sustained and predictable support of higher-level ethanol blends through the level of the implied conventional renewable fuel volume requirement helps provide some longer-term incentive for the market to invest in the necessary infrastructure. As a result, we do not believe it would be appropriate to reduce the implied conventional renewable fuel volume requirement below 15 billion gallons at this time.

Our analysis of several of the statutory factors highlighted, in our view, the importance of ongoing support for corn ethanol generally and for an implied conventional renewable fuel volume requirement that helps to incentivize the domestic consumption of corn ethanol. These include the economic advantages to the agricultural sector, most notably for corn farmers, as well as employment at ethanol production facilities and related ethanol blending and distribution activities. The rural economies surrounding these industries also benefit from strong demand for ethanol. The consumption of ethanol, most notably that produced domestically, reduces our reliance on foreign sources of petroleum and increases the energy security status of the U.S. as discussed in Section IV.B.

Although most corn ethanol production occurs in facilities that commenced construction prior to December 19, 2007, and is ''grandfathered'' under the provisions of 40 CFR 80.1403, and thus is not required to achieve a 20 percent reduction in GHGs in comparison to gasoline,[220] nevertheless, based on our current assessment of GHG impacts, on average corn ethanol provides some GHG reduction in comparison to gasoline. Greater volumes of ethanol consumed thus correspond to greater GHG reductions than would be the case if gasoline was consumed instead of ethanol.

The volumes we are finalizing in this rule reflect an implied conventional renewable fuel volume of 15.0 billion gallons each year from 2023–2025.[221] These volumes are consistent with the statutory intent of the RFS program and provide ongoing incentive for the use of higher-level ethanol blends. As discussed in the preceding paragraphs, greater use of higher-level ethanol blends is expected to result in benefits to rural economic development and energy security and is projected to reduce GHG emissions from the transportation sector. While we recognize that ethanol consumption is highly unlikely to reach 15.0 billion gallons in any year through 2025 there are sufficient volumes of non-ethanol renewable fuels to enable the total renewable fuel volume requirements to be met.

In our proposed rule, the RFS volumes reflected an implied conventional renewable fuel volume of 15.25 billion gallons for 2024 and 2025. In comments on our proposed rule multiple stakeholders stated that any increase in the implied volume requirement for conventional renewable fuel above 15 billion gallons was inconsistent with Congress' intention that all increases in renewable fuel between 2015 and 2022 be in advanced biofuel, with conventional renewable fuel static at 15 billion gallons. We

[218] EPA did not use 15 billion gallons of conventional renewable fuel for 2016, but instead used the general waiver authority to reduce that implied volume requirement below 15 billion gallons. The U.S. Courts of Appeals for the D.C. Circuit ruled in *ACE* that EPA had improperly used the general waiver authority, and remanded that rule back to EPA for reconsideration. As discussed in Section V, EPA is responding to this remand through the application of a supplemental standard in 2023 that, combined with an identical supplemental standard in 2022, rectifies our inappropriate use of the general waiver authority for 2016. The effective implied conventional biofuel volume for 2023 of 15.25 billion gallons is thus a result of the 2023 supplemental standard.

[219] 87 FR 39600 (July 1, 2022).

[220] CAA section 211(o)(2)(A)(i).

[221] In 2023, the implied volume for conventional renewable fuel is 15.00 billion gallons, but the inclusion of the supplemental standard of 250 million gallons makes the conventional renewable fuel volume effectively 15.25 billion gallons.

continue to believe that EPA has authority to establish RFS volumes that reflect an implied conventional renewable fuel volume that is greater than 15.0 billion gallons if these volumes are supported by our analysis of the statutory factors. However, after reviewing the public comments and available data we have decided to finalize RFS volumes that reflect an implied conventional renewable fuel volume of 15.0 billion gallons each year from 2023–2025. We believe these volumes are supported by our analysis of the statutory factors, are consistent with the statutory intent of the RFS program, and appropriately balance a desire to provide continued incentives for higher level ethanol blends and a desire to incentivize increasing production and use of advanced biofuels.

Table VI.B–1. shows the types of biofuel we project will be supplied to meet the implied conventional renewable fuel volumes, including both conventional ethanol and non-cellulosic advanced biofuels beyond those needed to satisfy the advanced biofuel volume requirements.

TABLE VI.D–1—MEETING THE CANDIDATE VOLUME FOR CONVENTIONAL RENEWABLE FUEL

[Million RINs]

	2023	2024	2025
Conventional ethanol	13,845	13,955	13,779
Non-cellulosic advanced biofuel	1,405	1,045	1,221
Total	[a] 15,250	15,000	15,000

[a] Includes the additional 250 million RINs needed to satisfy the supplemental volume requirement addressing the remand of the 2016 standards.

Based on our assessment of available supply, we do not believe that there would be a need for conventional biodiesel or renewable diesel to be imported in order to help meet an effective conventional renewable fuel candidate volume of 15.25 billion gallons in 2023 (after accounting for the supplemental standard) and 15.0 billion gallons in 2024 and 2025. A review of the recent RIN generation data suggests that conventional biodiesel and renewable diesel are unlikely to be supplied to the U.S. market if sufficient volumes of advanced biodiesel and renewable diesel are available. Nevertheless, such imports remain a potential source in the event that the market did not respond to the candidate volumes in the way that we have projected it would. As discussed in Section III.B.4.b, total production capacity from grandfathered biodiesel and renewable diesel facilities is approximately 2.5 billion gallons.

E. Summary of Final Volume Requirements

For the reasons described above, we are establishing RFS volume requirements based the four component categories discussed above. The volumes for each of the component categories (sometimes referred to as implied volume requirements) are summarized in Table VI.E–1. Also shown is the supplemental volume requirement addressing the 2016 remand, discussed more fully in Section V.

TABLE VI.E–1—FINAL VOLUME REQUIREMENTS FOR COMPONENT CATEGORIES

[Billion RINs]

	2023	2024	2025
Cellulosic biofuel	0.84	1.09	1.38
Biomass-based diesel [a]	2.82	3.04	3.35
Non-cellulosic advanced biofuel	5.10	5.45	5.95
Conventional renewable fuel	15.00	15.00	15.00
Supplemental volume requirement	0.25	0	0

[a] BBD volumes are given in billion gallons.

These final volumes are similar to, but higher than the volumes in the proposed rule (after accounting for the fact that we are not finalizing the proposed eRIN provisions in this rule). Specifically, the cellulosic biofuel volumes are higher for all three years. The volumes for non-cellulosic advanced biofuels in this final rule are equal to the volumes from the proposed rule in 2023, and 250 million and 650 million ethanol-equivalent gallons higher in 2024 and 2025 respectively. Finally, the volumes for conventional biofuel in this final rule are equal to the volumes in the proposed rule for 2023, and 250 million gallons lower for 2024 and 2025. The volumes for each of the four component categories shown in the table above can be combined to produce volume requirements for the four statutory categories on which the applicable percentage standards are based. The results are shown below.

TABLE VI.E–2—FINAL VOLUME REQUIREMENTS FOR STATUTORY CATEGORIES

[Billion RINs]

	2023	2024	2025
Cellulosic biofuel	0.84	1.09	1.38
Biomass-based diesel [a]	2.82	3.04	3.35
Advanced biofuel	5.94	6.54	7.33
Total renewable fuel	20.94	21.54	22.33

TABLE VI.E–2—FINAL VOLUME REQUIREMENTS FOR STATUTORY CATEGORIES—Continued

[Billion RINs]

	2023	2024	2025
Supplemental volume requirement	0.25	0	0

[a] BBD volumes are given in billion gallons.

We believe that these volume requirements will preserve and continue the gains made through biofuels in previous years when the statute specified applicable volume targets. In particular, these volume requirements will help ensure that the transportation sector will realize additional reductions in GHGs and that the U.S. will experience greater energy independence and energy security. The volume requirements will also promote ongoing development within the biofuels and agriculture industries as well as the economies of the rural areas in which biofuels production facilities and feedstock production reside.

As discussed in Section II, our volume requirements for 2023 and the associated percentage standards will not be in place prior to the beginning of 2023, and we are establishing the 2024 applicable volumes after the statutory deadline. For the reasons described in Section II, the standards are nonetheless appropriate.

VII. Percentage Standards for 2023–2025

EPA has historically implemented the nationally applicable volume requirements by establishing percentage standards that apply to obligated parties, consistent with the statutory requirements at CAA section 211(o)(3)(B). The statute gives EPA discretion as to how applicable volume requirements should be implemented for years after 2022. The CAA requires EPA to promulgate regulations that, regardless of the date of promulgation, contain compliance provisions applicable to refineries, blenders, distributors, and importers that ensure that the volumes in CAA section 211(o)(2)(B), which includes set volumes, are met.[222] Further, under the statutory requirement that we review implementation of the program in prior years as part of our determination of the appropriate volume requirements for years after 2022,[223] we considered the past effectiveness of the use of percentage standards as the implementation mechanism for volume requirements. We determined that this mechanism continues to be effective and reasonable, and obligated parties are, at this point, very familiar with this implementation mechanism. We were also unable to identify any straightforward and easily implementable alternative mechanisms, nor were any suggested in comments on the proposal. Therefore, we are continuing to use percentage standards as the implementing mechanism for years after 2022.

The obligated parties to which the percentage standards apply are producers and importers of gasoline and diesel, as defined by 40 CFR 80.1406(a).[224] Each obligated party multiplies the percentage standards by the sum of all non-renewable gasoline and diesel they produce or import to determine their Renewable Volume Obligations (RVOs).[225] The RVOs are the number of RINs that the obligated party is responsible for procuring to demonstrate compliance with the applicable standards for that year. Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party for each year.[226] The renewable fuel volumes used to determine the 2023, 2024, and 2025 percentage standards are described in Section VI.E and are shown in Table VII–1.

TABLE VII–1—VOLUMES FOR USE IN DETERMINING THE APPLICABLE PERCENTAGE STANDARDS

[Billion RINs]

	2023	2024	2025
Cellulosic biofuel	0.84	1.09	1.38
Biomass-based diesel[a]	2.82	3.04	3.35
Advanced biofuel	5.94	6.54	7.33
Renewable fuel	20.94	21.54	22.33
Supplemental standard	0.25	n/a	n/a

[a] The BBD volumes are in physical gallons (rather than RINs).

As described in Section II.D, EPA is permitted to establish applicable percentage standards for multiple future years after 2022 in a single action for as many years as it establishes volume requirements.

A. Calculation of Percentage Standards

The formulas used to calculate the percentage standards applicable to obligated parties are provided in 40 CFR 80.1405(c). We are continuing to use the percentage standard mechanism to implement the volume requirements for years after 2022.

In addition to the required volumes of renewable fuel, the formulas also require estimates of the volumes of non-renewable gasoline and diesel, for both highway and nonroad uses, that are projected to be used in the year in which the standards will apply. In previous annual standard-setting rules,

[222] CAA section 211(o)(2)(A)(i) and (iii).

[223] CAA section 211(o)(2)(B)(ii).

[224] Note that in this action, we are moving the definition of ''obligated party'' without modification from 40 CFR 80.1406(a) to 40 CFR 80.2. This is part of an effort to consolidate all defined terms into a single regulatory section. In Section IX.K, we further discuss the consolidation of all definitions in 40 CFR part 80, subpart M, into the definitions section at 40 CFR 80.2. EPA is not reopening the definition of obligated party.

[225] 40 CFR 80.1407.

[226] As discussed in Section V, we are finalizing a supplemental standard for 2023 to address the remand of the 2016 standards under *ACE.* That supplemental standard is in addition to the four standards required under the statute, though as described in Section V, compliance demonstrations for total renewable fuel and the supplemental standard will be combined in annual compliance reports submitted under 40 CFR 80.1451.

the statute required the Energy Information Administration (EIA) to provide to EPA projected volumes of transportation fuel to be sold or introduced into commerce in the United States for the following calendar year by October 31 of each year.[227] However, the last year to which this statutory requirement applied was 2021 and therefore it does not apply to compliance years after 2022. Moreover, historically the transportation fuel projections EIA provided to EPA consisted of the gasoline and diesel volume projections from EIA's Short Term Energy Outlook (STEO).[228] The STEO only provides volume projections for one future calendar year, which was sufficient to inform past annual standard-setting rulemakings as they never established applicable percentage standards for more than one future calendar year. In contrast, this rulemaking establishes volume requirements and associated percentage standards for three future calendar years. Therefore, we cannot use the STEO as a source for projections of gasoline and diesel for this action and are instead using EIA's 2023 Annual Energy Outlook (AEO) for the purposes of calculating the percentage standards in this action.[229]

Before using EIA's projections of gasoline and diesel, however, several adjustments need to be made. First, the projected gasoline and diesel volumes in AEO 2023 include projections of renewable fuels used in transportation fuel (*e.g.,* ethanol, biodiesel, and renewable diesel). Since renewable fuels are not subject to the percentage standards, the volumes of renewable fuel are subtracted out of the EIA projections of gasoline and diesel. Second, the projected diesel volumes in AEO 2023 also include projections of diesel used in ocean-going vessels. Since fuel used in ocean-going vessels is explicitly excluded from the definition of transportation fuel in 40 CFR 80.2—and therefore is not an obligated fuel and does not incur an RVO under the RFS program—the volumes of these fuels are subtracted out of the EIA projections of diesel. Third, the projected gasoline, diesel, and renewable fuel volumes in AEO 2023 include projections of these fuels used in Alaska. Since Alaska is not part of the RFS covered area—and therefore fuel used in this state is excluded from the RFS program—the volumes of gasoline, diesel, and renewable fuel used in Alaska are subtracted out of EIA's nationwide projections of these fuels.[230] Finally, as discussed in RIA Chapter 1.11, EPA has determined that it is necessary to make an adjustment to the projections of gasoline and diesel provided by EIA in AEO 2023 to accurately reflect the gasoline and diesel volumes ultimately used by obligated parties in their RVO calculations. The table below provides the precise projections from AEO 2023 used to calculate the percentage standards for 2023–2025.

TABLE VII.A–1—AEO 2023 VOLUMES USED FOR THE CALCULATION OF PERCENTAGE STANDARDS FOR 2023–2025

Fuel category	Table	Line
Gasoline	Table 11[a]	Product Supplied/by Fuel/Motor Gasoline.
Renewables blended into gasoline	Table 2	Energy Use & Related Statistics/Ethanol (denatured) Consumed in Motor Gasoline.
	Table 11	Biofuels/Other Biomass-derived Liquids.
Diesel	Table 11	Product Supplied/by Fuel/Distillate fuel oil/of which: Diesel.
Renewables blended into diesel	Table 11	Biofuels/Biodiesel.
		Biofuels/Renewable Diesel.
Diesel used in ocean-going vessels	Table 49	International Shipping/Distillate Fuel Oil (diesel).

[a] In the proposal for this action, we used the gasoline demand forecasts from Table 2 of AEO 2022 to calculate the proposed percentage standards. We intended to use Table 2 of AEO 2023 to calculate the percentage standards in this action as well; however, EIA informed EPA that 2023 gasoline demand forecast in Table 2 is not benchmarked to STEO whereas it is in Table 11 and directed EPA to use the values in Table 11 instead.

In order to convert projections provided by EIA in energy units into the volumes needed for the calculation of percentage standards, we used the conversion factors provided in AEO 2023 Table 68.[231]

B. Treatment of Small Refinery Volumes

In CAA section 211(o)(9), Congress provided for qualifying small refineries to be temporarily exempt from RFS compliance through December 31, 2010. Congress also provided that small refineries could receive an extension of the exemption beyond 2010 based either on the results of a required Department of Energy (DOE) study or in response to individual petitions demonstrating that the small refinery suffered ''disproportionate economic hardship.'' CAA section 211(o)(9)(A)(ii)(II) and (B)(i).

The annual percentage standards herein are based on our projection that no gasoline or diesel produced by small refineries will be exempt from RFS requirements pursuant to CAA section 211(o)(9) for 2023–2025. In April and June 2022, EPA denied 105 pending SRE petitions for years spanning 2016 through 2020, finding that, consistent with the holding of the U.S. Court of Appeals for the Tenth Circuit in *Renewable Fuels Association* v. *EPA,* SREs can only be granted under CAA section 211(o)(9) if a small refinery demonstrates that it would suffer disproportionate economic hardship caused by compliance with the RFS program requirements and not due, even in part, to other factors.[232] In applying this new statutory interpretation, we found that that none of the small refinery petitioners suffered disproportionate economic hardship caused by their compliance with the RFS because all obligated parties, including small refineries, are able to pass through the costs of their RFS compliance (*i.e.,* RIN costs) to their customers in the form of higher sales prices for gasoline and diesel. Accordingly, we denied all SRE petitions pending at that time.[233]

[227] CAA section 211(o)(3)(A).

[228] See, for example, ''EIA letter to EPA with 2020 volume projections 10–9–2019,'' available in the docket.

[229] Available at *https://www.eia.gov/outlooks/aeo.*

[230] State-specific projections of gasoline, diesel, and renewable fuel usage are not provided in AEO 2023. Instead, we use data from EIA's State Energy Data System (SEDS) to estimate the portion of these fuels used in Alaska, available at *https://www.eia.gov/state/seds/seds-data-fuel.php.*

[231] Available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=20-AEO2023&cases=ref2023&sourcekey=0.*

[232] *Renewable Fuels Assn* v. *EPA,* 948 F.3d 1206, 1253–54 (10th Cir. 2020); see generally, April 2022 SRE Denial Action and June 2022 SRE Denial Action.

[233] For a fuller discussion of EPA's revised statutory interpretation and analysis of the costs of RFS compliance, see the April and June 2022 Denial Actions at Section IV.D.

Absent new arguments and supporting data to the contrary, we anticipate that the CAA interpretation and analysis presented in the April and June 2022 SRE Denial Actions will also apply to these future-year SRE petitions. Consequently, at this time, we anticipate that no SREs will be granted for these future years, including the 2023–2025 compliance years covered by this action. Therefore, we project that the exempt volumes from SREs to be included in the calculation specified by 40 CFR 80.1405(c) for 2023, 2024, and 2025 will be zero, and all small refineries will be required to comply with their proportional RFS obligations.[234] Nevertheless, because the obligations are calculated by applying the percentage standards to gasoline and diesel production volume, the RFS volume obligations on small refineries are proportionally smaller than on larger obligated parties. Even were EPA to grant an SRE in the future for 2023–2025, we do not plan to revise the percentage standards to account for such an exemption.[235]

C. Percentage Standards

The formulas in 40 CFR 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables comprising the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and projected gasoline and diesel volumes from exempt small refineries. The values of all the variables used for this rule are shown in Table VII.C–1 for 2023, 2024, and 2025.[236]

TABLE VII.C–1—VOLUMES FOR TERMS IN CALCULATION OF THE PERCENTAGE STANDARDS

[Billion RINs]

Term	Description	2023	2023 Supplemental	2024	2025
RFV_{CB}	Required volume of cellulosic biofuel	0.84	0.00	1.09	1.38
RFV_{BBD}	Required volume of biomass-based diesel[a]	2.82	0.00	3.04	3.35
RFV_{AB}	Required volume of advanced biofuel	5.94	0.00	6.54	7.33
RFV_{RF}	Required volume of renewable fuel	20.94	0.25	21.54	22.33
G	Projected volume of gasoline	138.62	138.62	139.57	137.49
D	Projected volume of diesel	55.44	55.44	52.59	52.04
RG	Projected volume of renewables in gasoline	14.48	14.48	14.89	14.77
RD	Projected volume of renewables in diesel	4.48	4.48	4.93	4.73
GS	Projected volume of gasoline for opt-in areas	0.00	0.00	0.00	0.00
RGS	Projected volume of renewables in gasoline for opt-in areas	0.00	0.00	0.00	0.00
DS	Projected volume of diesel for opt-in areas	0.00	0.00	0.00	0.00
RDS	Projected volume of renewables in diesel for opt-in areas	0.00	0.00	0.00	0.00
GE	Projected volume of gasoline for exempt small refineries	0.00	0.00	0.00	0.00
DE	Projected volume of diesel for exempt small refineries	0.00	0.00	0.00	0.00

[a] The BBD volume used in the formula represents physical gallons. The formula contains a 1.6 multiplier to convert this physical volume to ethanol-equivalent volume, consistent with the change to the BBD conversion factor discussed in Section X.D.

Using the volumes shown in Table VII.C–1, we have calculated the percentage standards for 2023, 2024, and 2025 as shown in Table VII.C–2.

TABLE VII.C–2—PERCENTAGE STANDARDS

	2023 (%)	2024 (%)	2025 (%)
Cellulosic biofuel	0.48	0.63	0.81
Biomass-based diesel	2.58	2.82	3.15
Advanced biofuel	3.39	3.79	4.31
Renewable fuel	11.96	12.50	13.13
Supplemental standard	0.14	n/a	n/a

The percentage standards shown in Table VII.C–2 are included in the regulations at 40 CFR 80.1405(a) and apply to producers and importers of gasoline and diesel.

VIII. Administrative Actions

A. Assessment of the Domestic Aggregate Compliance Approach

[234] We are not prejudging any SRE petitions in this action; however, absent a sufficient demonstration that a small refinery experiences DEH caused by compliance with the RFS program, we do not anticipate granting SREs in the future.

[235] See Renewable Fuel Standard (RFS) Program: RFS Annual Rules, Response to Comments, EPA–420–R–22–009, June 2022, at 145 for further discussion on our approach to this projection in the event we grant a future SRE.

[236] See ''Calculation of Final 2023–2025 Percentage Standards,'' available in the docket for this action.

The RFS regulations specify an ''aggregate compliance'' approach for demonstrating that planted crops and crop residue from the U.S. comply with the ''renewable biomass'' requirements that address lands from which qualifying feedstocks may be harvested.[237] In the 2010 RFS2 rulemaking, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA's enactment) and determined that as long as this baseline number of acres is not exceeded, it is unlikely, based on our assessment of historical trends and economic considerations, that new land outside of the 2007 baseline is being devoted to crop production. The regulations specify, therefore, that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not undertake individual recordkeeping and reporting related to documenting that their feedstocks come from qualifying lands, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of 402 million acres agricultural land has been exceeded. The regulations promulgated in 2010 require EPA to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 384.7 million acres in 2022 and thus did not exceed the 2007 baseline acreage of 402 million acres.[238] [239] We will continue to monitor total agricultural land annually to determine if national agricultural land acreage increases above this 2007 national aggregate baseline, as specified in the RFS2 Rule.[240]

B. Assessment of the Canadian Aggregate Compliance Approach

The RFS regulations specify a petition process through which EPA may approve the use of an aggregate compliance approach for planted crops and crop residue from foreign countries.[241] On September 29, 2011, EPA approved such a petition from the Government of Canada.[242] The total agricultural land in Canada in 2022 is estimated at 116.4 million acres. This total agricultural land area includes 94.9 million acres of cropland and summer fallow, 11.7 million acres of pastureland, and 9.8 million acres of agricultural land under conservation practices. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in EPA's response to Canada's petition. This 2022 acreage does not exceed the 2007 baseline acreage of 122.1 million acres.[243] We will continue to monitor total agricultural land annually to determine if Canadian agricultural land acreage increases above its 2007 aggregate baseline, as specified in the RFS2 Rule.[244]

IX. Biogas Regulatory Reform

We are finalizing biogas regulatory reform provisions to allow for the use of biogas as a biointermediate and RNG as a feedstock to produce biogas-derived renewable fuels other than renewable CNG/LNG.[245] The biogas regulatory reform provisions will also substantially help improve oversight of the program and mitigate against the potential for parties to double-count biogas and RNG given the program's expansion, thereby helping to ensure that only valid RINs are generated for biogas-derived renewable fuels. EPA received comment from many stakeholders on our proposed biogas regulatory reform provisions; we summarize and respond to all comments received in RTC Section 10.

A. Background

1. Statutory Authority

Congress established the RFS2 program in the 2007 Energy Independence and Security Act (EISA). Among other revisions to the prior RFS1 program that had been established by EPAct 2005, EISA defined renewable fuel as ''fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.'' [246] This definition has two relevant key components, both of which are necessary to generate RINs: (1) The fuel must be produced from renewable biomass, and (2) The fuel must be used to replace or reduce fossil fuel used as transportation fuel. EISA also provided a definition of ''renewable biomass,'' enumerating the seven categories of feedstocks that can be used to produce qualifying renewable fuel under RFS2.[247] This statutory definition of renewable biomass includes, among other things, separated yard waste, separated food waste, animal waste material, and crop residue, any of which are commonly used to produce biogas through anaerobic digestion.[248] EISA, as reflected in CAA section 211(o)(2)(A)(i),

[237] 40 CFR 80.1454(g). EPA established the ''aggregate compliance'' approach in the 2010 RFS2 rule and has applied it for the U.S. in annual RFS rulemakings since then. See 75 FR 14701–04. In this final rule, we have not reexamined or reopened this policy, including the regulations at 40 CFR 80.1454(g) and 80.1457. Similarly, as further explained below, we have applied this approach for Canada since our approval of Canada's petition to use aggregate compliance in 2011. In this final rule, we have also not reexamined or reopened our decision on that petition. Any comments we received on these issues are beyond the scope of this rulemaking.

[238] For additional analysis and the underlying USDA data, see ''Assessment of Domestic Aggregate Compliance Approach 2022,'' available in the docket for this action.

[239] USDA also provided EPA with 2021 data from the discontinued Grassland Reserve Program (GRP) and Wetlands Reserve Program (WRP). Given this data, EPA estimated the total U.S. agricultural land both including and omitting the GRP and WRP acreage. In 2021, combined land under GRP and WRP totaled 2,993,177 acres. Subtracting the GRP and WRP acreage in addition to the Agriculture Conservation Easement Program acreage yields an estimate of 379.6 million total acres of U.S. agricultural land in 2021. Just subtracting the Agriculture Conservation Easement Program leads to an estimate of 382.6 million total acres of U.S. agricultural land in 2021.

[240] 75 FR 14701.

[241] 40 CFR 80.1457.

[242] See ''EPA Decision on Canadian Aggregate Compliance Approach Petition'' (Docket Item No. EPA–HQ–OAR–2011–0199–0015).

[243] The data used to make this calculation can be found in ''Assessment of Canadian Aggregate Compliance Approach 2022,'' available in the docket for this action.

[244] 75 FR 14701.

[245] For purposes of this section of the preamble, by renewable natural gas or RNG, we mean a product derived from biogas that is produced from renewable biomass and that meets the natural gas commercial distribution pipeline specification for the pipeline that it is injected into. We refer to biogas that is produced from renewable biomass and that has undergone treatment to remove impurities and inert gases to a level suitable for its use to produce renewable CNG/LNG, but is not injected onto the natural gas commercial pipeline system as treated biogas. Generally, the primary difference between RNG and treated biogas is that RNG is injected onto the natural gas commercial distribution system and treated biogas is distributed via a closed, private distribution system. Biomethane is the methane component of biogas, treated biogas, and RNG that is derived from renewable biomass. Under the previous and new regulations, RIN generation is based on the energy, in BTUs, from biomethane (exclusive of impurities, inert gases often found with biomethane in biogas) that is demonstrated to be used as transportation fuel.

[246] CAA section 211(o)(1)(J).

[247] CAA section 211(o)(1)(I).

[248] Biogas was explicitly included in EPAct 2005 as a renewable fuel and therefore was included in the RFS1 program that applied from 2006–2009. In the 2010 rulemaking that established the RFS2 program based on changes to CAA section 211(o) enacted through EISA in 2007, we concluded that biogas was a qualifying renewable fuel if it is produced from ''renewable biomass.'' See 75 FR 14685–14686 (March 26, 2010).

also directs EPA to ''promulgate'' and ''revise'' ''regulations . . . to ensure that transportation fuel sold or introduce into commerce . . . contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel.'' The regulations EPA is promulgating as part of biogas regulatory reform in this action are necessary to ensure that biogas and RNG used to produce fuels that are in turn used to satisfy the statutory volume requirements actually qualify as renewable fuel, *i.e.,* are actually produced from renewable biomass and used as transportation fuel.

Additionally, the statutory definition of advanced biofuel at CAA section 211(o)(1)(B)(ii)(V) explicitly identifies biogas as a valid form of advanced biofuel. However, the statute does not specify how biogas that is produced from renewable biomass must be used in order to qualify as renewable fuel (*i.e.,* in the form of CNG or LNG, or in some other form). Biogas can be used as a feedstock to create renewable CNG/LNG, through clean-up and compression, or to produce other fuels, such as hydrogen or Fischer-Tropsch fuels. In this action, we are putting in place provisions that will allow for biogas to be used as a biointermediate feedstock to produce renewable fuels other than renewable CNG/LNG. As explained in our action establishing a biointermediates program, biointermediates are simply renewable biomass feedstocks that are partially processed at one facility before being transported to a different facility to complete processing into renewable fuel.[249] While EPA had historically not permitted feedstocks to be processed at multiple facilities due to implementation and oversight concerns, we recently expanded the program to allow processing at two different facilities under certain circumstances. In establishing the initial biointermediates program, EPA did not include biogas as a biointermediate because we acknowledged that the regulations we were promulgating at that time would not be appropriate for the more complex circumstances of biogas. The biogas regulatory reform regulations we are promulgating in this action provide the compliance and oversight mechanisms necessary to allow biogas to be processed into a biointermediate at one facility and then further processed into renewable fuel at a second facility while remaining consistent with the statutory requirements and applicable RFS pathway.[250]

2. Regulatory History

In the 2010 RFS2 rule, EPA included regulatory provisions for the generation of advanced biofuel (D code 5, or D5) RINs from biogas used as transportation fuel. The RFS2 regulations listed biogas as the fuel and included provisions for how a party demonstrated that biogas was used as transportation fuel. However, biogas as the term is defined in EPA's regulations and often used by industry is not actually a product that can be used as a transportation fuel. Biogas must undergo significant treatment to be used as a fuel especially in the form CNG/LNG because impurities found in biogas could cause substantial operability issues thereby harming CNG/LNG engines. Additionally, after promulgating the pathway for D5 RINs EPA received several pathway petitions requesting that EPA allow for the generation of cellulosic biofuel (D code 3, or D3) RINs for biogas produced from cellulosic feedstocks.

In 2014, EPA finalized the RFS ''Pathways II'' rule, which among other things added specific RIN-generating pathways for renewable CNG, renewable LNG, and renewable electricity to rows Q and T to Table 1 of 40 CFR 80.1426 (''Pathway Q'' and ''Pathway T'', respectively).[251] Pathway Q allowed for D3 RIN generation for renewable CNG/LNG produced from biogas from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and separated municipal solid waste (MSW) digesters, as well as biogas from the cellulosic components of biomass processed in other waste digesters. Pathway T allowed for D5 RIN generation for renewable CNG/LNG from biogas from waste digesters, which encompasses non-cellulosic biogas. These two pathways were structured so that biogas from approved sources would be the feedstock and renewable CNG/LNG would be the finished fuel for RIN generation purposes.

The Pathways II rule also established a then new set of regulatory provisions that detail the criteria necessary for biogas to be demonstrated to be renewable fuel and thus eligible to generate RINs. The regulations address two scenarios under which renewable CNG/LNG is produced and used for transportation. First, for renewable CNG/LNG produced from biogas that is only distributed via a closed, private, non-commercial system, the renewable CNG/LNG must be produced from renewable biomass under an EPA-approved pathway and demonstrated to be sold and used as transportation fuel.[252] Under this scenario, only renewable CNG/LNG that was produced and distributed as transportation fuel in a closed, private non-commercial system could generate RINs. Typically, parties that generate RINs under the closed scenario are directly supplying renewable CNG/LNG to a CNG/LNG fleet in close proximity to where the biogas is produced and collected and in many cases the party that generates the RIN is the same party that owns/operates the CNG/LNG fleet.

The second scenario under which RINs could be generated for renewable CNG/LNG addresses when renewable CNG/LNG is introduced into a commercial distribution system (*e.g.,* natural gas commercial pipeline system). In addition to demonstrating that the CNG/LNG is produced from renewable biomass under an EPA-approved pathways and sold and used as transportation fuel, potential RIN generators under this scenario must also demonstrate that the RNG was loaded onto and withdrawn from a physically-connected natural gas commercial distribution system, that the amount of CNG/LNG sold as transportation fuel corresponds with the amount of RNG placed onto the natural gas commercial distribution system, and that no other party relied on the RNG for the creation of RINs.[253] These additional requirements for CNG/LNG transmitted via a natural gas commercial distribution system were designed to ensure that the amount of renewable CNG/LNG claimed to have been used as transportation fuel corresponds with the amount of RNG placed onto the natural gas commercial distribution system and that such CNG/LNG is not double counted for RIN generation.

Since promulgation of the prior regulatory provisions in the RFS Pathways II rule,[254] many parties have requested that EPA approve pathways to allow the use of biogas as a biointermediate to produce various types of fuels (*e.g.,* steam methane reforming the biogas into hydrogen or using a Fischer-Tropsch process to turn biogas into renewable diesel). These parties have suggested that EPA should encourage these biogas-derived renewable fuels to increase the

[249] 87 FR 39600, 39635–51 (July 1, 2022).

[250] The regulations similarly allow RNG that has been placed on a commercial pipeline be withdrawn and used to produce renewable fuel.

[251] 79 FR 42128 (July 18, 2014).

[252] 40 CFR 80.1426(f)(10)(i).

[253] 40 CFR 80.1426(f)(11)(i).

[254] See 79 FR 42128 (July 18, 2014).

production and use of advanced and cellulosic renewable fuels.

In the 2020–2022 RFS Standards Rule, we promulgated regulatory provisions that allowed for the generation of RINs from renewable fuels produced from biointermediates.[255] However, we did not include the use of biogas as a biointermediate at that time. While we recognized the opportunity to increase the availability of advanced and cellulosic biogas-derived renewable fuels in support of the statutory goals, we also noted that allowing biogas or contracted RNG to be used as an input to produce a fuel other than renewable CNG/LNG entails adding further layers of complexity to a system that is already challenging to implement and oversee. In response to the significant number of comments requesting the inclusion of biogas a biointermediate in the 2020–2022 RFS Standards Rule, we stated that we neither developed nor proposed the provisions that would be necessary to address the unique circumstances associated with biogas as a biointermediate and that we intended to address the use of biogas as a biointermediate in a future rulemaking.[256] We believed then, and still believe, that the previous biogas provisions[257] must be modified to ensure that biogas is not double counted in a situation where biogas may have multiple uses (*e.g.,* as renewable CNG/LNG or as a biointermediate).

3. The Biogas and Biogas RIN Disposition and Generation Chain

In this subsection, we introduce and briefly discuss a number of key concepts and terms that are used throughout our discussion of biogas regulatory reform, including the relevant parties that participate in the biogas disposition/generation chain.[258]

a. Biogas and RNG

Under the previous biogas provisions, EPA broadly defined biogas as ''the mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that is produced through the anaerobic digestion of organic matter.'' Biogas typically contains significant amounts of impurities and inert gases (*e.g.,* carbon dioxide) and must undergo pre-treatment before it can be used to produce transportation fuel (*e.g.,* CNG/LNG in vehicles). In order for commercial natural gas pipelines to accept injections of biogas, the biogas must first be upgraded to meet pipeline specifications prior to injection. In this action, we call this pipeline quality biogas RNG, and we define biogas to be the precursor to RNG. The biogas producer is the party that produces biogas at a biogas production facility, and the RNG producer is the party that produces RNG at an RNG production facility.

b. Renewable CNG and LNG From RNG

For biogas to be used as renewable CNG/LNG to fuel a vehicle, the treated biogas or RNG is compressed into compressed natural gas (renewable CNG) or liquified natural gas (renewable LNG) and then used in CNG/LNG engines as transportation fuel. Under our previous biogas regulations,[259] we required that parties demonstrate through contracts and affidavits that a specific volume of RNG was used as transportation fuel within the U.S., and for no other purpose. For RNG to renewable CNG/LNG, the chain of parties that are involved in ensuring that biogas is produced from renewable biomass and used as transportation fuel includes:

- The biogas producer (*i.e.,* the landfill or digester that produces the biogas)
- The party that upgrades the biogas into RNG (the RNG producer)
- The parties that distribute and store the RNG (*e.g.,* pipeline operators)
- The parties that compress the RNG into renewable CNG/LNG
- The dispensers of the renewable CNG/LNG (*e.g.,* refueling stations)
- The consumers of the CNG/LNG (*e.g.,* a municipal bus fleet)
- And any third parties that help manage the information and records needed to show that the biogas was produced from renewable biomass and used as renewable CNG/LNG.

If biogas is directly supplied to an end user via a private pipeline, the biogas disposition/generation chain can be much smaller; sometimes even being a single party if the same party produces the biogas, treats and compresses/liquifies it, and supplies an onsite fleet of CNG/LNG vehicles.

4. Need for Regulatory Change

The previous biogas provisions lack specificity and clarity in several key areas, which, as EPA has gained experience in implementing the program, we have determined undermines EPA's ability to implement, oversee, and enforce the program. Critically, we have concerns that the existing regulations allow for double counting of biogas volumes or generating invalid RINs from biogas or RNG. These perversities could be exacerbated as EPA allows for multiple uses of biogas (*i.e.,* allows biogas to be used as a biointermediate). The lack of specificity and clarity has also led to a high degree of program complexity, unnecessarily burdening both EPA and industry and hindering effective oversight.

The previous biogas provisions do not specify how or where the quantity of CNG/LNG was to be measured, which party was the RIN generator, how a RIN generator was to demonstrate that the CNG/LNG was actually used as transportation fuel, or how the RIN generator demonstrated that the CNG/LNG was not double counted. The previous biogas provisions were also silent on whether and how parties could store biogas prior to and after registration, how parties reconcile stored volumes over periods of time, and when if ever such volumes had to be used as transportation fuel for RIN generation.

Due to the lack of specificity in those previous biogas provisions for how potential RIN generators would demonstrate that CNG/LNG was produced from renewable biomass and used as a transportation fuel, the registration requests that EPA received over the past several years varied considerably in their approaches. The main point of variation concerned the party that would generate the RINs. Approaches in registration requests have included:

- Parties that use renewable CNG/LNG in a specified fleet (*e.g.,* fleet operators)
- Parties that dispense renewable CNG/LNG
- Parties that generate RNG from qualifying biogas
- Parties that produce the qualifying biogas for renewable CNG/LNG generation

[255] 87 FR 39600 (July 1, 2022).

[256] See 87 FR 39600, 39641 (July 1, 2022).

[257] For purposes of this preamble, the previous biogas provisions refer to those regulatory requirements that apply for the generation of RINs from qualifying biogas under 40 CFR part 80, subpart M, that are being modified by this final action. These regulatory provisions will sunset and be replaced by the biogas regulatory reform provisions discussed in this section, which include a modified definition of biogas. Additionally, under the RFS program, biogas used to produce renewable fuels must be produced from renewable biomass. See id. (definition of ''renewable fuel''), Table 1 to 40 CFR 80.1426.

[258] For purposes of this preamble, we refer to the chain of parties that produce biogas, RNG and biogas-derived renewable fuels, distribute such products, use such biogas-derived renewable fuels as a transportation fuel, and generate and transfer RINs for biogas-derived renewable fuels collectively as the biogas disposition/generation chain.

[259] 40 CFR 80.1426(f)(10)(ii), (f)(11)(ii).

• Marketers that organize contracts between RNG producers and CNG/LNG users.

EPA did not envision this broad range of differing approaches to RIN generation for renewable CNG/LNG when we designed the previous biogas regulations. While these regulations required registrants to demonstrate in their requests that another party could not double count the quantity of RINs generated for a volume of biogas and renewable CNG/LNG,[260] the regulations are so open-ended that multiple parties—the renewable CNG/LNG producer, the party distributing the CNG/LNG, biogas producer, fleet owners, and/or dispensing stations—could be in a position to claim a single volume. That is, while the regulations prohibit the double counting of RIN generation for the same quantity of renewable CNG/LNG, they also inadvertently made it relatively easy for double counting to occur.

The previous biogas provisions also allowed for a single renewable CNG/LNG dispenser to contract with multiple RNG producers and allowed a single RNG producer to contract with multiple CNG/LNG dispensers. This flexibility allowed for the creation of network of contracts which encompass many RNG producers, many RNG distributers and marketers, and many CNG/LNG dispensers, creating a complex paperwork system for EPA to track and that increased the difficulty of effectively overseeing the program.

The regulatory revisions outlined in this section are necessary to promote expansion of renewable fuel volumes, to prevent invalid RINs, and to allow EPA and industry to effectively ensure compliance, as discussed in more detail below.

a. Supporting the Broad Goals of the RFS Program

The broad goals of the RFS program are to reduce GHG emissions and enhance energy security through increases in renewable fuel use over time. Inclusion of new types of renewable fuel or expansion of existing types of renewable fuel in the program can help to accomplish these goals. Any fuel that is produced from renewable biomass and is used as transportation fuel (as defined in the Clean Air Act) has the potential to participate in the RFS program, provided in satisfies the applicable statutory and regulatory requirements. Biogas is already a major source of renewable fuel, with RNG used as renewable CNG/LNG currently representing the vast majority of cellulosic biofuel. As discussed in Section III.B.1, use of RNG has been growing at a rapid rate since 2016 through the incentives created by the cellulosic RIN under the RFS program, in addition to LCFS credits in California and other states. However, the opportunity for continued growth of RNG is expected to be constrained in the future by two factors. First, the economics of developing biogas facilities becomes increasingly challenging for smaller facilities, and particularly for facilities located more remotely from natural gas pipeline interconnects. The first facilities brought into the program tended to be the largest and most economical, with it becoming increasingly costly to bring on incremental volume over time. Second, as discussed in Section III.B.1., the rate of growth in the consumption capacity of the in-use fleet of CNG/LNG vehicles is expected to slow. When the program started in 2016, there was a sizeable existing fleet of CNG/LNG vehicles that were operating on fossil natural gas and that could quickly be used to generate RINs through establishing contracts for RNG. Since the use of RNG has been saturating the existing in-use CNG/LNG vehicle fleet, particularly the largest and most economical fleets, the use of biogas as a feedstock for renewable fuel production will be increasingly constrained by the much slower growth in CNG/LNG fleet sales. At the same time, based on the number of existing landfills [261] and wastewater treatment facilities and the potential for significant expansion of anaerobic digesters,[262] there exists significant potential to increase the productive use of biogas by using it as a biointermediate to produce renewable fuel under the RFS program. By tapping into the greater market for that biogas that can be economically converted to other renewable fuels, the impending constraints on the use of biogas as a feedstock for renewable fuel production can be mitigated.

The use of biogas to produce fuels other than renewable CNG/LNG is also consistent with the statute's focus on growth in cellulosic biofuel over other advanced biofuels and conventional renewable fuel after 2015.[263] However, due to concerns with the potential double counting of biogas/RNG for RIN generation, EPA has not registered parties to generate RINs for biogas used for fuels other than renewable CNG/LNG under the existing regulations, so biogas use has instead been limited to the CNG/LNG vehicle market under the RFS program. Allowing the program to incorporate biogas-derived renewable fuels other than renewable CNG/LNG would support the increase in usage of renewable fuels which can reduce GHGs emissions and promote energy independence.

b. Preventing Double Counting and Fraud

In order for the RFS program to function, the RIN market must maintain foundational integrity: namely, the parties that transact RINs and use RINs for compliance must have confidence that those RINs are valid. While the vast majority of RINs generated over the RFS program's history have not been found to be invalid, a non-trivial quantity of invalid RINs have also been generated.[264] The significant value of the RINs, particularly cellulosic RINs, provides incentives for fraudulent generation, and complicated renewable fuel production and distribution systems, such as the contractual network for demonstrating that CNG/LNG qualifies as renewable fuel described in Section IX.A.2, provide opportunities for fraudulent behavior. Fraudulent RINs can be generated, for example, by parties fabricating reports or records to generate RINs for volumes of biogas that have been used for a different, non-transportation fuel purpose. Furthermore, the more complicated the regulatory requirements and data systems, the more likely it is that parties may inadvertently generate invalid RINs due to simple errors such as reliance on a faulty meter that measured volumes incorrectly or made a calculation error. That is, invalid RIN generation, including double counting of RINs (generating more than one RIN for the same ethanol-equivalent gallon of renewable fuel), can result from either intentional or unintentional actions.

In all cases of double counting, some or all of the RINs generated would be invalid and may additionally be deemed fraudulent. The generation of invalid RINs can have a deleterious effect on

[260] See 40 CFR 80.1426(f)(11)(ii)(H), which states that ''[n]o other party relied upon the volume of biogas/CNG/LNG for the creation of RINs.''

[261] *https://www.epa.gov/lmop/landfill-gas-energy-project-data.*

[262] *https://www.epa.gov/agstar/livestock-anaerobic-digester-database.*

[263] For years after 2015, conventional renewable fuel remains constant at 15 billion gallons, and non-cellulosic advanced biofuel increases by no more than 0.5 billion gallons annually. Annual increases in cellulosic biofuel, in contrast, accelerate from 1.25 billion gallons in 2016 to 2.5 billion gallons in 2022.

[264] For more information, see EPA's Civil Enforcement of the Renewable Fuel Standard Program page available at: *https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program.*

RIN markets and impose a significant burden on regulated parties and EPA to identify and replace those invalid RINs, take enforcement action against liable parties, and remedy the invalidity.

The potential for double counting of biogas, RNG, and biogas-derived renewable fuels is a significant concern since it can undermine the credit system that EPA uses to implement the statutory volume requirements under CAA section 211(o). Even though the existing regulations prohibit such double counting,[265] we have concerns that those regulations and the complex system of contracts and documentation they entail do not enable EPA to detect or protect against the double counting of RINs from biogas feedstocks because of the challenge tracking biogas through commercial pipelines.

Invalid RINs can also create adverse market effects. In the short term, invalid RIN generation could oversupply the credit market and adversely impact credit values. In the longer term, remediation of invalid RINs could invalidate the data upon which EPA bases its projections of future supply to set standards and undermine investment in the growth of valid renewable fuels.

Having a robust means of avoiding double counting and fraud is particularly important because once EPA begins accepting registration requests for biogas to be used as a biointermediate and biogas-derived renewable fuels other than renewable CNG/LNG, the opportunities for the double counting of biogas could increase dramatically. For example, without a robust system in place a party could easily generate RINs for a quantity of biogas used to produce RNG for use in CNG/LNG vehicles and then, through a complex contractual network, attempt to allow a different party to generate a RIN for production of other renewable fuel generated from the same volume of RNG.

We believe that the biogas regulatory reform provisions we are finalizing virtually eliminate the potential for double counting and minimize opportunities for fraud by specifying the party that generates RINs, by holding all directly regulated parties in the biogas disposition/generation chain liable for transmitting or using invalid RINs, by tracking RNG through reporting requirements, and by leveraging third-party oversight mechanisms (*i.e.,* third-party engineering reviews, RFS QAP, and annual attest engagements).

[265] See 40 CFR 80.1426(f)(11)(i)(F).

c. Enhancing Program Simplicity and RIN Integrity

While the previous biogas provisions provide flexibility, as described in Section IX.A.2, they have also resulted in a complex program that is overly burdensome for both EPA and industry. Under the previous biogas provisions, parties demonstrate that biogas is used as renewable CNG/LNG for RIN generation through an extensive network of contractual relationships and documentation that shows that a specific volume of qualifying biogas is used as transportation fuel in the form of renewable CNG/LNG. These demonstrations occur during registration in the form of extensive paperwork, including contracts and associated documentation; registration packages can sometimes number over a thousand pages of contracts for a single RNG production facility. These contracts can also cover multiple facilities, creating an ever more complex network of contracts.

The potential expanded use of biogas as a biointermediate and RNG as a feedstock to produce renewable fuels would make the program under the previous biogas provisions impracticable to oversee and, as discussed above, more susceptible to double counting and fraud. Since biogas may have multiple uses, it is crucial to minimize the potential for generating invalid or fraudulent RINs, including the double counting of RINs. As more uses of biogas are allowed under the program, additional regulatory measures are necessary because EPA will be tracking and overseeing increased volumes of biogas, and we want to ensure a program design that enables EPA to effectively track and oversee larger volumes of biogas (particularly in instances where biogas is converted into RNG and placed into a natural gas commercial pipeline system) going to multiple end uses. We also want to avoid situations in which opaque contractual mechanisms could potentially allow multiple parties to claim that the same volume of biogas is used as two or more biogas-derived renewable fuels.

One of the revisions EPA is finalizing in this rulemaking is to track the flow of RNG in EMTS. Doing so will simplify oversight, ensure that quantities of biogas-derived renewable fuels used as transportation fuel are real, and provide confidence to encourage investment in these fuels. The biogas regulatory reform program includes those parties, and only those parties, that are necessary and best able to demonstrate the valid use of renewable fuel use for transportation: the biogas producer, the RNG producer, and the party that can demonstrate its use for transportation (*e.g.,* the renewable CNG dispenser). Each party has a set of clearly defined roles and responsibilities under the program.

5. Summary of Changes

In this rulemaking, EPA proposed to specify requirements for different parties within the biogas disposition/generation chain. We also proposed to expand how biogas can be used through provisions allowing biogas to be used as a biointermediate such that renewable fuel produced from biogas could be produced through sequential operations at more than one facility and allowing RNG to be used as a feedstock to produce a different renewable fuel. We are finalizing many elements of biogas regulatory reform largely as proposed. The key elements of the biogas regulatory reforms that we are now finalizing include the following:

- Specification of the party that upgrades the biogas to RNG (the RNG producer) as the RIN generator.
- A requirement that the RNG producer assign RINs generated for the RNG to the specific volume of RNG when the volume is injected into a natural gas commercial pipeline system.
- A requirement that the party that can demonstrate that the RNG was used as transportation fuel may separate the RIN.
- Specific regulatory requirements for key parties (*i.e.,* biogas producer, RNG producer, RNG RIN owners, and RNG RIN separators) in the RNG production, distribution, and use.
- Conditions on the use of biogas and storage of RNG prior to registration.
- Specific provisions to address when biogas is used as a biointermediate and when RNG is used as a feedstock.

These elements are applied to the following parties:

- The party that produces the biogas (the biogas producer).
- The party that upgrades the biogas to RNG, injects the RNG into the natural gas commercial pipeline system, and generates/assigns the RIN to the RNG (the RNG producer).
- Any party that transfers title of the assigned RIN (RNG RIN owner).
- The party that demonstrates that the RNG was used as transportation fuel in the form of renewable CNG/LNG (the RNG RIN separator) or used as a feedstock to produce a renewable fuel other than renewable CNG/LNG.

We discuss each of these key elements and parties in more detail in the following sections.

Regulatory requirements for each of these key activities and parties are necessary to ensure that the biogas is produced, converted to RNG, and eventually used as transportation fuel consistent with CAA and regulatory requirements. Specifying the requirements applicable to each party enables EPA to take a streamlined regulatory approach to the production, distribution, and use of RNG that allows for the flexible use of RNG without imposing strict limitations on which parties can take title to and use the RNG.

Furthermore, we are also sunsetting regulatory provisions that will no longer be necessary. For example, much of the documentation of contracts between each party in the biogas distribution/generation chain previously required to be submitted to EPA at registration will no longer be necessary to submit.

Finally, based on comments requesting more time for parties to comport with the biogas regulatory reform provisions, we are providing more time for both new and existing registrants to come into compliance, as discussed in Section IX.F.

We did not propose to revisit or reopen the pathways for biogas established in the 2014 RFS Pathways II rule and are therefore not addressing any issues or comments received on the pathways themselves. We will continue to review pathway petitions under 40 CFR 80.1416 and may take separate regulatory action on additional pathways for biogas as appropriate in the future.

B. Biogas Under a Closed Distribution System

Under the previous biogas provisions, there were two approaches for generating RINs from biogas to renewable CNG/LNG: (1) biogas in a closed, private, non-commercial distribution system that is compressed to renewable CNG/LNG, and (2) biogas upgraded to RNG, injected into a commercial pipeline system, and then compressed to renewable CNG/LNG.[266] The focus of this regulatory reform deals with RNG injected onto the natural gas commercial pipeline system. We are therefore finalizing as proposed only minor modifications to the existing regulatory provisions for biogas used to produce a renewable fuel when the biogas is produced and made into a biogas-derived renewable fuel in a closed distribution system. Because it is typically only a single party participating in a closed distribution system (*i.e.,* the same party that produces the biogas is the same party that converts the biogas to renewable CNG/LNG and then uses that biogas in their own CNG/LNG fleets), there is little opportunity for the double counting of biogas through multiple parties claiming the same volume across the biogas distribution/generation chain.

We are finalizing as proposed that parties that generate RINs for biogas to renewable CNG/LNG via a closed distribution system will continue to operate under similar provisions to the previous biogas provisions. We are also finalizing as proposed a requirement that when the biogas producer is a separate party from the party that generates RINs for biogas to renewable CNG/LNG in a closed distribution system, the biogas producer will have to separately register with EPA. This provision ensures that biogas producers are treated consistently throughout the program and helps EPA identify how parties are related in the biogas distribution/generation chain. We recognize that this may require some parties to update their registration information with EPA, but we do not expect this to require new third-party engineering reviews or the resubmission of registration materials.

To help ensure consistency in the regulatory requirements for all biogas-derived renewable fuels, we are moving the provisions for biogas to renewable CNG/LNG via a closed distribution system into the new 40 CFR part 80, subpart E. We sought comment on whether and how to streamline the regulatory requirements for biogas to renewable CNG/LNG via a closed distribution system. We did not receive significant comments regarding parties producing renewable CNG/LNG from biogas via a closed distribution system, and we are finalizing that we are moving these provisions to subpart E as proposed.

C. RNG Producer as the RIN Generator

For biogas upgraded to RNG and placed on a natural gas commercial pipeline system, we are finalizing as proposed that RNG producers will be the sole RIN generators, and that they will generate RINs for RNG they produce and inject into a commercial pipeline. The previous regulations allowed any party to generate RINs from biogas-derived renewable fuels, even parties that were not part of the biogas distribution/generation chain. In the RFS Pathways II rule, we did not specify a RIN generator because we believed that the complexities of the production and distribution of biogas-derived renewable fuels warranted a case-by-case approach to RIN generation.[267] We noted that we would continue to monitor RIN generation practices and that we might reconsider specifying the RIN generator for biogas-derived renewable fuels at a later date. Based on our experience implementing the program since then, and in light of the expansion in the use of biogas as a biointermediate and RNG as a feedstock, we now believe that it is important to designate a RIN generator.

We believe that RNG producers are best positioned to generate the RINs for two reasons. First, one of the goals of biogas regulatory reforms is to minimize the potential for double counting of biogas or RNG since such biogas or RNG could potentially be used to produce multiple types of fuels. By designating RNG producers as the RIN generators, the RINs will effectively be tracked in EMTS from RNG injection through withdrawal via the assignment, separation and/or retiring of RINs, as discussed in more detail in Section IX.D. This approach significantly reduces double counting concerns since a specific volume of RNG will have corresponding RINs assigned to it, and by specifying that the RINs can only be separated under specific circumstances.

Second, we believe RNG producers are also well positioned to determine whether the RNG was produced from qualifying biogas and to determine the correct amount of biomethane that will qualify for RIN generation. RNG producers typically add non-renewable components to biogas to make pipeline quality RNG. They are often the only party aware of the non-renewable components, and the only party in a position to measure the biomethane content of the RNG prior to introducing non-renewable components.

We also considered designating other parties as the RIN generator. For example, we considered designating the party that produces or uses the renewable CNG/LNG as the RIN generator. However, if we finalized such an approach, then we will largely forgo any ability to track assigned RINs to volumes of RNG in EMTS because the RNG will have already traversed the entirety of the natural gas commercial pipeline system before the RIN was generated and assigned. This approach will not remedy the double counting and tracking concerns under the existing program. The RNG would still have to be tracked via a complicated series of contractual relationships instead of electronically in EMTS. The downstream party and EPA acting in its oversight capacity would still have to go

[266] See 40 CFR 80.1426(f)(10) and (11).

[267] 79 FR 42128, 42144 (July 18, 2014).

to great lengths to ensure that the RNG was not double counted before the RIN was generated.

We recognize that the approach we are finalizing will affect a number of parties that are currently registered to generate RINs for biogas to renewable CNG/LNG, and we specifically sought comment on our proposal to designate the RNG producer as the RIN generator for RNG injected into a natural gas commercial pipeline system. We received a number of comments relating to who should be the RIN generator for RNG RINs. Multiple commenters suggested that our approach should be broader and that we should allow third parties, such as marketers, to be the RIN generator. These commenters stated that smaller entities might not have the expertise necessary and would not want to take on the liability associated with RIN generation. Commenters also expressed concern regarding the need to re-negotiate contracts that had previously let a party other than the RNG producer generate RINs.

Given that in this action we are expanding the use of biogas as a biointermediate and RNG as a feedstock, we believe it is important for parties that generate RINs in the RFS program to be held responsible for complying with the regulations, and in general we believe that parties that have a direct role in the production or use of a fuel are the more appropriate parties to generate RINs. Parties involved in the production of feedstocks or renewable fuel should not be allowed to shift liability to third parties. While stakeholder comments provided perspectives on market dynamics, these commenters did not explain how allowing third parties to generate RINs would directly improve compliance and enforcement of this expanded program.

Additionally after reviewing stakeholder comments and engaging directly with companies,[268] we remain convinced that this step is necessary to implement the other proposed changes discussed below. By making the RNG producer the RIN generator, we will greatly improve our ability to track the movement of the RNG via RINs assigned at the point of injection as discussed in Section IX.D. This change will also simplify the program while improving our ability to effectively oversee it. In response to concerns on contract negotiation timing, we are finalizing modifications to our proposed implementation date, as discussed in Section IX.F.

[268] See ''Set Rule Log of Meetings,'' available in the docket for this action.

Based on our experience with CNG/LNG, and from stakeholders' experience in California's LCFS program, we recognize that third parties will likely serve a useful role in supporting regulated parties in brokering and trading biogas, RNG, and biogas-derived renewable fuel. We also believe that biogas producers, RNG producers, and RNG RIN separators would likely contract with third parties to help them comply with the proposed regulatory requirements by preparing and submitting registration requests and periodic reports. Since our system for registration and RIN generation allows third parties to assist the regulated party in preparing to comply with the applicable regulatory requirements (*e.g.,* by helping to prepare reports, broker RIN transactions, etc.), and we are not planning on changing this allowance under this rule, we believe this should provide most of the functionality the commenters requested.

D. Assignment, Separation, Retirement, and Expiration of RNG RINs

EPA is finalizing revisions to the regulations to specify how parties will assign, separate, and retire RINs generated for RNG. Under the previous regulations, RINs were generated and immediately separated after any party in the biogas disposition/generation chain demonstrated that a specific amount of RNG was used as transportation fuel. Because RINs were generated and simultaneously separated based on the same event, the previous biogas provisions did not provide tracking of RNG or renewable CNG/LNG in EMTS through RIN assignment and separation.

We are finalizing as proposed that the RNG producer must assign any and all RINs generated for a given volume of RNG to the same volume of RNG at the point of injection, and the RINs must follow transfer of title of that RNG until it is withdrawn from the same natural gas commercial pipeline system.[269] The purpose of this requirement is to ensure that the RIN, as tracked through EMTS, follows the transfer of title of the RNG as the RNG moves through the natural gas commercial pipeline system.

Regarding RIN separation, we are finalizing with technical modifications the proposal that only the party that demonstrates that the RNG was used as transportation fuel will be eligible to separate the RINs generated for the RNG from the RNG itself., This party is defined as the RNG RIN separator. This party may either be the party that withdrew the RNG from the natural gas commercial pipeline system or the party that produced or oversaw the production of the renewable CNG/LNG from the RNG. This is a different approach than the prior regulations. Previously, the party that generates the RINs from a volume of biogas separates any RINs generated for that biogas immediately after the party has demonstrated that the biogas was produced from renewable biomass under an EPA-approved pathway and used as transportation fuel. Separation does not necessarily occur at the end of the biogas distribution/generation chain, which necessitates tracking via contractual relationships, as discussed above, and forgoes any ability for EMTS to track the assigned RINs as the volumes of RNG move through the natural gas commercial pipeline system. Our changes will allow for RINs assigned to a given volume of RNG to be tracked via EMTS as the RNG moves through the natural gas commercial pipeline system from injection to withdrawal. Similarly, we are finalizing as proposed the clarification that the provisions that require obligated parties to separate assigned RINs when they take title to any assigned RINs do not apply to RINs assigned to RNG. Allowing obligated parties to separate assigned RINs for RNG would undermine the purpose of our proposal to use RINs assigned to RNG in EMTS to track transfers of RNG.

In the case of RNG used to produce renewable CNG/LNG, the party that obtains the documentation needed to demonstrate that the RNG was used to produce transportation fuel in the form of renewable CNG/LNG is best positioned to separate the RIN. This is analogous to the provisions that require parties blending denatured fuel ethanol into gasoline to separate any assigned RINs for the denatured fuel ethanol at fuel terminals (*i.e.,* the point at which it is reasonable to assume that the denatured fuel ethanol will be used as transportation fuel).[270] Similarly, once a party has turned RNG into renewable CNG or renewable LNG, we can reasonably assume that the renewable CNG or renewable LNG will be used as transportation fuel. We proposed that the party that separates RNG RINs must have withdrawn the RNG from the natural gas commercial pipeline system and produced renewable CNG/LNG from that RNG, among other

[269] For purposes of this preamble, when we refer to the RNG producer we are collectively referring to the party that produces and injects the RNG into the natural gas commercial pipeline system or imports the RNG into the covered location. Unless otherwise specified, all proposed requirements as part of this proposal apply to both RNG producers and RNG importers.

[270] 40 CFR 80.1429.

requirements. We received comments that the party that withdraws the RNG from the natural gas commercial pipeline system is not always the same party that converts RNG into renewable CNG/LNG. We believe either the party that withdraws the RNG from the natural gas commercial pipeline system and produces renewable CNG/LNG from that RNG or the party that converts RNG into renewable CNG/LNG could have sufficient information to be positioned to demonstrate that the RNG is used as transportation fuel, so we have finalized the regulations to allow either party to separate RNG RINs.

To address the potential issue of double counting an RNG RIN where a party claims that the RNG is used both as renewable CNG/LNG and as a different biogas-derived renewable fuel, we are finalizing as proposed the requirement that parties that use RNG to produce a biogas-derived renewable fuel other than renewable CNG/LNG will have to retire the assigned RINs for the RNG used as a feedstock and then generate a separate RIN using the procedures for RIN generation for the new renewable fuel.

RNG RINs will expire consistent with the current regulatory requirements at 40 CFR 80.1428(c). Under 40 CFR 80.1428(c), any RIN that is not used for compliance purposes for the year in which it was generated, or for the following year, is considered an expired RIN, and expired RINs are considered invalid RINs under 40 CFR 80.1431. What this means for RNG RINs is that if no party separates an RNG RIN or retires the RNG RIN to produce renewable fuel by the annual compliance deadline for the compliance year following the year in which that RNG RIN was generated, the RNG RIN will expire. For example, if a RIN is generated for RNG injected into the natural gas commercial pipeline system in 2024, then that RNG RIN will expire after the 2025 annual compliance deadline. If no party separated the assigned RIN for the RNG because no party was able to demonstrate that the RNG was used as transportation fuel or as a feedstock, then the RNG RIN will expire and no longer be usable for compliance purposes. We note that this approach is consistent with existing regulations for how RIN expiration works under the RFS program generally. We also note that that this provision will allow for at least 15 months for any assigned RNG RIN to be separated (*i.e.,* a RIN generated and assigned in December of a compliance year will have at least 15 months before it expires after the subsequent compliance year's annual compliance deadline), and in many cases much longer. We believe this to be sufficient time for parties to demonstrate that the RNG with the assigned RINs was used as transportation fuel and will help encourage parties to use RNG as transportation fuel under the RFS before the RIN expires.

Separating the RIN assignment and RIN separation roles provides multiple benefits to both EPA and the regulated community. First, this approach will significantly increase the ability for the title to RNG to be tracked and overseen, because the transfer of title to RNG will follow the assigned RIN and will be reported in EMTS. EPA and third parties will be able to track the parties that transferred title to the RNG and follow the movement of the RNG via the assigned RIN in EMTS, as opposed to having to track a complex series of contractual relationships between each and every party in the RNG distribution system. This approach will also greatly simplify the auditing process for both EPA and for third parties, allowing for increased program oversight.

Second, this approach allows us to streamline the registration, reporting, and recordkeeping requirements for RNG and RNG RINs by utilizing EMTS for tracking. This creates a number of efficiencies. With regard to registration, it eliminates the need for parties to submit contracts at registration, as discussed in Section IX.A. For reporting, since the RNG and RNG RINs will be tracked in EMTS, we will no longer require the reporting of affidavits and other documentation concerning the transfer of RNG that we currently require to ensure that the RIN generator has the information needed to demonstrate that a specific volume of RNG was used as transportation fuel. For recordkeeping, EMTS will electronically provide real-time data concerning how a given volume of RNG is transferred and ultimately used. This eliminates the need for the existing provisions that require RIN generators to obtain documents from every party in the biogas distribution/generation chain in the form of additional contracts, affidavits, or real-time electronic data. These registration, reporting, and recordkeeping requirements significantly streamline program implementation for EPA and reduce the compliance burden on regulated parties.

Third, this mitigates the risk of counting a given volume of RNG more than once because we are clearly specifying the point in the process when RNG RINs must be generated (*i.e.,* at the point where RNG is injected into the natural gas commercial pipeline system) and the point in the process when RNG RINs must be separated (*i.e.,* when the RNG is demonstrated to be used as a transportation fuel). Because the RNG can only be injected into the natural gas commercial pipeline system once and because an assigned RNG RIN can only be separated once, this specificity virtually eliminates a party's ability to double count the RNG at the point of injection or claim that a given quantity of RNG was used for more than one purposes.

E. Structure of the Regulations

Due to the comprehensive nature of the biogas regulatory reform provisions, we are creating a stand-alone subpart rather than embed them in the rest of the RFS regulatory requirements in 40 CFR part 80, subpart M. Thus, we are finalizing as proposed the creation of a new subpart for biogas-derived renewable fuels—subpart E in 40 CFR part 80. This new subpart includes provisions not only for biogas and RNG used to produce renewable CNG/LNG, but also for other biogas-derived renewable fuels including biogas cases where biogas is used as a biointermediate and RNG is used as a feedstock. The provisions for these fuels under subpart M are being copied into the new subpart E, and the provisions within subpart M are being phased out as described in Section IX.F.

Based on our general approach adopted in the Fuels Regulatory Streamlining Rule,[271] we are structuring the new subpart for biogas-derived renewable fuels as follows:

- Identify general provisions (*e.g.,* implementation dates, scope, applicability etc.).
- Articulate the general requirements that apply to parties regulated under the subpart (*e.g.,* biogas producers, RNG producers, and RNG RIN separators).
- Articulate the specific compliance and enforcement provisions for biogas-derived renewable fuels (*e.g.,* registration, reporting, and recordkeeping requirements).

We believe that this subpart and structure will make the biogas-derived renewable fuel provisions more accessible to all stakeholders, help ensure compliance by making requirements more easily identifiable, and help future participants in biogas-derived biofuels better understand regulatory requirements in the future.

F. Implementation Date

In response to extensive request from public comment to provide more lead time for the implementation of the biogas regulatory reform provisions, we

[271] See 85 FR 78415–78416 (December 4, 2020).

are finalizing more time than proposed for both new parties and existing registrants to come into compliance with the biogas regulatory reform provisions. Parties that are registered to generate RINs for renewable CNG/LNG prior to July 1, 2024 will have until January 1, 2025 to come into compliance with the biogas regulatory reform provisions. Parties registered July 1, 2024 or after will have to meet the biogas regulatory reform provisions beginning July 1, 2024. On January 1, 2025, all parties must comply with the biogas regulatory reform provisions and only biogas and RNG produced under the biogas regulatory reform provisions are eligible for RIN generation. Below we discuss our proposed timeline, the comments we received, and how we adjusted the timeline based on the comments.

Recognizing the need to provide a transition period for parties that are already generating RINs for biogas under the prior provisions to the biogas regulatory reforms, we proposed that all parties operating under the previous biogas provisions would have to come into compliance with the proposed biogas regulatory reform provisions by January 1, 2024. We also proposed that parties that injected RNG into the natural gas commercial pipeline system under the previous biogas provisions prior to January 1, 2024 could use the RNG for the generation of RINs under the previous biogas regulatory provisions until January 1, 2025. We believed at the time that this was enough time for parties to come into compliance with the proposed biogas regulatory reform provisions and utilize for RIN generation the RNG stored on the natural gas commercial pipeline system. We sought comment on whether more time was needed for parties to transition to the proposed biogas regulatory reform provisions.

In response, we received significant public comment suggesting that more time was needed by both parties already registered under the previous biogas provisions and parties looking to register new facilities under the biogas regulatory reform provisions. Commenters suggested that the new testing and measurement requirements for biogas and RNG could take considerable time for parties to install compliant meters and arrange for independent third-party engineers to ensure that such meters were installed consistent with the new regulatory requirements. Commenters suggested that the implementation timeline should also consider facilities that are not currently registered because it can take years for an RNG project to be developed and many new projects may need modification to comport with the new requirements. Additionally, several commenters suggested that it would take more than the approximately six months allotted for the renegotiation of contracts with parties that produce, distribute, and use RNG to align with the new requirements. Parties suggested that by not providing enough lead time to comport with the measurement requirements and to allow parties to renegotiate contracts, EPA would strand a significant volume of RNG that would otherwise be eligible for use as renewable CNG/LNG under the RFS program. Some commenters suggested that EPA should provide an additional year over what was proposed (*i.e.,* a January 1, 2025 start date instead of the proposed January 1, 2024 date), while others suggested EPA push the deadline to January 1, 2026.

In response to the requests for more time for existing registrants, we are finalizing a start date of January 1, 2025, for facilities registered under the previous biogas provisions by July 1, 2024. We believe this extension should afford enough time for those facilities to come into compliance with the new regulatory requirements. It would in practice allow for almost a year and a half for parties to update their facilities to comport with the new regulatory requirements, update their registration information with EPA, and renegotiate their contracts. This would also provide existing registrants enough time to use any RNG stored on the natural gas commercial pipeline system before the new RIN generation requirements for RNG begin on January 1, 2025.

In response to the requests for more time for new registrations, we are finalizing a start date of July 1, 2024, which affords new parties enough time prepare to meet the new regulatory requirements for biogas regulatory reform. Because these facilities are still preparing to come into the RFS program, we believe that a full year is sufficient for them to make adjustments to their facilities and contractual relationships prior to registration. Furthermore, we must balance the need to provide facilities that have planned to participate in the RFS under the previous biogas provisions with our ability to implement and oversee the program.

We are finalizing as proposed that any RIN generators under the previous biogas provisions must generate RINs for RNG stored in the natural gas commercial pipeline system by January 1, 2025. As stated in the proposal, we believe this is a sufficient amount of time to utilize the amount of stored RNG as transportation fuel, and it is important to begin the tracking in EMTS via the RIN of all RNG under the RFS program as soon as practicable. A January 1, 2025 deadline may encourage existing registrants to comply with the biogas regulatory reform provisions prior to the deadline because the RNG produced under those existing registrations may have difficulty using the RNG as transportation fuel for RIN separation by the January 1, 2025 deadline.

To ensure a smooth transition, we are requiring that existing registrants submit registration updates comporting with the biogas regulatory reform provisions no later than October 1, 2024. We anticipate that 3 months is enough time for EPA to process the registration requests of the existing registrants; however, we encourage existing registrants to submit updates prior to the deadline if able to ensure a smooth transition to the biogas regulatory reform provisions. Existing RIN generators will be allowed to generate RINs under the previous biogas regulatory reform provisions for biogas and RNG used as transportation fuel prior to January 1, 2025.[272] Any RINs generated for biogas used as transportation fuel or RNG on or after January 1, 2025 must adhere to the biogas regulatory reform provisions.

In addition to extending some of the deadlines, to further address timing concerns raised by commenters related to the implementation of this biogas regulatory reform, we are finalizing several changes based on comments to the proposed provisions themselves which are designed to allow for a smoother transition to the reformed biogas regulatory provisions. These changes to what we proposed include, but are not limited to, streamlining the registration process for existing registered biogas and RNG production facilities by no longer requiring certificates of analysis for biogas and RNG at initial registration, no longer requiring at registration waivers from pipelines for RNG that did not meet applicable pipeline specifications, and removing the proposed emissions-related registration requirements. Also, as discussed in Section IX.H.2, we are intending to update our reporting

[272] We expect that RINs generated for biogas demonstrated to be used in as transportation fuel by December 31, 2024, under the previous biogas provisions will be generated by February 2025. Typically, because the RIN generator must collect documentation from various parties in the contractual chain to ensure that the biogas or RNG was used as transportation fuel prior to RIN generation, RIN generation can take around a month after the biogas or RNG was used as transportation fuel.

systems to more readily accommodate the submission of reports to streamline and modernize the submission of biogas and RNG-related information under biogas regulatory reform.

G. Definitions

We are finalizing with modifications the proposed definitions of various regulated parties, their facilities, and the products related to the production of biogas-derived renewable fuels. We are also finalizing with modifications the proposed definitions of other terms as necessary for clarity and consistency. We have modified the proposed definitions related to biogas regulatory reform based on public comments and describe those changes in more detail either below or in the RTC document.

We are also finalizing the proposal to move and consolidate all defined terms for the RFS program from 40 CFR 80.1401 to 80.2. We are doing this because we moved all of the non-RFS fuel quality regulations, including the relevant definitions, from 40 CFR part 80 to part 1090 as part of our Fuels Regulatory Streamlining Rule.[273] As such, it is no longer necessary to have separate definitions sections for 40 CFR part 80, subpart M, as only requirements related to the RFS program are housed in 40 CFR part 80. We are not changing the meaning of the terms moved from 40 CFR 80.1401 to 80.2, but are simply relocating them to consolidate the definitions that apply to RFS in a single location. Because we have consolidated all definitions for the RFS program into 40 CFR 80.2, any newly defined terms under this action appear in 80.2.

For parties regulated under the biogas regulatory reform provisions, we are finalizing several new terms to specify which persons and parties are subject to the revised regulatory requirements in a manner that is consistent with our approach under our other fuel quality and RFS regulations. For example, a biogas producer is defined as any person who owns, leases, operates, controls, or supervises a biogas production facility, and a biogas production facility is any facility where biogas is produced from renewable biomass that qualifies under the RFS program. The same framework for applies to RNG producers.

Under the previous RFS regulations, the term ''biogas'' is used to refer to many things and its use may differ depending on context. In some cases, we distinguish between raw biogas, *i.e.,* biogas collected at a landfill or through a digester that contains impurities and large portions of inert gases, and pipeline-quality biogas which has many of the impurities removed for distribution through a commercial pipeline. Some stakeholders also use the pipeline-quality biogas term interchangeably with renewable CNG or renewable LNG, which are renewable fuels produced from biogas. To clarify our intent, we are finalizing specific definitions for biogas-derived renewable fuel, biogas, treated biogas, biomethane, and renewable natural gas (RNG).

''Biogas'' is often used to broadly mean any renewable fuel used in the transportation sector that has its origins in biogas. However, in the context of the RFS program, we have learned that it is necessary to distinguish between these products. We are therefore finalizing a definition of ''biogas-derived renewable fuel'' that includes renewable CNG, renewable LNG, or any other renewable fuel that is produced from biogas or its pipeline-quality derivative RNG now or in the future.

We are defining biomethane as exclusively methane that is produced from renewable biomass. We believe a separate definition for biomethane is important because biomethane (exclusive of impurities and inert gases often found with biomethane in biogas) is what RIN generation is based on. In order to ensure the appropriate measurement of biomethane for RIN generation for RNG, we issued guidance under the existing regulations that cover cases where non-renewable components are added to biogas, and we are codifying provisions based on that previously issued guidance in this action.[274] Biomethane is a component of biogas, RNG, treated biogas, renewable CNG, and renewable LNG, all of which, under the definitions being finalized in this action, must be produced through anaerobic digestion of renewable biomass.

We are defining biogas as a mixture including biomethane that is produced from anaerobic digestion and may have undergone some processing to remove water vapor, particles, and some trace gases, but requires additional processing (such as removal of carbon dioxide, oxygen, or nitrogen) to be suitable for use to produce a biogas-derived renewable fuel. This new definition of biogas is intended to make it explicit that biogas includes gas collected at landfills or through a digester before that biogas is either upgraded to produce RNG or is used to make a biogas-derived renewable fuel, which was intended but not stated in the previous definition. Gas containing biomethane that has undergone treatment to remove components such that it is suitable for use to produce a biointermediate or biogas-derived renewable fuels is no longer biogas and is either RNG or treated biogas, depending on whether it meets pipeline specifications and is placed on a commercial pipeline.

To describe biogas-derived pipeline-quality gas, we proposed to adopt a term now in common use—renewable natural gas, or RNG. Under the proposed definition, in order to meet the definition of RNG, the product would have to have met all of the following:

- The gas must be produced from biogas,
- The gas must contain at least 90 percent biomethane content,
- The gas must meet the commercial distribution pipeline specification submitted and accepted by EPA as part of registration, and
- The gas must be designated for use to produce a biogas-derived renewable fuel.

We proposed that RNG must contain at least 90 percent biomethane content because we believed this to be consistent with many commercial pipeline specifications that we have seen submitted as part of existing registration submissions for the biogas to renewable CNG/LNG pathways. We received public comments stating that the proposed 90 percent biomethane content limit was too stringent or unnecessary because of how EPA proposed to define a batch of RNG. Some public commenters noted that commercial pipeline specifications are typically specified in methane (*i.e.,* not specific to biomethane) and that often non-renewable components are blended into RNG to meet pipeline specifications. The public commenters highlighted that it would be energy intensive to clean up biogas to meet a 90 percent biomethane threshold and that many pipeline's methane content specifications are well below the proposed level. Other public commenters noted that because of how EPA proposed to measure RNG (*i.e.,* direct measurement of biomethane using specified meters) and to define a batch of RNG (*i.e.,* by being the volume of directly measured biomethane), such a limit was unnecessary and confusing. Based on these comments, we are not finalizing the proposed 90 percent biomethane threshold in the definition of RNG.

We are finalizing as proposed to define RNG such that it only meets the

[273] 85 FR 78417–78420 (December 4, 2020).

[274] See ''Guidance on Biogas Quality and RIN Generation when Biogas is Injected into a Commercial Pipeline for use in Producing Renewable CNG or LNG under the Renewable Fuel Standard Program.'' September 2016. EPA–420–B–16–075.

definition if the gas is designated for use to produce a biogas-derived renewable fuel under the RFS program. We are finalizing this element of the definition for consistency with the regulatory requirement that such fuels be used only for transportation under the RFS consistent with the Clean Air Act. This element is important to avoid the double-counting of volumes of RNG that could be claimed as both a renewable fuel under the RFS program and as a product for a non-transportation use under a different federal or state program.

EPA's previous biogas guidance explains that biogas injected onto the commercial pipeline should meet the specific pipeline specifications required by the commercial pipeline in order to qualify as transportation fuel for RIN generation.[275] Commenters noted that our proposed definition excluded RNG that required addition of non-renewable components. Based on these comments, we are modifying our proposed definition of RNG to specify that RNG must not require removal of components to be placed into a commercial pipeline. This definition would not disqualify gas that requires addition of non-renewable components in order to meet pipeline specifications. Since the definition of RNG is based on pipeline specifications, registration submissions for RNG must include these pipeline specifications to demonstrate that the definition of RNG will be met.

Treated biogas results from processing biogas similar to RNG, but, unlike RNG, it is not intended to be placed on a commercial pipeline. We have created different regulatory provisions for treated biogas and RNG because we have different concerns regarding how to verify that they are used as transportation fuel. Treated biogas is a separate term from RNG to distinguish the different regulatory provisions.

We have incorporated the use of these new definitions in both 40 CFR part 80, subpart E and 40 CFR part 80, subpart M where applicable.

H. Registration, Reporting, Product Transfer Documents, and Recordkeeping

We are finalizing with modifications the proposed compliance provisions necessary to ensure that the production, distribution, and use of biogas, RNG, and biogas-derived renewable fuels are consistent with Clean Air Act requirements under the RFS program. These compliance provisions include registration, reporting, PTDs, and recordkeeping requirements. Each of these compliance provisions is discussed below.

1. Registration

Under the RFS program, biointermediate and renewable fuel producers are required to demonstrate at registration that their facilities can produce the specified biointermediates and renewable fuels from renewable biomass under an EPA-approved pathway. These producers demonstrate that they are capable of making qualifying biointermediates and renewable fuels by having an independent third-party engineer conduct a site visit and prepare a report confirming the accuracy of the producer's registration submission. These RFS registration requirements serve as an important step to ensure that only biointermediates and renewable fuels that can be demonstrated to meet the Clean Air Act requirements for producing qualifying renewable fuels are allowed into the program. We also require parties that transact RINs to register in order for them to gain access to EPA systems where RIN transactions are recorded and to submit required periodic reports, which are necessary to ensure that we can track and verify the validity of RINs.

To that end, biogas producers, RNG producers, and RNG RIN separators must register with EPA prior to participation in the RFS program. Under these registration requirements, biogas producers, RNG producers, and RNG RIN separators must submit information that demonstrates that the facilities are capable of producing biogas, RNG, or renewable CNG/LNG from renewable biomass under an EPA-approved pathway. For biogas producers and RNG producers, this information must include the feedstocks that the producer intends to use, the process through which the feedstock is converted into biogas or RNG, and any other information necessary for EPA to determine whether the biogas or RNG, was produced in a manner consistent with Clean Air Act and EPA's regulatory requirements. Such information is necessary to ensure that biogas-derived renewable fuels are produced only from qualifying biogas. Biogas producers and RNG producers must also establish a baseline volume for their respective facilities at registration. This baseline volume is intended to represent the production capacity of the facility and serve as a check for EPA and third parties on the volumes reported by a facility of biogas or RNG to help identify potential fraud. Like biointermediate production and renewable fuel production facilities, we are requiring that biogas production and RNG production[276] undergo a third-party engineering review as part of registration to have an independent professional engineer verify at registration that the facility is capable of producing biogas or RNG consistent with Clean Air Act and EPA regulatory requirements. For RNG RIN separators, we are requiring they submit a description of process and equipment used to compress RNG into renewable CNG/LNG at registration and a list of initial dispensing locations.

We are also finalizing as proposed that biogas producers and RNG producers associate with one another as part of their registrations. An association is a process where two parties establish that they are related for purposes of complying with regulatory requirements under the RFS program. Such associations are needed to track the relationships between the parties and to allow RIN generators the ability to generate RINs in EMTS. For example, under the RFS QAP, RIN generators must associate with QAP auditors in order to generate Q–RINs in EMTS. Similarly, biointermediate producers and renewable fuel producers must associate with one another in order for the renewable fuel producer to generate RINs for renewable fuels produced from biointermediates. These associations must be submitted via registration because our registration system is currently set up to track these kinds of relationships. Similarly, when biogas is used to produce a biogas-derived renewable fuel or as a biointermediate in a biogas closed distribution system, biogas producers and RIN generators must also associate with one another at registration.

It is important to note that under existing fuel quality regulations at 40 CFR part 1090 and RFS regulations at 40 CFR part 80, new registrants who require an annual attest engagement (see Section IX.K.2) must identify a third-party auditor and associate with that party via registration. To submit materials on behalf of the regulated party, any third-party auditor who is not already registered must register in accordance with existing requirements under 40 CFR parts 1090 and 80 using forms and procedures specified by EPA. For parties required to complete an annual attest engagement under biogas regulatory reform, the registration and association of third-party auditors will

[275] See ''Guidance on Biogas Quality and RIN Generation when Biogas is Injected into a Commercial Pipeline for use in Producing Renewable CNG or LNG under the Renewable Fuel Standard Program.'' September 2016. EPA–420–B–16–075.

[276] See 40 CFR 80.1450(b)(2).

function the same because we did not propose and are not modifying the existing requirement that all parties do so. We only highlight this provision to aide affected stakeholder's understanding of how the biogas regulatory reform will work and discuss related attest engagement requirements in more detail in Section IX.K.2.

We received several comments opposed to the requirement that biogas producers directly register. Commenters discussed how this might subject small parties to liability and regulatory burdens and suggested that the QAP process effectively oversees the process. However, it is important for parties that choose to produce biogas under the RFS program to be held responsible for complying with the regulations, because the biogas producer is the party best able to demonstrate that the biogas was produced from renewable biomass under an EPA-approved pathway. This is critical for EPA's oversight and enforcement capabilities, and to ensure that fuels that are used to satisfy the statutory volume requirements are actually qualifying renewable fuel. The RFS QAP mainly provides oversight for the facilities registered under the RFS and is not a substitute for holding biogas producers that do not comply with the regulatory requirements liable. As discussed in Section IX.C, we believe that third parties will continue to help smaller entities participate in the RFS program as they currently do for other renewable fuels.

2. Reporting

Under the RFS program, we generally require reports from regulated parties for the following reasons: (1) To monitor compliance with the applicable RFS requirements; (2) To support the generation, transaction, and use of RINs via EMTS; (3) To have accurate information to inform EPA decisions; and (4) To promote public transparency. We already have reporting requirements for renewable fuels, including for renewable CNG/LNG, in 40 CFR 80.1451. We are establishing similar reporting requirements for biogas producers, RNG producers, and RNG RIN separators.

For biogas producers, we are requiring monthly batch reports that include the amount of raw biogas produced as well as the biomethane content and energy for the biogas produced at each biogas production facility. In these reports, biogas producers must also break down each batch by its verification status, by its associated pathway information (*e.g.,* D code, feedstock, and designated use), and by the party receiving the batch (*e.g.,* RNG producer).[277] The associated pathway information includes how the biogas will be used (*i.e.,* whether the biogas would be used to make renewable CNG/LNG via a closed, private pipeline system; RNG; or used as a biointermediate). This information is necessary for EPA to ensure that the amount of biogas produced corresponds to the biogas producer's registration information and serves as the basis for RIN generation for biogas-derived renewable fuels. This information is also important for the verification of RINs under the RFS QAP and for annual attest audits.

We intend to have biogas producers complete the monthly reporting requirement by entering batch reports directly into EMTS and then transferring each batch also in EMTS to a party that uses such biogas to produce a biogas-derived renewable fuel, RNG, or a biointermediate. Tracking the movement of biogas batches in EMTS between the biogas producer and the parties that use such biogas to produce biogas-derived renewable fuels, RNG, or as a biointermediate will improve the quality of information, enable better information sharing between parties, including third-party auditors, and define a structured reporting process.

For RNG producers, we are requiring quarterly reports to support verification of the amount of RNG produced from qualifying biogas and injected into the natural gas commercial pipeline system. RNG producers must report the amount and energy content of biogas used to produce RNG and the quantity of RNG that was produced and placed onto the natural gas commercial pipeline system by verification status and associated pathway. Similar to the biogas reports, these reporting requirements are necessary to demonstrate the amount of RNG produced from qualifying biogas and to describe the amount of RNG placed on the natural gas commercial pipeline system, and to help track the associated pathways and D-codes of the produced RNG. We note that these reports are intended to replace the previous reporting requirements for renewable CNG/LNG RIN generators.[278] Under biogas regulatory reform, we will no longer require that the contracts or affidavits were obtained from parties in the biogas distribution/generation chain, since this tracking will be done via EMTS. We believe this will greatly simplify the quarterly reporting requirements related to RNG when compared to the prior biogas to renewable CNG/LNG regulatory provisions.

Similar to the reporting procedure for biogas producers, RNG producers will generate RNG RINs in EMTS and transact them to parties that use the RNG as a feedstock, for process heat, or to produce renewable CNG/LNG. RNG producers would match the corresponding batch of biogas to the batch of RNG through transactions in EMTS like how RINs are currently transacted. This allows a batch of RNG to be directly connected to a corresponding amount of biogas batches within the RNG producer's EMTS holdings. This process ensures the batch information has been properly reported and transferred between parties. The reports will also serve as the basis for third-party verification and EPA audits to help ensure the validity of RNG RINs.

We are requiring that RNG RIN separators submit periodic reports related to their RNG RIN separation activities. For RNG to renewable CNG/LNG, these reports must denote which facilities/dispensers converted RNG to renewable CNG/LNG, where the renewable CNG/LNG was dispensed, and the amount of RNG that was converted to renewable CNG/LNG and dispensed. This information is necessary to help demonstrate that the RNG was converted to renewable CNG/LNG and used as transportation fuel. These periodic reports also serve as the basis for attest auditors and EPA to verify RNG RIN separation activities.

RNG RIN separators must also submit additional information related to the separation transaction in EMTS. Under the previous regulations, we established a series of codes to identify the reason that a RIN is separated, consistent with the regulatory requirements that allow for RIN separation.[279] To implement the requirements for biogas regulatory reform, we are requiring that RNG RIN separators identify in EMTS the reason they were separating an assigned RIN from RNG via new separation codes; *i.e.,* whether the RIN was separated from the RNG for conversion to renewable CNG/LNG. These parties may only separate the RIN from RNG after they have the documentation needed to demonstrate that the RNG was used as transportation fuel in the form of renewable CNG/LNG.[280] These changes to EMTS will

[277] Multiple commenters noted a difference in the preamble to the NPRM and the proposed regulations regarding whether separate batches should be generated by digester or by facility. We are finalizing that batches should be generated by facility, as discussed in RTC Section 10.5.

[278] RFS0601: Renewable Fuel Producer Supplemental report.

[279] See 40 CFR 80.1429.

[280] Note, RIN separation transactions are reported in EMTS. RNG RIN separators must report RIN

Continued

help track the use of RNG under the RFS program, which we believe will improve program oversight.

3. Product Transfer Documents (PTDs)

We are requiring product transfer documents (PTDs) for transfers of title for biogas and RNG. We have historically used PTDs to create a record trail that demonstrates the movement of product and information between various parties, as a mechanism to designate and certify regulated products as meeting EPA's regulatory requirements, and to convey specific information to parties that take custody or title to the product.[281] PTDs are important for biogas regulatory reform as they are necessary to document that qualifying biogas was transferred between biogas producers and RNG producers. EPA and third parties also review PTDs to help verify the RINs are validly generated.

For biogas title transfers, we are requiring that PTDs include information related to the transferer and transferee, the intended use of the biogas, the amount of biogas being transferred, and the date that title of the biogas was transferred. For RNG title transfers, we are requiring that PTDs include the names and addresses of the transferor and transferee, the transferor's and transferee's EPA company registration numbers, the amount of RNG being transferred, and the date of the transfer. Additionally, we are requiring that RNG producers clearly designate on the PTDs that the RNG must be used as transportation fuel. We note that the RIN PTD requirements at 40 CFR 80.1453(a) also apply to transfers of title for the RINs assigned to the RNG. For cases when RNG is transferred prior to injection into the natural gas commercial pipeline system (*i.e.,* between the RNG production facility and the injection point), we are also requiring PTDs for transfer of RNG custody that indicate that the RNG must be used for qualifying purpose. The purpose of requiring PTDs for custody transfers prior to injection into the natural gas commercial pipeline system is to create a paper trail so that third parties and EPA can audit whether the RNG claimed as injected into the pipeline was in fact injected into the natural gas commercial pipeline system. These elements of the PTDs largely mirror the elements included on the current PTD requirements for transfers of renewable fuels and biointermediates under the current RFS program in 80.1453.

4. Recordkeeping

We are finalizing as proposed recordkeeping requirements for biogas producers, RNG producers, and RNG RIN separators. The purpose of recordkeeping requirements under the RFS program is to allow verification that the renewable fuels were produced from qualifying renewable biomass, under an EPA-approved pathway, and that the renewable fuel was used as transportation fuel, heating oil, or jet fuel. These records serve as the basis for information submitted to EPA as part of registration and reporting, as well as for the basis of audits conducted by independent third parties and EPA.

For biogas producers, we are requiring records that are already required under the RFS for the production of renewable CNG/LNG from biogas. These records include information needed to show that biogas came from qualifying renewable biomass, copies of all registration information including information related to third-party engineering reviews, copies of all reports, and copies of any required testing and measurement under the RFS program.

For RNG producers, we are including recordkeeping requirements consistent with other parties that produce renewable fuels under the RFS program. Relevant to RNG production, RNG producers must maintain records indicating how much biogas was received at their facility from a registered biogas producer, records demonstrating how much biogas was converted to RNG, and records showing the amount of non-renewable content added to ensure that applicable pipeline specifications are met. For RNG injection, RNG producers are required to maintain records showing the date of injection and the volume and energy content of the RNG injected into the natural gas commercial pipeline system.[282] For RNG RIN generation, RNG producers must maintain records related to the generation of RINs in accordance with 40 CFR 80.1454(b). These recordkeeping requirements are necessary to ensure that the RNG was produced and injected in a manner consistent with CAA requirements and applicable regulatory requirements, and that the appropriate number of RINs was generated for the RNG injected into the natural gas commercial pipeline system. Since EPA will be tracking the movement of assigned RNG RINs in EMTS, we no longer require that the RIN generator (*i.e.,* RNG producer under biogas regulatory reform) maintain records related to the contractual arrangements for the sale and transfer of RNG to parties that distribute the RNG to the end user. These records will no longer be needed since EMTS will memorialize the necessary information pertaining to the transfer of the assigned RINs.

We are also requiring that RNG RIN separators maintain records related to their RNG RIN separation activities. For RNG to renewable CNG/LNG, this includes information related to the location where the RNG was converted into renewable CNG/LNG, as well as the date, location, and amount of dispensed CNG/LNG. The recordkeeping requirements related to demonstrating that RNG was used as transportation fuel were previously maintained by the RIN generator but now must be maintained by the RNG RIN separator. These records are necessary to ensure that RNG is used as transportation fuel, and we believe that it is most appropriate to require that the party best positioned to demonstrate that the RNG is used as transportation fuel maintain the records.

I. Testing and Measurement Requirements

We are finalizing specific testing and measurement procedures for biogas and RNG. Due to the value of RINs and the contribution that that value can make to company revenue, parties have clear incentives to manipulate testing and measurement results to appear to have produced more biogas, RNG, and biogas-derived renewable fuels than they actually did. By establishing clear and consistent testing and measurement requirements, we can ensure the validity of RINs and a level playing field for RIN generators.

For the measurement of biogas and RNG, we are finalizing the incorporation of relevant portions of the previously published guidance into the regulations.[283] Under the guidance, we allowed for parties to submit as part of their registrations whether they were using in-line gas chromatography (GC) meters or an alternative sampling protocol for measurement of biogas. In this action, we are also allowing an alternative to continuous measurement,

separations consistent with the regulatory requirements specified in 40 CFR 80.140(d) and 80.1452.

[281] The PTD requirements for RFS are described at 40 CFR 80.1453.

[282] For specific cases where RNG that is trucked to an interconnect, we are proposing the RNG producer measure when loading and unloading each truck.

[283] ''Guidance on Biogas Quality and RIN Generation when Biogas is Injected into a Commercial Pipeline for use in Producing Renewable CNG or LNG under the Renewable Fuel Standard Program'' See document ID: EPA–420–B–16–075.

specifying a specific standard for GC meters, and requiring measurement for both biogas and RNG.

Multiple commenters raised concerns about the proposed measurement devices. They requested that EPA allow other types of measurement devices and allow use of the manufacturers' operating procedures in lieu of EPA's proposed standardized measurement techniques. However, federal regulations based on the National Technology Transfer and Advancement Act (NTTAA) state that agencies should give preference to standardized measurement techniques.[284] Given that there are standards for measurement techniques that can be used in the measurement of methane concentration and flow of biogas and RNG, we do not believe it is appropriate to allow for the use of manufacturers' operating procedures or to allow parties to provide documentation to EPA when standards for such measurement exist. The appropriateness of using other techniques mentioned by the commenters depends on whether a standard meets the requirements. Commenters did not provide standards for the alternative measurement devices that they recommended EPA allow, although EPA did find one standard that is sufficient which is for thermal mass flow measurement devices and is therefore allowing those devices under the program. The standards for measurement that we are finalizing are as follows:

- API MPMS 14.3.1, API MPMS 14.3.2, API MPMS 14.3.3, and API MPMS 14.3.4: These standards describe the measurement of gaseous flow by orifice meters for use in biogas production and RNG production facilities.
- API MPMS 14.12: This standard describes measurement of gaseous flow by vortex meter for use in biogas production and RNG production facilities.
- ASTM D7164: This standard describes measurement of methane concentration by gas chromatogram for use in biogas production and RNG production facilities.
- EN 17526: This standard describes how to measure gaseous flow by thermal mass flow meter for use in biogas and RNG production facilities.

Similarly, we are also incorporating into the regulations part of the guidance related to analytical testing for the registration of biogas and RNG for use in the production of a biogas-derived renewable fuel.[285] To balance the need for timely registration with our need to ensure product quality and to inform future regulations, we are finalizing the requirement that RNG producers need to submit certificates of analysis from an independent laboratory in its three-year engineering reviews, but not at initial registration.

To summarize the requirements we are finalizing, in all engineering reviews for facilities upgrading biogas to RNG, an RNG producer must supply specifications for the natural gas commercial pipeline system into which the RNG will be injected. The pipeline specifications must contain information on all parameters regulated by the pipeline (*e.g.,* hydrogen sulfide, total sulfur, carbon dioxide, oxygen, nitrogen, heating content, moisture, and any other available data related to the gas components). Additionally, in all three-year engineering review updates for facilities upgrading biogas to RNG, an RNG producer must supply the following:

- A certificate of analysis (COA) for a representative sample of the biogas produced at the digester or landfill.
- A COA for a representative sample of the RNG prior to the addition of any non-renewable components.
- A COA for a representative sample of the RNG after blending with non-renewable components (if the RNG is blended with non-renewable components prior to injection into a pipeline).
- Summary table with the results of the three COAs and the pipeline specifications (converted to the same units).

We had proposed that facilities supply documentation of any waiver provided by the commercial distribution pipeline for any parameter of the RNG that does not meet the pipeline specifications, if applicable. Based on comments, we are no longer requiring that such waivers be supplied at registration. Instead, we are requiring parties to keep records of such waivers so that EPA can determine whether RNG producers brought RNG up to pipeline specifications consistent with EPA's regulatory requirements.

We are finalizing as proposed that the RNG producers must include on the COAs submitted as part of a three-year engineering review update major and minor gas components (*e.g.,* methane, carbon dioxide, nitrogen, oxygen, heating value, relative density, moisture, and any other available data related to the gas components), hydrocarbon analysis, and trace gas components (*e.g.,* hydrogen sulfide, total sulfur, total organic silicon/siloxanes, moisture, etc.), plus any additional parameters and related specifications for the pipeline being used. We are also specifying methods that must be used when measuring biogas properties. These standards are based on methods used for these measurements which have been submitted to us in the past and which we believe provide sufficient accuracy. The standards we are codifying for biogas and RNG measurement for three-year engineering review update analysis are the following:

- ASTM D3588: This method describes how to calculate heating value and relative density.
- ASTM D4888: This method describes how to measure moisture content.
- ASTM D5504: This method describes how to measure hydrogen sulfide and other sulfur compounds.
- ASTM D6866: This method measures biogenic carbon.
- ASTM D8230: This method describes how to measure siloxanes.
- EPA Method 3C: This method describes how to measure methane, carbon dioxide, nitrogen, and oxygen.
- API MPMS 14.1: This method describes how to obtain representative samples.

We also note in the guidance that parties must keep the COAs, pipeline specifications, and any measurement-related RIN generation components under the recordkeeping requirements of 40 CFR 80.1454. As part of the RFS program's third-party oversight provisions, the guidance recommends that third-party engineers review conformance with applicable recordkeeping requirements as part of their engineering reviews while third-party auditors review conformance with these recordkeeping requirements pursuant to the RFS QAP. We are finalizing as proposed that RNG producers must keep testing and measurement records of biogas and RNG and that third-party auditors must verify this information as part of QAP, if applicable, as mentioned in the guidance.[286]

We are also finalizing as proposed additional measurement requirements

[284] 15 CFR 287.4(f).

[285] ''Guidance on Biogas Quality and RIN Generation when Biogas is Injected into a Commercial Pipeline for use in Producing Renewable CNG or LNG under the Renewable Fuel Standard Program'' See document ID: EPA–420–B–16–075.

[286] ''Guidance on Biogas Quality and RIN Generation when Biogas is Injected into a Commercial Pipeline for use in Producing Renewable CNG or LNG under the Renewable Fuel Standard Program'' See document ID: EPA–420–B–16–075.

for RNG that is trucked to a gas pipeline interconnect. In this situation, RNG producers must measure RNG flow and energy content of biomethane both on loading into and unloading from the truck. We find that this requirement is necessary to ensure that RINs are only generated from renewable biomass.

J. RFS QAP Under Biogas Regulatory Reform

Consistent with how QAP was treated under the previous biogas provisions, we are not requiring that biogas producers and RNG producers participate in the RFS QAP. We believe these biogas regulatory reforms will address the issues of double counting as discussed in Section IX.A.4.b, such that a requirement that biogas producers and RNG producers participate in the RFS QAP is not necessary.

While we are not requiring RFS QAP participation, for parties that choose to participate in QAP under the updated biogas program, both the biogas producer and the RNG producer must be audited by the same independent third-party auditor in order to generate a Q–RIN for RNG. In the NPRM we proposed additional elements that a QAP auditor would have to verify under biogas regulatory reform consistent with the proposed regulatory requirements.[287] These new QAP elements for RNG producers included requirements that the QAP auditor must: [288]

- Verify that the sampling, testing, and measurement of RNG is consistent with the new regulatory requirements.
- Verify that RINs were assigned correctly.
- Verify that RINs were separated and retired correctly.
- Verify that the RNG was injected into a natural gas commercial pipeline system.
- Verify that RINs were not generated on non-renewable components added to RNG prior to injection into a natural gas commercial pipeline system.

These new QAP elements are necessary for QAP auditors to ensure that RNG and RNG RINs are produced and generated, respectively, consistent with the biogas regulatory reform provisions and, in addition to the generally applicable QAP elements at 40 CFR 80.1469, will provide a robust verification scheme to help ensure that RINs generated for RNG are valid. Therefore, we are finalizing them as proposed.

We note that, under this action, the parties that transact the assigned RNG RIN and the RNG RIN separator do not need to be included as part of the RFS QAP. This approach is consistent with the current regulatory treatment of RINs generated for ethanol and biodiesel, and we are not modifying how the RFS QAP considers RIN separations in this action. We note that, as described in Section IX.K.2, we are requiring that RNG RIN separators undergo annual attest engagements, which we believe should provide sufficient third-party oversight to ensure that RNG RINs are separated consistent with the biogas regulatory reform provisions.

Several commenters suggested that instead of finalizing the proposed biogas regulatory reform provisions, EPA should require QAP participation for parties that generate RINs for biogas to CNG/LNG. While we believe that QAP participation can provide added assurance for parties that transact RINs generated for biogas to CNG/LNG, the QAP is not a substitute for the biogas regulatory reform provisions. EPA cannot implement through QAP the modified measurement, reporting, and recordkeeping requirements that are necessary to ensure that qualifying biogas is used to produce biogas-derived renewable fuels or address our double-counting concerns in a situation where biogas may be used for multiple purposes under the RFS program. These requirements must be imposed on the parties that produce, distribute, and use biogas, RNG, and biogas-derived renewable fuels because those parties are best positioned to demonstrate compliance with the applicable statutory and regulatory requirements. The QAP auditor's role is to verify that the applicable regulatory requirements are met, not serve as a substitute for the compliance and enforcement provisions that compose biogas regulatory reform designed to ensure that qualifying biogas is produced and used to generate valid RINs. As we articulated in Section IX.A, we are modifying the compliance and enforcement mechanisms under the previous biogas provisions to address concerns with double counting to ensure that RINs generated from biogas meet Clean Air Act and EPA regulatory requirements.

Commenters also failed to explain how QAP participation would effectively address any of EPA's concerns with oversight after we have allowed biogas and RNG to be used for multiple uses under the RFS program. As noted in the NPRM,[289] we believe the previous biogas provisions were ill-suited for situations where biogas/RNG could have multiple uses and that the increased flexibility in the program would require additional oversight to ensure that biogas/RNG was not double-counted and generating invalid RINs. QAP cannot effectively oversee this situation because individual auditors would only verify a small portion of the production/distribution system as part of their verification. Only through creating effective, systemwide tracking can such verification occur. Our biogas regulatory reform provisions will use EMTS to track the movement of biogas and RNG from production until ultimate use. QAP auditors and EPA can then use this tracking information to verify that double-counting did not occur.

K. Compliance and Enforcement Provisions and Attest Engagements

We are finalizing as proposed compliance and enforcement provisions for biogas-derived renewable fuels similar to the existing compliance and enforcement provisions under the RFS program. Under the RFS program, these provisions serve to deter fraud and ensure that EPA can effectively enforce when noncompliance occurs, and the compliance and enforcement provisions for biogas-derived renewable fuels will serve the same purposes. We discuss the specific provisions below.

1. Prohibited Actions, Liability, and Invalid RINs

In order to deter noncompliance, the regulations must make clear what acts are prohibited, who is liable for violations, and what happens when biogas-derived RINs are found to be invalid. To this end, we are finalizing as proposed provisions that establish: (1) Prohibited actions relating to the generation of RINs from biogas-derived renewable fuels; (2) How biogas producers, RNG producers, and RIN generators for RNG will be held liable when RINs from biogas-derived renewable fuels are determined to be invalid; (3) How biogas producers and RNG producers may establish affirmative defenses; and (4) Provisions related to the treatment of invalid RINs from biogas-derived renewable fuels. Many of these provisions are similar to provisions under the existing RFS program and EPA's fuel quality programs in 40 CFR part 1090.

a. Prohibited Actions

The RFS program regulations enumerate specific prohibited acts under the RFS program. In our recent Fuels Regulatory Streamlining Rule, we consolidated the multiple prohibited acts statements in the various fuel quality provisions sections of 40 CFR part 80 into a single prohibition against causing, or causing someone else to,

[287] See 87 FR 80737–80738 (December 30, 2022).

[288] See 40 CFR 80.180(c).

[289] 87 FR 80693.

violate any requirement of the part.[290] For biogas regulatory reform, we are adopting a prohibited act that mirrors the consolidated prohibited acts provision from the Fuels Regulatory Streamlining Rule, and specify that any person who violates, or causes another person to violate, any requirement in the subpart for biogas-derived renewable fuels, *i.e.,* 40 CFR part 80, subpart E, is liable for the violation. Consolidation of the prohibited actions is not meant to alter the scope of prohibited actions, but instead provides more clarity to the regulated community regarding what actions are prohibited.

b. Liability Provisions for Biogas, RNG, Biogas-Derived Renewable Fuels, and RINs generated for RNG and Biogas-Derived Renewable Fuels

We are finalizing as proposed liability provisions similar to the liability provisions in other EPA fuels programs, including the existing RFS program and the recently finalized biointermediates rule. Specifically, we are requiring that when biogas, RNG, biogas-derived renewable fuels, or RINs from RNG or a biogas-derived renewable fuel are found to be in violation of regulatory requirements, the biogas producer, the RNG producer, the biogas-derived renewable fuel producer, and the person that generated RINs from RNG or a biogas-derived renewable fuel will all be liable for the violation. Consequently, RIN generators for biogas-derived renewable fuels are ultimately responsible for ensuring that any biogas or RNG used to produce the fuel complies with the regulations. The description of feedstocks and processes in registration materials accepted by EPA does not constitute a determination by EPA that the subsequent feedstocks and processes used subsequent to the registration are consistent with the RFS regulations. Rather it merely represents that the information provided at registration would allow for proper RIN generation. The responsibility of ensuring compliance with applicable requirements on a continuing basis for biogas, RNG, and RINs generated from RNG and biogas-derived renewable fuel rests with all parties in the biogas disposition/generation chain.

As noted above, this approach to liability has been used extensively in other EPA fuels programs (*e.g.,* the RFS program, gasoline, and diesel programs) where it is presumed that violations that occur at downstream locations (*e.g.,* a retail station selling gasoline) were caused by all parties that produced, distributed, or carried the fuel. If upstream parties, such as RNG producers, are concerned about downstream non-compliance, they can take advantage of the affirmative defense provisions if all of the criteria are met.

We note that the current RFS regulations include provisions for EPA to take certain administrative actions in cases where a regulated party has been found to engage in a prohibited practice under the RFS regulations. First, under 40 CFR 80.1450(h) EPA may deactivate a company registration in cases where a party has failed to comply with applicable regulatory requirements. The regulations provide that EPA will notify the party of the compliance issue, and the party has 30 days from the date of the notification to correct the issue before EPA may deactivate the party's registration. However, in cases where the party's actions compromise public health, public interest, or public safety, EPA may deactivate the registration of the party without prior notice to the party. This would likely apply in cases where a party is found to be generating invalid or fraudulent RINs. Second, EPA may administratively revoke an RFS QAP plan for cause. The existing regulation at 40 CFR 80.1469(e)(4) specifies that EPA may revoke a QAP plan ''for cause, including, but not limited to, an EPA determination that the approved QAP has proven to be inadequate in practice.'' Furthermore, the regulation at 40 CFR 80.1469(e)(5) specifies that ''EPA may void *ab initio* its approval of a QAP upon the EPA's determination that the approval was based on false information, misleading information, or incomplete information, or if there was a failure to fulfill, or cause to be fulfilled, any of the requirements of the QAP.''

Under biogas regulatory reform, these existing provisions for administrative action will apply like they do currently under the RFS program. We would intend to deactivate registrations in cases where parties in the biogas disposition/generation chain have failed to meet their regulatory requirements or when it is identified that the party has willfully generated invalid or fraudulent RINs. The consequences of deactivation of a party in the biogas disposition/generation chain (*i.e.,* a biogas producer, RNG producer, or RNG RIN separator) would result in the prohibition of the generation of RINs from any affected biogas, RNG, or biogas-derived renewable fuel from the party whose registration was deactivated. Similarly, if EPA has approved a QAP plan for a biogas-derived renewable fuel and EPA revokes the QAP plan, the RIN generator previously under that QAP plan would not be able to generate verified RINs for that fuel. We note that these administrative actions would be in addition to any civil penalties. We believe that in combination with the prohibited actions, liabilities, and provisions for dealing with invalid RINs from biogas-derived renewable fuel being finalized in this rule, regulated parties in the biogas disposition/generation chain would have a strong incentive to comply with the biogas regulatory reform provisions.

c. Affirmative Defenses

We are finalizing as proposed that biogas producers and RNG producers may establish affirmative defenses to certain violations if the biogas producer or RNG producer meets all elements specified to establish an affirmative defense. We allow for affirmative defenses in the RFS program and in our fuel quality program under 40 CFR part 1090 in cases where a party did not cause or contribute to the violation or financially benefit from the violation. We are allowing biogas producers to establish an affirmative defense so long as all the following are met:

- The biogas producer or any of the biogas producer's employees or agents, did not cause the violation.
- The biogas producer did not know or have reason to know that the biogas, RNG, or RINs were in violation of a prohibition or regulatory requirement.
- The biogas producer has no financial interest in the company that caused the violation.
- If the biogas producer self-identified the violation, the biogas producer notified EPA within five business days of discovering the violation.
- The biogas producer submits a written report to EPA within 30 days of discovering the violation, which includes all pertinent supporting documentation describing the violation and demonstrating that the applicable elements of this section were met.
- The biogas producer conducted or arranged to be conducted a quality assurance program that includes, at a minimum, a periodic sampling and testing program adequately designed to ensure its biogas meets the applicable requirements to produce the biogas.
- The biogas producer had all affected biogas verified by a third-party auditor under an approved QAP plan.
- The PTDs for the biogas indicate that the biogas was in compliance with the applicable requirements while in the biogas producer's control.

For RNG producers, we are finalizing as proposed analogous requirements to

[290] See 85 FR 29034, 29075 (May 14, 2020); 40 CFR 1090.1700.

establish an affirmative defense except that, instead of relating to biogas producers, the elements relate to RNG producers. We believe these elements to establish an affirmative defense will allow RNG producers to avoid liability only in cases where they could not reasonably be expected to know that a violation took place; for example, if an RNG RIN separator separated RINs improperly.

We are also finalizing as proposed that RNG producers and biogas-derived RIN generators may not establish an affirmative defense against violations when the RNG or biogas-derived renewable fuel, respectively, is found to be in violation. Under the RFS program, the RIN generator is always responsible for the validity of the RIN. As such, biogas-derived renewable fuel RIN generators will not have the ability to establish an affirmative defense for biogas-derived renewable fuels and RINs generated for such fuels. We expect these parties, like all RIN generators under the RFS program, to diligently ensure that other parties that are part of the biogas distribution/generation chain are meeting their regulatory requirements. Similarly, when the RNG producer produces RNG and generates a RIN for such RNG, the RNG producer will not be able to establish an affirmative defense for the RNG or RNG RINs.

d. Invalid RINs

We are finalizing as proposed provisions similar to the existing RFS regulations to address the treatment of invalid RINs generated for RNG and biogas-derived renewable fuels. Under biogas regulatory reform, if a RIN generated for RNG or a biogas-derived renewable fuel is identified as potentially invalid by any party (*e.g.,* the RIN generator, an independent third-party auditor, or EPA), certain notifications and remedial actions will be required to address the potentially invalid RIN. These provisions are necessary to ensure that RINs represent biogas-derived renewable fuels that were produced from renewable biomass under an EPA-approved pathway and used as transportation fuel.

We are also finalizing as proposed provisions that require biogas and RNG producers to notify the next party in the biogas disposition/generation chain if they become aware that inaccurate amounts of biogas or RNG were transferred to that party. In addition, any person must notify EPA within five business days of discovery if they become aware of any biogas or RNG producers taking credit for the sale of the same volumes of biogas/RNG to multiple downstream parties. These provisions are necessary to help prevent the generation of invalid RINs by ensuring that parties in the biogas disposition/generation chain are informing all affected parties of issues when they arise.

2. Attest Engagements

We are finalizing as proposed attest engagement provisions similar to the attest engagement provisions in other EPA fuels programs, including the existing RFS program and the recently finalized biointermediates rule. These provisions are designed to ensure compliance with the regulatory requirements, and this action simply extends those requirements to the newly regulated parties under biogas regulatory reform. Specifically, we are finalizing as proposed that biogas producers, RNG producers, and RNG RIN separators separately undergo an annual attest engagement. Annual attest engagements are annual audits of registration information, reports, and records to ensure compliance with regulatory requirements. Under our fuel quality and RFS programs, we require that attest engagements be performed by an independent third-party certified professional accountant that notifies EPA of any discrepancies they identify in their prepared report. The audited parties typically correct areas identified by the attest auditor, and we review the reports for areas of concern that need to be addressed in future actions. We have a long history of successfully employing annual attest engagements to help ensure integrity of our fuel quality and RFS programs, and we believe that attest engagements are an important component of third-party oversight of biogas-derived renewable fuels.

Attest engagements for biogas producers involve an audit of underlying records (including measurement records and PTDs), reports, and registration information (including the third-party engineering review report) for batches of biogas. These attest engagement procedures for biogas producers help ensure that biogas is generated from qualifying feedstocks and consistent with EPA's regulatory requirements.

Attest audits for RNG producers involve additional procedures that are specific to the production and injection of RNG into the natural gas commercial pipeline system. These provisions involve verifying that records of the measurement of RNG injection are consistent with the measurement requirements for RNG described in Section IX.I and verifying that pipeline injection statements match the amount of RNG reported by RNG producers in quarterly reports. Attest auditors must also confirm that the correct number of RINs were generated in EMTS as compared to the underlying records. The purpose of these new attest engagement procedures for RNG producers is to help ensure that RNG RINs are validly generated consistent with EPA's regulatory requirements for RNG.

We are also requiring specific annual attest engagement procedures to verify RNG RIN separation. These annual attest engagement procedures are in addition to those currently required for RINs separated under 40 CFR 80.1464. Specifically, an independent attest auditor must obtain the underlying records for reported information regarding an RNG RIN separator's operations and ensure that the RNG RIN separator has only separated RNG RINs in a manner consistent with their ability to demonstrate that RNG was used as transportation fuel. Similar to other annual attest engagement procedures under EPA's fuels program, issues identified by the independent attest auditor are required to be flagged in the annual attest engagement report. These annual attest engagement provisions are necessary to ensure that RNG RINs are only separated when consistent with applicable regulations.

The attest engagements for all parties under biogas regulatory reform follow the same general requirements for other attest engagements under EPA's other fuel programs.[291] In their registration information, parties must identify their independent attest auditors, and their independent attest auditors must electronically submit annual attest engagement reports directly to EPA using forms and procedures prescribed by EPA. In addition, an independent auditor (*i.e.,* a CPA without any interest in the audited party) must conduct the audit on a representative sample of information, prepare the annual attest engagement report detailing any discrepancies or findings from the audit, and submit the report to EPA by the annual June 1st deadline. Attest engagements are appropriate for parties involved in the generation of RINs for biogas-derived renewable fuels as they serve to maintain consistency across the three regulated parties and serve as valuable third-party oversight.

L. RNG Used as a Feedstock

We are finalizing as proposed provisions to address situations in which RNG is used as a feedstock to make biogas-derived renewable fuel

[291] See 40 CFR 80.1464 and 1090.1800.

other than renewable CNG/LNG. Specifically, renewable fuel producers must retire the RINs assigned to a given volume of RNG prior to using that volume to produce biogas-derived renewable fuels. When RNG is used as a feedstock to produce a biogas-derived renewable fuel, the applicable RIN generation procedures would vary depending on what fuel is made from the RNG. For example, if a renewable fuel producer were to use RNG as a feedstock to produce hydrogen, the renewable fuel producer would retire any RINs assigned to the volume of RNG and then generate new RINs for the hydrogen so long as the hydrogen met all other applicable regulatory requirements to qualify as a renewable fuel.

We believe this approach allows for multiple uses of RNG without imposing strict limits on the parties that produce or distribute RNG. By assigning RINs to the RNG injected into the natural gas commercial pipeline system and using EMTS to track the transfer of the assigned RINs between parties that produced the RNG and those that use the RNG, we believe we can provide flexibility in the use of RNG while maintaining adequate oversight. We believe requiring the RNG RINs to be retired sufficiently mitigates concerns with possible double counting of the RNG, *i.e.,* a party could not generate an additional RIN or allotment for the RNG unless any assigned RINs were first retired.

We received a significant number of public comments that supported allowing RNG to be used as a feedstock to produce biogas-derived renewable fuels other than renewable CNG/LNG. However, some of these commenters also suggested that the proposed biogas regulatory reform provisions were not needed to allow this activity. For reasons more thoroughly discussed in Section IX.A.4 and in the RTC document, the biogas regulatory reform provisions are necessary to ensure that RINs generated for biogas-derived renewable fuels are valid and to allow biogas and RNG to be used as a biointermediate or as a feedstock, respectively, under the RFS program. Without the biogas regulatory reform provisions, we could not adequately oversee the program, and without clear regulatory requirements and compliance mechanisms to appropriately account for the production, distribution, and use of biogas and RNG, there would be increased opportunities to double-count biogas/RNG.

M. RNG Imports and Exports

For imported RNG, we are maintaining, as proposed, the existing regulatory structure of the RFS whereby either the RNG importer or the producer of the foreign RNG may generate RINs. Under the previous biogas provisions, approximately 10 percent of D3 RINs are generated from imported Canadian RNG. Under this action, we are maintaining the flexibility of allowing either the foreign renewable fuel producer (in this case, the foreign RNG producer) or an importer of foreign RNG may generate RINs. A difference between the new regulations and the previous biogas provisions is that instead of any foreign party in the biogas distribution/generation chain being allowed to generate RINs, only a foreign RNG producer or RNG importer may generate the RIN. We do not believe these approach changes will significantly affect which parties currently generate RINs for Canadian RNG because to date only the RNG importer has generated RINs.

We note that consistent with the treatment of any foreign party that generates RINs under the RFS program, where a foreign RNG producer generates a RIN, that foreign producer must satisfy the additional regulatory requirements at 40 CFR 80.1466, which include submitting to U.S. jurisdiction, complying with inspection requirements, and posting a bond. We also note that any foreign party that owns RNG RINs must also meet the additional regulatory requirements for foreign RIN owners at 40 CFR 80.1467.

We are treating exports of RNG similarly to exports of renewable fuel under the RFS program because like when a renewable fuel that was exported, exported RNG would no longer be eligible for use as transportation fuel in the covered location thereby invalidating any RINs generated for the RNG. We have become increasingly aware that, due to demands abroad for pipeline quality natural gas and RNG, some parties may wish to export RNG. Under this action, since a RIN is generated for RNG at the point of injection into a natural gas commercial pipeline system, any party that exports the RNG outside of the covered location incurs an exporter RVO under 40 CFR 80.1430 and is required to satisfy that RVO by retiring the appropriate number and type(s) of RINs.

N. Biogas/RNG Storage Prior to Registration

We are finalizing as proposed provisions that address biogas or RNG that is produced and stored prior to EPA's acceptance of a biogas or RNG producer's registration submission. We proposed that biogas or RNG may be stored on site (*i.e.,* at a storage facility co-located at the biogas or RNG production facility [292]) prior to EPA's acceptance of a registration submission, provided that certain conditions are met. In order to ensure equal treatment of all parties, we also proposed that these storage provisions also apply to all other biointermediates and renewable fuels under the RFS program.

We received multiple comments on these proposed provisions. Several commenters stated that not allowing RINs to be generated for RNG stored off-site prior to EPA's acceptance of a registration would impose a burden on stakeholders due to, among other things, the long amount of time it takes EPA to process and accept registration requests In the NPRM, we explained that we believed the streamlined registration requirements for RNG producers should greatly decrease the time necessary to process registrations and thus eliminate the need for offsite storage prior to EPA acceptance of registration. After reviewing the comments, we continue to believe this to be the case, as discussed more fully in the RTC document. Consequently, we are finalizing as proposed that any biogas or RNG which is produced and stored prior to EPA's acceptance of a biogas or RNG producer's registration submission must be stored on-site to participate in RFS. What follows is background and detail about what we are finalizing.

Under the RFS1 program, we issued guidance [293] stating that parties may assign RINs for renewable fuels that had left the renewable fuel production facility prior to EPA acceptance of registration because the RFS1 regulations required that RINs be assigned to renewable fuels at the point of production but did not specifically define what ''point of production'' meant. We took this approach under RFS1 because the program did not require that the renewable fuel be produced under an EPA-approved pathway (*i.e.,* the renewable fuel qualified by virtue of meeting the

[292] ''Facility'' is defined at 40 CFR 80.1401 to mean ''all of the activities and equipment associated with the production of renewable fuel starting from the point of delivery of feedstock material to the point of final storage of the end product, which are located on one property, and are under the control of the same person (or persons under common control).''

[293] Questions and Answers on the Renewable Fuel Standard Program. Page 7. *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1001T9Z.pdf.*

definition of ''renewable fuel'' under the RFS1 program).

Under the RFS2 program, in general, EPA does not allow parties that produce renewable fuels to generate RINs for renewable fuel that has left the control of the renewable fuel producer prior to EPA acceptance of the renewable fuel producer's registration. We have not allowed this because of the possibility that EPA may determine that the fuel was not produced consistently with EPA's regulatory requirements and, therefore, may not be eligible for RIN generation. In contrast, however, we had allowed parties to generate RINs for biogas and RNG that was produced prior to EPA acceptance of the RIN generator's registration and was stored offsite, provided several conditions were met. First, the biogas/RNG must have been produced after the third-party engineer conducted the site visit as described in 40 CFR 80.1450(b)(2). Second, the biogas/RNG must have been produced consistent with the requirements of an EPA-approved pathway. Third, the RIN generator must not have changed the facility after the site visit by the third-party engineer. We had allowed this greater flexibility to allow biogas/RNG to be stored offsite prior to registration for pathways converting biogas to renewable CNG/LNG in large part due to the length of time it has taken EPA to review and accept registrations as a result of the previous registration requirements. However, this flexibility has hindered our ability to verify the validity of RIN generation for stored biogas/RNG. From our experience implementing biogas pathways, allowing RNG to be stored offsite has posed challenges when overseeing the production of RNG, since the production of RNG from the facility would often not match the number of RINs generated. The information used to generate the RINs was often different from the information used to demonstrate RNG production for the month. The main reason this information did not align under the previous biogas provisions was likely because RNG is typically stored for an undisclosed period of time. Because of how difficult it is to track discrete volumes of RNG that are claimed for RIN generation, production and use information rarely matched up, and the only way to compare RNG production information with RNG use information was to review all of the underlying records for every party in the entire distribution system over the entire period, which could involve the collection and evaluation of hundreds of thousands of records for the production, transfer, and use of each discrete volume of biogas/RNG since the beginning of the program, *i.e.,* 2014. By disallowing storage prior to registration, we can fully utilize the RIN assigned to RNG volumes to track the production and use of RNG and eliminate the risk of noncompliant, stored RNG generating RINs.

As explained in Section X.H.4, as part of biogas regulatory reform we are no longer requiring that biogas and RNG producers demonstrate that there are contracts between each party in the biogas distribution/generation chain in order to demonstrate transportation use. This will streamline registration of facilities, so we believe it is no longer appropriate to allow for RINs to be generated for biogas/RNG produced and stored offsite of the biogas/RNG production facility prior to EPA acceptance of the biogas and RNG producer's registrations. Also, as discussed in Section IX.I, we are further streamlining the registration requirements by no longer requiring RNG producers to supply COAs for biogas and RNG at initial registration. The removal of this COA requirement at initial registration will likely further reduce the amount of time it will take RNG producers to be registered.

We are, however, continuing to allow for the storage onsite of biogas/RNG, consistent with other renewable fuels and biointermediates, produced prior to EPA acceptance of a registration submission if certain conditions are met. Specifically, we are allowing for storage onsite when all of the following conditions are met:

- The stored biogas, RNG, biointermediate, or renewable fuel was produced after an independent third-party engineer has conducted an engineering review for the renewable fuel production or biointermediate production facility.
- The stored biogas, RNG, biointermediate, or renewable fuel was produced in accordance with all applicable regulatory requirements under the RFS program.
- The biogas producer, RNG producer, biointermediate producer, or renewable fuel producer made no change to the facility after the independent third-party engineer completed the engineering review.
- The stored biogas, RNG, biointermediate, or renewable fuel was stored at the facility that produced the biogas, RNG, biointermediate, or renewable fuel.
- The biogas producer, RNG producer, biointermediate producer, or renewable fuel producer maintains custody and title to the stored biogas, RNG, biointermediate, or renewable fuel until EPA accepts the biogas or RNG producer's registration.

These conditions are necessary for biogas/RNG to be stored onsite prior to registration to ensure that RINs are not generated for fuels that fail to meet the applicable Clean Air Act and regulatory requirements for the production of renewable fuels. We believe that so long as the biogas or RNG producer has had a third-party engineer confirm that the facility could produce products consistent with the applicable RFS regulatory requirements and so long as the producer does not modify their facility, the biogas and RNG produced at these facilities should be eligible to generate RINs. These products have to be produced in accordance with the applicable regulatory requirements. We are requiring that the biogas or RNG producer maintain custody of the product because once the product has left its facility, the producer would be less able to remedy issues with the product; this could also result in other parties downstream becoming liable for the product should it not meet applicable regulatory requirements. After EPA has accepted the biogas or RNG producer's registration, the stored products could then be used under the RFS program.

O. Single Use for Biogas Production Facilities

To minimize program complexity and avoid the double-counting of biogas, we are also finalizing as proposed provisions to govern the use of biogas from a biogas production facility. Under these provisions, biogas producers are limited to supplying biogas or treated biogas for a single use (*e.g.,* RNG, renewable CNG/LNG, or to produce a biointermediate). We understand that in real-world applications there may often not be a perfect match between biogas production capacity and the quantity of biogas for a particular use. However, limiting biogas from each biogas production facility to a single use serves the goals of minimizing program complexity and safeguarding against double counting by eliminating the opportunity for double counting in the first place.

We received comments asking that EPA not finalize this proposed condition. Commenters stated that imposing such a condition would preclude significant volumes of biogas from being used at biogas production facilities that had projects that could supply biogas for multiple uses under the RFS program, especially if EPA finalized the eRINs proposal. Furthermore, some commenters

suggested that EPA's condition related to a single biogas use precluded the use of biogas for purposes outside of the RFS program.

While we appreciate commenters' perspectives, we have concluded that retaining the proposed condition on single use is necessary given the expansion of the biogas program we are also finalizing in this rule. Allowing only a single use of biogas under the RFS program will significantly reduce the ability for parties to double count biogas for purposes of RIN generation under the RFS program. Were we to allow for multiple uses from a single facility, we would need more enhanced compliance and enforcement mechanisms than were proposed in order to adequately oversee the additional complexity. We intend to monitor the effects of the single use limitation on biogas production facilities and may consider ways to permit multiple uses of biogas at a single facility under the RFS program after we have more experience implementing the new, expanded biogas program.

In response to commenters concerns that we are limiting the ability for biogas producers to supply biogas for purposes outside of the RFS, we are clarifying that parties may use biogas for purposes outside of the RFS program; *i.e.,* the condition on the single use of biogas at a biogas facility only applies to a single use under the RFS program. We discuss related public comments and respond more thoroughly in RTC Section 10.

P. Requirements for Parties That Own and Transact RNG RINs

We are finalizing as proposed the requirement that parties that solely transact assigned RNG RINs (*i.e.,* parties that transact RNG RINs but that do not generate or separate the RNG RINs) must comply with all current regulatory requirements for owning and transacting RINs under the RFS program. The sole difference is that only a party that is a registered RNG RIN separator and has demonstrated that the RNG has been used as renewable CNG/LNG will be allowed to separate the RNG RIN. In other words, parties that simply transact assigned RNG RINs are not allowed to separate RINs, and we intend to design EMTS to prevent them from doing so. As described in more detail in Section IX.H.4, this provision is necessary to ensure that RNG is used as transportation fuel consistent with the CAA and applicable regulatory requirements.

Except for the limitation on RNG RIN separation, we note that we are not otherwise modifying the requirements for parties that own and transact RNG RINs; we are simply highlighting how parties that solely own and transact RNG RINs will operate in the context of the biogas regulatory reform provisions.

X. Other Changes to Regulations

This section describes the other regulatory changes beyond those already discussed that we are finalizing for the fuel quality and RFS programs. We address comments related to these regulatory changes in RTC Section 11.

A. RFS Third-Party Oversight Enhancement

Independent third-party auditors and engineers play critical roles in ensuring the integrity of the RFS program.[294] The independent third-party engineer ensures that a renewable fuel producer's facility can actually produce renewable fuel in accordance with the RFS regulations and thus generate valid RINs. The independent third-party auditor, when hired by a renewable fuel producer, verifies that the renewable fuel produced adheres to its registered and approved feedstocks and processes, and therefore verifies the RINs generated under the RFS QAP.[295] Given EPA's recent promulgation of a program allowing renewable fuel to be produced from biointermediates,[296] we expect there will be an expansion in the scope and number of regulated entities under the RFS program in the future, making third-party verifications even more critical.

We proposed changes to third-party verifications and submissions in the 2016 Renewables Enhancement Growth and Support (REGS) proposed rule; [297] however, those proposed changes were not finalized. We re-proposed (*i.e.,* proposed anew) some, but not all of those changes in conjunction with this rulemaking and are now finalizing a modified version of those proposed changes in this action.

As we explained in the 2016 REGS proposal, EPA has taken a number of enforcement actions against renewable fuel producers that generated invalid RINs, and the extent of the unlawful and fraudulent activities associated with the RFS program, as demonstrated by these cases, is troubling given the roles that independent third parties play in the RFS program. Because we are concerned that independent third-party auditors and engineers may not be sufficiently mitigating unlawful and fraudulent activities in the RFS program to the extent needed for a successful program, we are strengthening requirements that apply to these entities. Consequently, we are modifying the requirements for independent third-party auditors that use approved QAPs to audit renewable fuel production to verify that RINs are validly generated by the producer. The purpose of these modifications is to protect against conflicts of interest of QAP providers by strengthening the independence requirements for them. We are also making several changes to the requirements for the professional engineer serving as an independent third party conducting an engineering review for a renewable fuel producer as part of their RFS duties in connection to a renewable fuel producer's initial registration and subsequent registration updates.

The changes to the regulations that we are making fall into six areas. First, we are strengthening the independence requirements for third-party engineers by requiring those engineers to comply with similar requirements to those that apply to independent third-party auditors.

Second, we are requiring that the third-party engineer sign an electronic certification when submitting engineering reviews to EPA to ensure that the third-party engineer has personally reviewed the required facility documentation, including site visit requirements, and that the third-party engineer meets the applicable independence requirements. Previously, the third-party engineer signed a certification statement within the engineering review documents. We believe that an electronic certification at the time of submission will help to ensure that the third-party engineer conducts their duties with impartiality and independence.

Third, we are requiring that third-party engineers provide documents and

[294] We note that independent third parties serve a different function than the third parties discussed in Section IX.C. In this case, the independent third party must meet regulatorily specified requirements that ensure that the independent third party will objectively conduct verification activities under the RFS program. Third parties that informally assist compliance by regulated parties are not subject to those same independence requirements.

[295] Independent third-party engineers and auditors are referred to separately based on their roles in the RFS program. In order to participate in the RFS program, renewable fuel producers must have a third-party engineering review of their facility prior to generating RINs, and every three years thereafter. References to third-party professional engineers in this preamble refer to the third parties that conduct those engineering reviews. Third-party auditors verify that the renewable fuel produced by renewable fuel producers adheres to their registered and approved feedstocks and processes to generated QAPed RINs. These auditors may be professional engineers as well, but references to third-party auditors in this preamble refer to third parties (engineers and other types of professionals) that perform that QAP-related function.

[296] 87 FR 39600 (July 1, 2022).

[297] 81 FR 80828 (November 16, 2016).

more detailed engineering review write-ups that demonstrate the professional engineer performed the required site visit and independently verified the information through the site visit and independent calculations.

Fourth, we are requiring that three-year engineering review updates be conducted by a third-party engineer while the facility being reviewed is producing renewable fuel. We believe that the efficacy of a third-party engineer's review is greatly enhanced when the facility is operating under normal conditions and not in a shut down or maintenance posture. Conducting the engineering review while the facility is operational will allow the third-party engineer to accurately and completely verify the elements of the engineering review necessary to certify to EPA that the facility is in compliance with its registration materials.

Fifth, we are specifying that third-party auditors must ensure that personnel involved in third-party audits (including verification activities) are not negotiating for future employment with the owner or operator of the audited party. In the NPRM, we proposed to disallow a person employed by an independent third-party auditor who is involved in a specific activity by the auditor from accepting future employment with the owner or operator of the audited party for a period of at least 12 months. Several commentors opposed this prohibition and claimed that it may deter candidates from working for an auditor due to future job restrictions or constitute an unlawful workplace restriction in jurisdictions that have adopted ''right to work'' laws. We agree that the proposed prohibition can be more narrowly tailored to address our primary concern, which is auditors negotiating for future employment while conducting auditing activities. We believe that third-party auditors could be unduly influenced in their QAP verification activities if they are negotiating for future employment while providing auditing services, and are finalizing a narrower prohibition that only applies to auditors that are negotiating for future employment with the audited party. This ensures the impartiality needed in third-party auditors without restricting individuals' ability to obtain future employment.

Sixth, we are specifying prohibited acts and liability provisions applicable to third-party engineers to reduce the potential of a conflict of interest with the renewable fuel producer. These requirements will help EPA and obligated parties better ensure that third-party audits and engineering reviews are being correctly conducted, provide greater accountability, and ensure that third-party auditors and engineers maintain a proper level of independence from the renewable fuel producer.

Taken together, we believe these six requirements will help avoid RIN fraud by strengthening third-party verification of renewable fuel producers' registration information. Additional information on third-party auditors and engineers is provided below.

1. Third-Party Auditors

Third-party independence is critical to the success of any third-party compliance program. We believe that the independence requirements applicable to third-party auditors in the RFS program should be clarified and strengthened to further minimize (and hopefully eliminate) any conflicts of interest between auditors and renewable fuel producers that might lead to improper RIN validation. We are clarifying the prohibition against an appearance of a conflict of interest to include:

- Acting impartially when performing all auditing activities.
- Prohibiting independent third-party auditors that were involved in the design or construction of a facility from auditing that facility.
- Prohibiting a person employed by an independent third-party auditor who is negotiating for future employment with the owner or operator of the audited party from participating in that audit.

These provisions are intended to prevent, among other things, third-party auditors that were involved in the design of a facility or who are negotiating for employment with the audited party from conducting QAP verification activities. In both instances, we believe that third-party auditors could be unduly influenced in their QAP verification activities as a result.

In the 2023–2025 NPRM, we proposed to prohibit third parties that offered QAP services from offering other business services to audited parties for a period of at least one year. One commentor stated that this prohibition was overreaching and would stifle the ability of large firms to provide QAP services because large firms often provide other services not associated with the design of the facility or the RFS program (*e.g.,* tax services), which would discourage large firms from providing QAP services. As discussed in RTC Section 11.1, we appreciate the commenter's concern and, therefore, are finalizing a narrower prohibition that only applies to third parties that were involved in the design or construction of the audited facility. This achieves the goal of the proposed provision without unnecessarily limiting the pool of third parties who can qualify as third-party auditors.

2. Third-Party Engineers

Engineering reviews from independent third-party engineers are integral to the successful implementation of the RFS program. Not only do they ensure that RINs are properly categorized, but they also provide a check against fraudulent RIN generation. As we have designed our registration system to accommodate the association between third-party auditors and renewable fuel producers to implement the RFS QAP, we have realized that both the way engineering reviews are conducted and the nature of the relationships among the third-party engineers, affiliates, and renewable fuel producers are analogous to third-party auditors and renewable fuel producers. As a result, we are strengthening the independence requirements for third-party engineers by requiring those engineers to comply with requirements similar to those that apply to independent third-party auditors.

We are also improving the RFS registration requirements for three-year engineering review updates by requiring site visits to take place when the facility is producing renewable fuel. This will provide the regulated community and EPA with greater confidence in the production capabilities of the renewable fuel facility. Since the adoption of the RFS2 requirements in 2010, most engineering reviews have been conducted by a handful of third-party engineers. Some of these engineers are using templates that make it difficult for EPA to determine whether registration information was verified.

We are concerned that, in some instances, the third-party engineers are relying too heavily on information provided by the renewable fuel producers, and not conducting a truly independent verification. In order to provide greater confidence in third-party engineering reviews, we are requiring that the engineering review submission include evidence of a site visit while the facility is producing the renewable fuel that it is registered to produce. We are also incorporating EPA's current interpretation and guidance into the regulations regarding actions that third-party engineers must take to verify information in the renewable fuel producer's registration application. The amendments explain that in order to verify the applicable registration information, the third-party

auditor must independently evaluate and confirm the information and cannot rely on representations made by the renewable fuel producer. We are also requiring that the third-party engineer electronically certifies that the third-party meets the independence requirements whenever the third-party submits engineering reviews or engineering review updates to EPA. Previously, the third-party engineer signed a certification statement within the engineering review documents. Requiring the certification to be signed at the time of submission will remind the third-party engineer of the independence requirements prior to submitting the engineering reviews.

We believe these amendments will help provide greater assurance that third-party engineering reviews are based upon independent verification of the required registration information in 40 CFR 80.1450, helping to provide enhanced assurance of the integrity of the registration materials submitted by the facility, as well as the renewable fuel they produce.

Finally, we are specifying prohibited activities for third-party engineers failing to properly conduct an engineering review, or failing to disclose to EPA any financial, professional, business, or other interest with parties for whom the third-party engineer provides services for under the RFS registration requirements. Based on its review of RFS registrations, EPA has concerns that third-party engineers may not be appropriately conducting engineering reviews consistent with EPA's intent because they may not meet the requirements for independence to qualify as a third party. We believe that making third-party engineers more accountable for properly conducting engineering reviews under the regulations and requiring that they interact more directly with EPA will help us to identify potential conflicts of interest and to bring enforcement actions should an issue arise.

During discussions with stakeholders after publication of the NPRM, some parties suggested that EPA delay the implementation date for the enhancements to third-party oversight because third-party engineers will have already conducted three-year engineering site visits for facilities prior to the effective date of the rule that are due January 31, 2024, and it was unclear how these new changes would affect previously conducted site visits by independent third-party engineers that are due January 31, 2024. To address these concerns, we are specifying that the new requirements for independent third-party engineers and for engineering reviews will begin on February 1, 2024. A February 1, 2024, implementation date will ensure that three-year engineering reviews conducted to meet the January 31, 2024, deadline are not impacted by the new regulatory requirements avoiding duplicative effort on the part of independent third-party engineers.

B. Deadline for Third-Party Engineering Reviews for Three-Year Updates

We are finalizing with modification our proposal that third-party engineers conduct engineering review site visits no sooner than July 1 of the calendar year prior to the January 31 deadline for three-year registration updates. In response to public comments, we are also finalizing additional flexibility that will allow parties to reset their three-year update due date if they comply with the three-year update requirement before it was due. We believe this flexibility will allow parties to simultaneously comply with the RFS program and CARB's LCFS verification requirements. Finally, in response to public comments requesting more time to comply with the new requirements, we are finalizing that the new deadline for engineering review site visits will begin after the 2023 three-year registration update deadline (*i.e.,* after January 31, 2024) to minimize the impact on those parties that may have already arranged for engineering review site visits under the previous regulatory requirements.

Previously, renewable fuel producers were required to have a third-party engineer conduct an updated engineering review three years after initial registration. The regulations stated that the three-year engineering review reports were due by January 31 three years after the first year of registration. However, the regulations did not specify when the third-party engineer must conduct the site visit. We received several inquiries from renewable fuel producers and third-party engineers concerning when the third-party engineer must conduct the site visit ahead of the January 31 deadline. We originally published guidance that stated that the site visits for three-year updates should occur no later than 120 days prior to the January 31 deadline. Due to extenuating circumstances, we have on a case-by-case basis allowed for site visits to occur up to a full calendar year prior to the deadline.

However, we continue to have concerns that third-party engineers are conducting site visits well ahead of the January 31 deadline and that the renewable fuel production facilities they visited may have undergone significant alteration between the time of the site visit and the time that the third-party engineering review report is due. To address our concern, we are requiring that the site visit occur no sooner than July 1 of the preceding calendar year. We believe that this amount of time will provide third-party engineers enough time (seven months) to conduct site visits and prepare and submit engineering review reports to EPA without the site visit becoming out-of-date. We believe this additional time is reasonable as the number of facilities that require three-year updates has increased.

We are also specifying which batches of RINs should be included in the V_{RIN} calculation portion of the three-year registration update. Under this provision, third-party engineers must select from batches of renewable fuel produced through at least the second quarter of the calendar year prior to the applicable January 31 deadline for V_{RIN} calculations. We believe this is necessary because some third-party engineers conduct V_{RIN} calculations for facilities' RIN generation materials that only cover two years. Furthermore, we have noticed that the period from which batches are selected for V_{RIN} calculations can vary significantly across third-party engineers and we want to ensure that this portion of the engineering review update is conducted consistently.

We received comments suggesting that we should accept engineering reviews with site visits that occurred within 12 months of the deadline, in part to align with California's verification requirements under their LCFS program. While we appreciate commenters' concerns that there may be overlapping verification requirements for the RFS program and California's LCFS, we note that most renewable fuel producers under the RFS program do not participate in California's program. However, in order to allow parties to utilize a single site visit for both programs, the final rule allows parties to reset their three-year updates, as long as they have complied with the regulatory requirements before the three-year update is due. This would have the added benefit of allowing a party that needed to undergo a new engineering review as required under 40 CFR 80.1450(d)(1) to use that new engineering review to fulfil their three-year engineering review update (assuming all applicable requirements for the three-year update are met).

Several commenters suggested that we postpone the implementation date for these provisions to avoid parties having

to redo their three-year updates and engineering reviews because the regulatory requirements changed in the middle of a three-year update cycle. We agree with commenters' concerns and note that it was not our intent to require parties to comply with two sets of regulatory requirements for the same three-year update. Therefore, to address commenters' concerns and clarify our intent, we are requiring that the new deadline for three-year update site visits and VRIN requirements begins after the conclusion of the compliance year 2023 three-year update deadline (*i.e.,* February 1, 2024). We believe this implementation date will minimize the effects of these changes on parties that have already started complying with previous three-year update requirements and will allow for a smooth transition.

C. RIN Apportionment in Anaerobic Digesters

In the Pathways II rule, we created a pathway to allow D3 RINs to be generated for renewable CNG/LNG produced from biogas from digester types that process only predominately cellulosic [298] feedstocks (*i.e.,* municipal wastewater treatment facility digesters, agricultural digesters, and separated MSW digesters), as well as from the cellulosic components of biomass processed in other waste digesters.[299] We also created a renewable CNG/LNG pathway to allow for D5 RINs to be generated for biogas produced from other waste digesters.[300] If a party simultaneously converts a predominately cellulosic feedstock and a non-predominantly cellulosic feedstock in a waste digester, it must apportion the resulting RINs under the appropriate D3 and D5 pathways accordingly. To support this calculation, we required parties to calculate the cellulosic converted fraction (*i.e.,* the portion of a cellulosic feedstock that is converted into renewable fuel) based on measurements of cellulose obtained using a method that produces reasonably accurate results. For a heterogeneous feedstock such as separated food waste—which may be simultaneously converted with cellulosic feedstocks in waste digesters—the cellulosic content can vary widely between batches, making it very difficult for renewable fuel producers to determine the cellulosic content of the feedstock with any degree of accuracy.

Since the Pathways II rule was finalized, stakeholders have inquired how to apportion RINs in the specific case wherein feedstocks that are not predominantly cellulosic—specifically, separated food waste—are simultaneously converted with predominantly cellulosic feedstocks into biogas in a digester.[301] EPA's previous registration and RIN apportionment equations were designed assuming that the converted fractions of the cellulosic and non-cellulosic feedstocks could be accurately determined through chemical testing. However, apportioning RINs for biogas produced from co-processed feedstocks is distinct from apportioning RINs for other co-processed cellulosic and non-cellulosic feedstocks (*e.g.,* corn kernel fiber co-processed with corn starch). In the NPRM, we explained that some of the existing requirements are unnecessary or otherwise inappropriate for these circumstances and that there are features of co-processing in a digester that make it reasonable to consider a different regulatory approach to RIN apportionment. The feedstocks in question are generated as physically separate streams such that the mass, moisture content, and methane production potential of each feedstock can be determined before mixing, a possibility that was not contemplated by the previous apportionment equations. Further, we understand that parties interested in co-processing predominantly cellulosic feedstocks with separated food waste are not planning on claiming any credit for the cellulosic components of the food waste due to challenges accurately measuring cellulosic content of the variable food waste feedstock, which means that chemical analysis of the cellulosic content of the food waste feedstock and digestate is not required. Another factor that reduces the risk of D3 RINs being generated from non-cellulosic feedstock is that mixing of non-cellulosic food waste in anaerobic digestion does not lead to a decrease in biogas production relative to when the feedstocks are processed separately,[302] so the biogas production from the cellulosic feedstock processed alone provides an accurate or conservative estimate of the same feedstock's biogas production when mixed with non-cellulosic feedstocks.

In this action we are finalizing as proposed specific equations to determine feedstock energy for when predominantly cellulosic and non-predominantly cellulosic feedstocks are simultaneously converted in anaerobic digesters. We have made slight technical adjustments to these equations and changed their location relative to what was proposed to address commenter concerns. The cellulosic feedstock energy equation is similar to the existing, broader equations, with a few modifications. The new equation uses a volatile solids measurement since non-volatile solids do not generally produce biogas, increasing the accuracy over the existing equation. For calculating total solids and volatile solids, we are requiring the use of American Public Health Association method number 2540, which is already used by the wastewater treatment industry in their operations of anaerobic digesters. The non-predominantly cellulosic biogas is the difference between total biogas produced and cellulosic biogas as calculated by the cellulosic feedstock apportionment equation. We believe these equations will ensure that cellulosic RINs are only generated for predominately cellulosic feedstocks because they make a conservative assumption of the cellulosic biogas production and ensure that the biogas produced from non-predominantly cellulosic feedstocks generates entirely non-cellulosic RINs. Along with this updated equation, we are requiring biogas producers to keep records of feedstocks necessary to verify apportionment calculations.

To support this apportionment, we are finalizing that at registration biogas producers provide the converted fraction of the predominantly cellulosic feedstock used in an anerobic digester when it is simultaneously converted with a non-predominantly cellulosic feedstock as well as relevant supporting data. Instead of chemical data supporting a cellulosic converted fraction as required under the existing regulations, which will continue to apply for situations other than anaerobic digesters, we are requiring that, at registration, a facility producing biogas from anaerobic digestion either choose a predetermined, conservative value for converted fraction (explained in more detail below) or provide the following:

- Operational data showing the biogas yield from digesters which process solely the cellulosic feedstock(s) and which operate under similar conditions as the digesters addressed in the registration.

[298] A predominately cellulosic feedstock is a feedstock with an adjusted cellulosic content of greater than 75 percent.

[299] See row Q in Table 1 to 40 CRF 80.1426; 79 FR 42168 (July 18, 2014). D3 RINs may also be generated for renewable CNG/LNG produced from biogas from landfills—the landfill biogas pathway is not implicated by these changes.

[300] See row T in Table 1 to 40 CFR 80.1426; 79 FR 42168 (July 18, 2014). This pathway must be used if the feedstock being processed in a digester is not predominantly cellulosic.

[301] See Byron Bunker (EPA), ''Reply to American Biogas Council on the Treatment of Agricultural Digesters under the Renewable Fuel Standard (RFS) Program,'' March 15, 2017.

[302] Karki et al. Bioresource Technology 330 (2021) 125001. DOI: 10.1016/j.biortech.2021.125001.

• A description including any calculations demonstrating how the data were used to determine the cellulosic converted fraction.
• The cellulosic converted fraction that will be used in the RIN apportionment.

Operational data used to determine the cellulosic converted fraction will necessarily be obtained at a particular range of temperatures, pressures, residence times, feedstock composition, and other process variables. Since biogas production can change based on processing conditions, we are requiring a registrant to identify the conditions in its registration under which the facility will need to operate to properly apportion RINs. In specifying those processing conditions, we are requiring parties to place limitations on a combination of temperature, amount of each cellulosic feedstock source, solids retention time, hydraulic retention time, or other processing conditions established at registration which may impact the conversion of the predominantly cellulosic feedstock. These limitations must be based on the data used to derive the cellulosic converted fraction so that when it is simultaneously converting multiple feedstocks, the facility is operating under conditions essentially the same as those for the digesters from which the cellulosic converted fraction was derived. For example, a registrant that calculates a cellulosic converted fraction from historical data of a given digester processing a single type of cellulosic feedstock could use that historical operational data to identify the limitations on temperature, residence times, and other operational variables such that the converted fraction remains valid.

As an alternative to specifying operational data, we are allowing registrants to select a standard converted fraction value specified in the regulations for the specific cellulosic feedstock which they are simultaneously converting with a non-predominantly cellulosic feedstock in anaerobic digesters. We are providing specific standard values for four cellulosic feedstocks (bovine manure, chicken manure, swine manure, and WWTP sludge), which are 50 percent of the measured biochemical methane potential (BMP) obtained from published literature.[303] BMP typically results in a higher converted fraction than when the same feedstock is processed in industrial scale digesters. One study that looked at two digesters over the course of less than a year identified sustained periods where full scale digesters produced over 30 percent less methane than predicted by BMP and recommended that designers of digestion systems should assume 10–20 percent lower methane production in full scale digesters than from BMP.[304] Given the limited types of feedstocks, the limited number of digesters evaluated in this study, and the different goals behind the recommendations,[305] we chose a more conservative estimate of 50 percent lower methane production and added specific processing requirements to ensure that D3 RINs generated meet the statutory goal.[306] In the NPRM, we requested comments for other default values of converted fractions. We received multiple comments suggesting that EPA use a conservative default value for cellulosic converted fraction that is 80% of the biomethane potential instead of 50% of the biomethane potential which we proposed. However, as discussed in more detail in the RTC document, the commenters did not provide necessary detail or representative data to justify a higher value, nor did they explain why the higher value was necessary given the ability to submit operational data at registration to establish a higher value. Given these factors, we are finalizing as proposed that the conservative estimates are 50 percent of the biomethane potential. Additionally, one commenter identified a discrepancy between higher heating and lower heating values, and we have corrected the default cellulosic converted fraction to use higher heating values, consistent with the equations in which the value is used.

As with other biogas, biogas produced from simultaneously converting predominantly cellulosic and non-predominantly cellulosic feedstocks is also eligible to be used as renewable CNG/LNG; a biointermediate; or other renewable fuel. We are requiring that the different D-codes be tracked through PTDs from biogas producers and RNG producers, as well as reporting of D-code information into EMTS. Under this approach, biogas producers will specify the proportion of biogas by D-code on their PTDs. The parties using the biogas to generate RINs for RNG (as discussed in Section IX) will use this proportion to calculate the appropriate number of D3 and D5 RINs.

D. BBD Conversion Factor for Percentage Standard

In the 2020–2022 proposed rule, we proposed a change to the conversion factor used in the calculation of applicable percentage standards for BBD.[307] We did not finalize that proposed change in the 2020–2022 final rule. We are now finalizing that change to be implemented for compliance years 2023 and beyond, and we are including data from 2022 in the determination of the appropriate revised conversion factor.

In the 2010 RFS2 rule, we determined that because the BBD standard was a ''diesel'' standard, its volume must be met on a biodiesel-equivalent energy basis.[308] In contrast, the other three standards (cellulosic biofuel, advanced biofuel, and total renewable fuel) must be met on an ethanol-equivalent energy basis. At that time, biodiesel was the only advanced renewable fuel that could be blended into diesel fuel, qualified as an advanced biofuel, and was available at greater than de minimis quantities.

When we established the formula for calculating the applicable percentage standards for BBD in 2010, the formula needed to accommodate the fact that the volume requirement for BBD would be based on biodiesel equivalence while the other three volume requirements would be based on ethanol equivalence. Given the nested nature of the standards, however, RINs representing BBD would also need to be valid for complying with the advanced biofuel and total renewable fuel standards. To this end, we designed the formula for calculating the percentage standard for BBD to include a factor that would convert biodiesel volumes into their ethanol equivalent. This factor was the same as the Equivalence Value (EqV) for biodiesel, 1.5, as discussed in the 2007

[303] Dairy manure value comes from Labatut et al. (2011) Bioresource Technology, 102, p. 2255–2264. DOI: 10.1016/j.biortech.2010.10.035. Swine manure data comes from Vedrenne et al. (2008) Bioresource Technology, 99, p. 146–155. DOI: 10.1016/j.biortech.2006.11.043. Chicken manure data comes from Li et al. (2013) Applied Biochemistry Biotechnology 171, p. 117–127. DOI: 10.1007/s12010–013–0335–7. Municipal sludge data comes from Holliger et al. (2017) Frontiers in Energy Research, 5, 12. DOI: 10.3389/fenrg.2017.00012. Values were converted using the ideal gas law at the stated or inferred conditions and 21,496 Btu lower heating value methane per lb methane.

[304] Holliger et al. (2017) Frontiers in Energy Research, 5, 12. DOI: 10.3389/fenrg.2017.00012.

[305] When designing a gas treatment system, one may use a slight overestimate of biogas production to maximize RNG production. Overestimating is less of a problem in designing a gas treatment system than it is in the RFS program, since overestimating production of biogas will lead to invalidly generated RINs.

[306] See memo ''Final calculation of cellulosic converted fraction values from biochemical methane potential,'' available in the docket for this action.

[307] 86 FR 72474 (December 21, 2021).

[308] See 75 FR 14670, 14682 (March 26, 2010).

RFS1 final rule.[309] The resulting formula[310] (incorporating the recent modification to the definitions of GE_i and DE_i)[311] is shown below:

$$Std_{BBD,i} = 100 \times \frac{RFV_{BBD,i} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$Std_{BBD,i}$ = The biomass-based diesel standard for year i, in percent.

$RFV_{BBD,i}$ = Annual volume of biomass-based diesel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RGSi = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

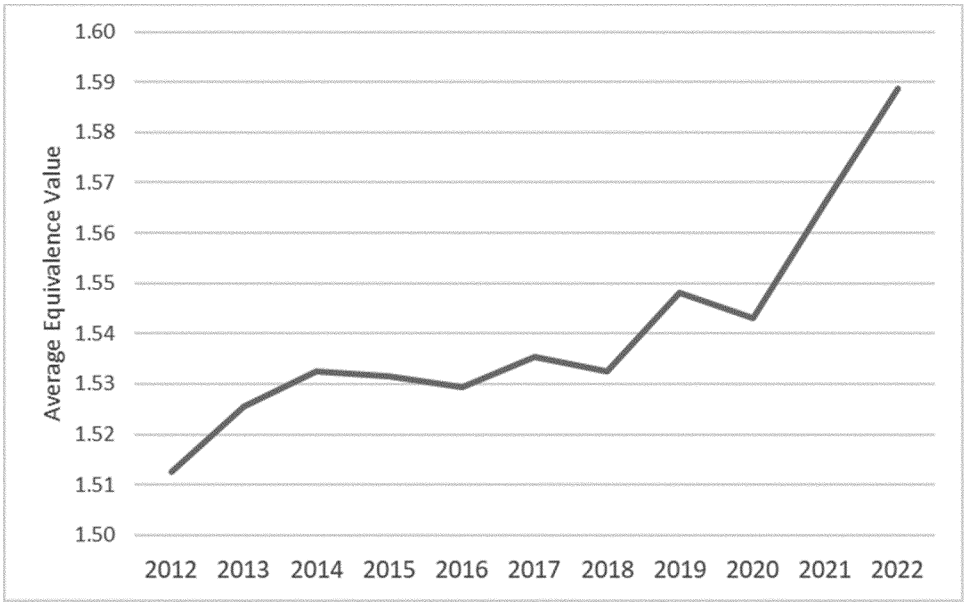
RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

GE_i = The total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

DE_i = The total amount of diesel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

In the years following 2010 when the percentage standard formula for BBD was first promulgated, advanced renewable diesel production has grown. Most renewable diesel has an EqV of 1.7, and its growing presence in the BBD pool means that the average EqV of BBD has also grown.[312]

Figure X.D-1: Average EqV for BBD Containing Both Biodiesel and Renewable Diesel



Source: Consumption of Biodiesel and Renewable Diesel with D4 RINs according to Data from EMTS

Because the formula currently specified in the regulations for calculation of the BBD percentage standard assumes that all BBD used to satisfy the BBD standard is biodiesel, it biases the resulting percentage standard low, given that in reality there is some renewable diesel in BBD. The bias is small, on the order of two percent, and has not impacted the supply of BBD since it is the higher advanced biofuel standard—rather than the BBD standard—that has driven the demand for BBD. Nevertheless, we believe that it is appropriate to modify the factor used in the formula to more accurately reflect the amount of renewable diesel in the BBD pool.

The average EqV of BBD appears to have grown over time without stabilizing. This trend has continued and is consistent with the growth in facilities producing renewable diesel.[313] We proposed to replace the factor of 1.5 in the percentage standard formula for BBD with a factor of 1.57 based on the average EqV for BBD in 2021, while also

[309] See 72 FR 23900, 23921 at Table III.B.4–1 (May 1, 2007).

[310] See 40 CFR 80.1405(c).

[311] See 85 FR 7016 (February 6, 2020).

[312] Under 40 CFR 80.1415(b)(4), renewable diesel with a lower heating value of at least 123,500 Btu/gallon is assigned an EqV of 1.7. A minority of renewable diesel has a lower heating value below 123,500 BTU/gallon and is therefore assigned an EqV of 1.5 or 1.6 based on applications submitted under 40 CFR 80.1415(c)(2).

[313] See RIA Chapter 5.2.

noting that ''we believe that the factor used in the formula for calculating the percentage standard for BBD should be at least 1.57.'' [314] Commenters were generally supportive of this change, with some suggesting the factor should be higher than proposed, and others suggesting we should be open to revisiting this factor again in the future as renewable diesel production increases. Based on the updated data for 2022 shown in Figure X.D–1 showing an average EqV for BBD of 1.59 in 2022, we now believe that the factor used in the formula for calculating the percentage standard for BBD should be at least 1.59. However, we also believe that maintaining consistency with the rounding protocol adopted for EqVs in 2007 is important. As described in the RFS1 rule, all EqVs are rounded to the first decimal place.[315] Applying that rounding protocol here results in factor of 1.6. This is slightly higher than the proposed value of 1.57, but is more consistent with the additional data for 2022 and application of the aforementioned rounding protocol. We are therefore replacing the factor of 1.5 in the percentage standard formula for BBD with a factor of 1.6.[316] Note that we are not changing any other aspect of the percentage standard formula for BBD.

E. Flexibility for RIN Generation

We are revising 40 CFR 80.1426 to simplify and clarify the requirement that renewable fuel producers and importers may only generate RINs if they meet all applicable requirements under the RFS program for the generation of RINs. The regulations EPA promulgated in the 2010 RFS2 final rule at 40 CFR 80.1426(a)(1), (a)(2), and (b) state, in part, that renewable fuel producers ''must'' generate RINs if they meet certain requirements, and 40 CFR 80.1426(c), in turn, prohibits the generation of RINs if a renewable fuel producer cannot demonstrate that they meet the requirements in 40 CFR 80.1426(a)(1), (a)(2), and (b). That rule retained the word ''must'' from the RFS1 regulations but also made it clear that parties cannot generate RINs for biofuel if the feedstock used to produce that biofuel does not satisfy the renewable biomass requirements or if the renewable fuel producer has not met all other applicable requirements, including registration, reporting, and recordkeeping requirements.[317] EPA's longstanding interpretation of these regulatory requirements is that renewable fuel producers that do not want to generate RINs can choose to not register, keep records, or report to EPA. In light of this approach, we have determined that a more straightforward approach will be to revise the regulations to allow, rather than require, RINs to be generated for qualifying renewable fuel. Thus, we are revising 40 CFR 80.1426(a)(1), (a)(2) and (b) to state that RINs ''may only'' be generated if certain requirements are met. We are also removing the provisions for small volume renewable fuel producers at 40 CFR 80.1426(c)(2), (c)(3), and 40 CFR 80.1455 because those provisions are no longer necessary. If any renewable fuel producer, regardless of size, has the ability to choose to generate RINs, then there is no longer a need to provide flexibility for small producers because they will only choose to generate RINs if it were economically beneficial to do so.

F. Changes to Tables in 40 CFR 80.1426

We are making changes to Tables 1 through 4 to 40 CFR 80.1426 in order to conform with current guidelines from the Office of Federal Register (OFR).[318] These tables were designated to 40 CFR 80.1426 and we refer to them as ''Table 1 to 40 CFR 80.1426,'' ''Table 2 to 40 CFR 80.1426,'' etc. Under OFR's guidelines, this way of referring to the tables meant that they should be located at the very end of 40 CFR 80.1426. However, Tables 1 and 2 were located after 40 CFR 80.1426(f)(1)(vi), Table 3 was located in 40 CFR 80.1426(f)(3)(v), and Table 4 was located in 40 CFR 80.1426(f)(3)(vi)(A).

In order to conform with OFR's guidelines, we are moving Tables 1 and 2 to the end of 40 CFR 80.1426, consistent with their current designation. Since we are not changing the designations or contents of these tables as part of this move, all of the existing references to these tables throughout 40 CFR part 80, subpart M, as well as all references in existing EPA actions and documents (including **Federal Register** notices, guidance documents, and adjudications) will remain accurate and valid. In contrast, for Tables 3 and 4, we are creating new provisions within the regulations into which we are moving and consolidating the formulas in these tables. Specifically, we are moving and consolidating the five formulas previously in Table 3 into 40 CFR 80.1426(f)(3)(v), and moving and consolidating the five formulas previously in Table 4 into 40 CFR 80.1426(f)(3)(vi)(A). The formulas themselves remain unchanged and since there are no other references to these tables outside of the paragraphs in which they were located, no additional revisions are necessary to implement this change.

G. Prohibition on RIN Generation for Fuels Not Used in the Covered Location

We are revising 40 CFR 80.1426(c) and 40 CFR 80.1431 to reiterate that parties (*e.g.,* foreign RIN-generating renewable fuel producers and importers) cannot generate RINs for renewable fuel unless it was produced for use in the covered location. The CAA and RFS regulations already limit RIN generation to renewable fuel produced for use in the United States, and these amendments are intended to address any potential confusion on the part of stakeholders. The amendments specify that RINs cannot be generated for renewable fuel that is not produced for use in in the covered location and make such RINs invalid. We note that it is a prohibited activity under 40 CFR 80.1460(b)(2) to generate or transfer invalid RINs, and this revision reinforces that generating RINs for fuel not produced for use in the covered location is a prohibited activity.

H. Separated Food Waste Recordkeeping Requirements

Under the CAA, qualifying renewable fuel must be produced from renewable biomass.[319] To ensure that RIN-generating renewable fuels satisfy this requirement, RFS regulations contain, among other things, recordkeeping provisions that require renewable fuel producers to ''keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used are renewable biomass if RINs are generated.'' [320] In addition to the generally applicable requirements, the RFS regulations also contain provisions for specific types of feedstocks where necessary to ensure that their use is consistent with the statutory and regulatory definitions of renewable biomass.

[314] 87 FR 80582, 80686 (December 30, 2022).

[315] 72 FR 23921, May 1, 2007.

[316] While we are revising the factor of 1.5 in the percentage standard formula for BBD, we have included all four of the percentage standard formulas in our amendatory text for 40 CFR 80.1405(c). This is due to the manner in which the original formulas were published in the CFR, which does not allow for revisions to a single formula without republishing all of the formulas. We are not modifying any aspect of these formulas beyond the change to the factor of 1.5 in the BBD formula.

[317] 40 CFR 80.1426(a)(1)(iii).

[318] Office of the Federal Register, National Archives and Records Administration, ''Document Drafting Handbook,'' August 2018 Edition (Revision 1.4), January 7, 2022.

[319] CAA section 211(o)(1)(J).

[320] 40 CFR 80.1454(d).

One such set of feedstock-specific requirements exists for separated food waste used to produce renewable fuel. In 2010, EPA promulgated a requirement that renewable fuel producers using separated food waste submit, at the time of their registration with EPA to generate RINs: (1) The location of any facility from which the waste stream consisting solely of separated food waste is collected; and (2) A separated food waste plan.[321] However, an unintended effect of requiring renewable fuel producers to submit the locations of the facilities from which separated food waste was collected as part of their facility registration was that producers were required to update their information with EPA every time their feedstock suppliers changed. EPA recognized this could be burdensome for producers and, in 2016, proposed to revise the regulations to remove this provision as a registration requirement and to simply rely on the corresponding recordkeeping requirement.[322] At that time, we noted that renewable fuel producers were also required to retain this information under the recordkeeping requirements under 40 CFR 80.1454.[323]

In 2020, we finalized the removal of this registration requirement and also reiterated that, pursuant to the existing recordkeeping provisions at 40 CFR 80.1454(d), renewable fuel producers were still required to ''keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced; these documents must be sufficient to verify that the feedstocks meet the definition of renewable biomass.'' [324] To emphasize that this requirement remained in the regulations in light of removing the corresponding registration requirement, we also promulgated a provision at 40 CFR 80.1454(j)(1)(ii) requiring renewable fuel producers to keep documents demonstrating the location of any establishment from which the separated food waste stream is collected.

The Clean Fuels Alliance America challenged EPA's promulgation of the separated food waste recordkeeping provision at 40 CFR 80.1454(j)(1)(ii). Petitioners alleged the requirement that renewable fuel producers keep records demonstrating the location of any establishment from which separated food waste is collected is arbitrary and capricious and that renewable fuel producers ''had no opportunity to comment because EPA failed to mention this new recordkeeping requirement in the proposed rule.'' [325]

In the proposal for this action, we emphasized that 40 CFR 80.1454(d), which was introduced in 2010, requires renewable fuel producers to keep records associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used are renewable biomass. However, recognizing that affected stakeholders may have had suggestions for how to better apply this requirement specifically to separated food waste feedstocks, we sought comment on the separated food waste-specific recordkeeping requirement in 40 CFR 80.1454(j)(1)(ii).[326] In particular, we sought comment on how renewable fuel producers using separated food waste as feedstocks could best implement, in a manner consistent with standard business practices within the industry, the requirement to keep records demonstrating where their feedstocks were produced and that the records would be sufficient to verify that the feedstocks meet the definition of renewable biomass. Based on previous discussions with third party feedstock suppliers, independent auditors, and renewable fuel producers we did not propose to modify the provisions of 40 CFR 80.1454. After review and consideration of the comments received on this action, we are not finalizing any of the modifications to the language from those comments. However, we are finalizing the alternative approach that we did propose with modifications based on the comments we received as described below.

We understand there is a desire for independent auditors to play a role in satisfying the requirement that renewable fuel producers keep records demonstrating the location of any establishment from which separate food waste is collected. Specifically, stakeholders have requested that, rather than renewable fuel producers holding the records themselves, independent auditors be allowed to verify the records directly from the feedstock aggregator. While the regulations require the renewable fuel producer to keep the records on the feedstock source and amount as specified under 40 CFR 80.1454(j), as further explained below, we are providing an option to allow independent auditors to verify records held by the feedstock aggregator by leveraging the biointermediates provisions of the RFS program. While most interest in this provision centers around used cooking oil collection, we believe this option can also be useful to third-party collectors of separated yard waste, separated food waste, and separated municipal solid waste.

Under the new option, instead of the renewable fuel producers holding records demonstrating that the feedstock used to produce renewable fuel is renewable biomass, feedstock aggregators may hold them provided that alternative regulatory requirements for the renewable fuel producer and feedstock aggregator are met. The alternative requirements needed to be met are summarized as follows:

- The feedstock aggregator will need to register with EPA and must keep all applicable records of feedstock collection.
- The renewable fuel producer will need to participate in the QAP program.
- PTDs will need to be supplied to the transferee for feedstocks after leaving the feedstock aggregator that include the volume, date, location at time of transfer, and transferor and transferee information.

The feedstock aggregator and the renewable fuel producer that processes those feedstocks will also be subject to the same liability provisions that apply to biointermediate producers and renewable fuel producers that process biointermediates. We note that under the RFS program, other than the limited alternative that we are finalizing in this action, renewable fuel producers must keep records to demonstrate that their renewable fuels are produced from renewable biomass as specified under 40 CFR 80.1454, as applicable. We are finalizing the alternative approach to address the specific circumstance where it is impractical for renewable fuel producers to provide the records specified under the recordkeeping requirements. We also note that if the records do not demonstrate the feedstock is renewable biomass, then the recordkeeping requirement is not met regardless of who is holding the records.

We received comments that having both the renewable fuel producer and feedstock aggregator be subject to QAP would be overly burdensome. We did not intend to have the feedstock aggregator directly participate in the QAP program like a biointermediate

[321] 40 CFR 80.1450(b)(1)(vii)(B).

[322] 81 FR 80828, 80902–03 (November 16, 2016).

[323] *Id.* (''The recordkeeping section of the regulations requires renewable fuel producers to keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that the feedstocks meet the definition of renewable biomass.'').

[324] 85 FR 7016, 7062 (February 6, 2020).

[325] *RFS Power Coalition* v. *U.S. EPA,* No. 20–1046 (D.C. Cir.), Doc. # 1882940 at 38–39, filed Jan. 29, 2021.

[326] We are not reopening the requirement at 40 CFR 80.1454(d).

producer as proposed in the NRPM, and we recognize that imposing direct participation of the feedstock aggregator could significantly increase the burden associated with the proposed option on feedstock aggregators. Based on these comments, we are requiring that only the renewable fuel producer needs to participate in the QAP program (instead of the proposed requirement to have the aggregator also participate). To ensure adequate oversight, we are also requiring that the QAP plan include a description of how the third-party auditor will audit each feedstock aggregator.

We also received comments asking for clarity regarding which obligations apply to feedstock suppliers versus feedstock aggregators. We intended the regulations to cover feedstock aggregators, not feedstock suppliers. We have clarified this in the regulations by updating the language and adding new definitions for feedstock aggregator and feedstock supplier.

Some commenters inquired about third parties holding records on behalf of the feedstock renewable fuel producer.[327] Under EPA's fuels programs, which includes the RFS program, we do not specify how parties must employ persons to fulfill their regulatory burdens so long as the specified party meets all applicable regulatory requirements. We believe that a party may arrange for a contractor to perform actions that meet regulatory requirements (*e.g.,* taking samples, analyzing samples, and reporting results to EPA) so long as that contractor adheres to the regulatory requirements, is acting on behalf of the regulated party, and the party understands that they will remain liable for ensuring the applicable regulatory requirements have been met. We believe this same arrangement is allowed for the separated food waste recordkeeping requirements. We want to reiterate, however, that the regulated party is liable for meeting the CAA and regulatory requirements and for any action of any party working on their behalf, whether it is a contractor, subcontractor, or other entity. The renewable fuel producer must make or arrange for the records to be made available to EPA upon request consistent with the regulatory requirements at 40 CFR 80.1454(t). Since the parties that are completing work on behalf of the regulated party are not independent of the company, they do not meet the independence requirements for QAP auditors or attest auditors, so they cannot audit the company in these roles. With the important conditions described here, we believe EPA's acceptance of contractors to conduct work on behalf of regulated parties addresses the commenters request to describe more clearly the circumstances when a contractor may hold the required feedstock records on behalf of a renewable fuel producer.

Since the feedstock aggregators are not substantially altering the feedstock before transferring the feedstock, we believe fewer requirements are necessary than for biointermediates to provide sufficient oversight of the feedstock and renewable fuel production process. Specifically, we are not requiring that the feedstock aggregator supply an engineering review, separated food waste plan, separated yard waste plan, or separated MSW plan as a part of registration. However, the renewable fuel producer will still need to supply these documents as part of their registration. In addition, the feedstock is not considered a biointermediate, so the feedstock aggregator can sell feedstock to a biointermediate producer, which could then sell a biointermediate to a renewable fuel facility.

I. Definition of Ocean-Going Vessels

We are revising the definition of ''fuel used in ocean-going vessels'' as proposed with slight modification to ensure that obligated parties include diesel fuel in their RVOs in a consistent manner and as required by the CAA and so that renewable fuel producers know which fuels used in marine applications are eligible for RIN generation.

Fuel used in ocean-going vessels is explicitly excluded from the CAA's definition of ''transportation fuel,'' [328] and does not need to be included in RVO calculations.[329] Relatedly, renewable fuel producers cannot generate RINs on renewable fuel used in ocean-going vessel because such fuel is not considered transportation fuel.[330] The RFS regulations defined the term ''[f]uel for use in an ocean-going vessel'' to mean: ''(1) any marine residual fuel (whether burned in ocean waters, Great Lakes, or other internal waters); (2) Emission Control Area (ECA) marine fuel, pursuant to § 80.2 and 40 CFR 1090.80 (whether burned in ocean waters, Great Lakes, or other internal waters); and (3) Any other fuel intended for use only in ocean-going vessels.'' [331] The term ''ocean-going vessels'' referenced in sub-prong (3), however, was not further defined in the regulations.

In the RFS2 final rule, we stated that EISA specifies that ''transportation fuels'' do not include fuels for use in ocean-going vessels and that we were interpreting that ''fuels for use in ocean-going vessels'' means residual or distillate fuels other than motor vehicle, nonroad, locomotive, or marine diesel fuel (MVNRLM) intended to be used to power large ocean-going vessels (*e.g.,* those vessels that are powered by Category 3 (C3), and some Category 2 (C2), marine engines and that operate internationally).[332] This statement made clear that vessels powered by C3 marine engines are ocean-going vessels and that fuel supplied to those vessels does not need to be included in obligated parties' RVO calculations.

We further explained the reference to ''and some Category (C2) marine engines'' in the RFS2 RTC document, in which we noted that while Category 1 (C1) and C2 engines are generally required to use MVNLRM diesel fuel (*i.e.,* transportation fuel), we had, at the time, recently established new standards for C3 marine engines that allowed C1 and C2 auxiliary engines equipped on vessels powered by C3 marine engines to utilize fuels other than MVNRLM diesel fuel.[333] We noted further that this could result in a vessel carrying three fuels: MVNRLM, ECA marine fuel, and residual fuels, and the latter two would not be considered transportation fuel under the program. In other words, the reference to ''and some Category (C2) marine engines'' in the RFS2 final rule refers to auxiliary engines equipped on vessels that are primarily powered by C3 marine engines.

Since the RFS2 regulations were promulgated, we have received several questions from the regulated community on the subject of what constitutes an ocean-going vessel, and what fuel must be included in obligated parties' RVO calculations. To address this, we proposed to define ocean-going vessels as ''vessels that are primarily (*i.e.,* ≥75 percent) propelled by engines meeting the definition of 'Category 3' in 40 CFR 1042.901.'' In other words, if a vessel is primarily propelled by C3 marine engines, it is an ocean-going vessel. Further, fuel used in Category 1 (C1) and Category 2 (C2) auxiliary engines installed on ocean-going vessels—which

[327] Commenters recommended this in part because they would like to use third-party tracking software to manage the collection and disclosure of data.

[328] CAA section 211(o)(1)(L).

[329] 40 CFR 80.1407(f)(8).

[330] 40 CFR 80.1426(a)(1)(iv).

[331] 40 CFR 80.1401.

[332] 75 FR 14670, 14721 (March 26, 2010).

[333] U.S. EPA, Renewable Fuel Standards Program (RFS2) Summary and Analysis of Comments, at 3–198–3–200. (February 2010).

are often used for purposes other than propulsion—do not need to be included in obligated parties' RVO calculations because the inquiry turns on the type of engine that primarily propels the vessel, not the actual engines that use the fuel. On the other hand, if a vessel is primarily propelled by C1 or C2 marine engines, they are not ocean-going vessels regardless of whether those vessels operate on international waters, and fuel supplied to these vessels must be included in obligated parties' RVO calculations.

We received one comment on the proposed definition of ''ocean-going vessel.'' The commentor stated that is unclear from the proposed definition how an obligated party supplying marine fuel would have knowledge about the percentage of propulsion provided by a vessel's various Category 1, 2, or 3 engines. As explained in the NPRM, auxiliary engines equipped on large ocean-going vessels are typically used for purposes other than propulsion (*e.g.,* electricity generation). Auxiliary engines, however, can be used for propulsion in emergencies, which is why the proposed definition was based on the primary type of engine used to propel a vessel. However, if a vessel is equipped with a Category 3 engine it can be assumed that the vessel will primarily use that engine for propulsion because it would not be practical or economical to propel that vessel primarily with smaller engines. Therefore, we are finalizing a modified definition of ocean-going vessel that is consistent with the intent of the proposed definition that turns exclusively on whether the vessel is equipped with a Category 3 engine. Specifically, we are defining ocean-going vessels as ''vessels that are equipped with engines meeting the definition of 'Category 3' in 40 CFR 1042.901.''

We are also revising the definitions of MVNRLM diesel fuel and ECA marine fuel to be consistent with the flexibilities that allow for the exclusion of certified NTDF from refiners' RVOs[334] and the flexibilities to certify diesel fuel for multiple purposes as allowed under EPA's fuel quality regulations.[335] Specifically, we are removing the restriction that fuel that meets the requirements of MVNRLM diesel fuel cannot be ECA marine fuel, as this exclusion conflicts with the designation provisions in 40 CFR part 1090.[336]

The previous definitions for MVNRLM diesel fuel and ECA marine fuel excluded fuel that conforms to the requirements of MVNRLM diesel fuel from the definition of ECA marine fuel, without regard to its actual use. Under this language, obligated parties who produced 15 ppm diesel fuel had to include the designated MVNRLM diesel fuel in their RVO calculations even if the fuel was designated and used as ECA marine fuel. In the 2020 annual rule, we intended that obligated parties could use the certified NTDF provisions to exclude ECA marine fuel used in ocean-going vessels but did not revise the definitions of MVNRLM diesel fuel and ECA marine fuel consistent with our intent. In this action, we are amending the definitions of MVNRLM diesel fuel and ECA marine fuel to clarify that 15 ppm distillate fuel that is properly designated as certified NTDF may also be designated as ECA marine fuel and excluded from a producer or importer's RVO calculations.

J. Bond Requirement for Foreign RIN-Generating Renewable Fuel Producers and Foreign RIN Owners

We are finalizing two changes to the bonding requirements for foreign RIN-generating renewable fuel producers and foreign RIN owners. First, we are increasing the amount of the foreign bond amount from $0.01 to $0.22 per RIN. The bond requirement previously applicable to foreign RIN-generating renewable fuel producers and foreign RIN owners was developed in the RFS1 rule to deter noncompliance and to assist with the collection of any judgments that result from a foreign RIN-generating renewable fuel producer's noncompliance with the RFS regulations.[337] In that rulemaking, the bond was set to $0.01 per RIN, when the expected value of RINs was much lower. Since 2013, RIN prices have hovered significantly above $0.01, and recently, RINs in all categories have consistently sold above $1.00 per RIN.[338] As explained in the 2023–2025 NPRM, the increased value of RINs makes a bond requirement of $0.01 per RIN neither sufficient to deter potential noncompliance nor likely to yield bonds of sufficient size to satisfy judicial or administrative judgments against foreign RIN-generating renewable fuel producers or foreign RIN owners. For these reasons, we are raising the bond requirement to more accurately reflect the current value of RINs, so that bonds can serve their intended purposes. While we had proposed raising the bond requirement to $0.30 per RIN—which was 10 percent of the price of a D3 RIN at the time of the proposal—after considering the comments received, we have re-calculated the amount to $0.22 per RIN, which is 10 percent of the average price of a D3 RIN for the most recent, full five-year period (2018–2022).[339] This approach accounts for recent fluctuations in price over a longer and representative time period.

Second, we are removing the option to make a direct payment to the U.S. Treasury under 40 CFR 80.1466(h) and are adopting the surety bond as the sole method to fulfill the foreign bond requirement. We have considered a variety of options used by other EPA programs and by other Federal agencies, including examining the financial assurance methods used by EPA for the Resource Conservation and Recovery Act (RCRA) and for the Transition Program for Equipment Manufacturers (TPEM) program. We also considered approaches used by other federal agencies, such as the Alcohol and Tobacco Trade Board (TTB) brewer's bonds, including surety and collateral (''cash'') bonds. Our inquiry led us to conclude that alternative approaches either do not work with the RFS program or are too burdensome to implement, and that the surety bond approach is the most appropriate and workable for the RFS program.

The effective date for the new bonding provisions will be April 1, 2024. We are giving a later effective date because we appreciate that parties may need this additional time to come into compliance with these new bonding requirements.

[334] 40 CFR 80.1407(f)(11).

[335] 40 CFR 1090.1015(a).

[336] We note that we are not changing the treatment of certified NTDF under the RFS program in this action.

[337] 72 FR 24007 (May 1, 2007).

[338] See RFS pricing data available at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information.*

[339] We selected average D3 RIN prices over the previous five years to smooth out fluctuations in RIN prices over time. We did not base our bond amount on projected RIN prices because estimating future RIN prices involves a lot of uncertainty and would not necessarily provide a more appropriate bond price. We pegged our bond prices to D3 RINs because D3 RINs have historically been the most valuable, and the purpose of the change is to ensure that bond prices serve as a sufficient deterrent to non-compliance by foreign parties. Pegging the price to a less valuable RIN would erode the efficacy of the deterrent. We chose 10 percent because we believed a higher percentage may be too costly for foreign RIN generators/owners to participate in the program. Percentages lower than 10 percent would have resulted in an insufficient deterrent against non-compliance.

K. Definition of Produced From Renewable Biomass

We are not finalizing at this time a definition of produced from renewable biomass or the related amendments to the regulatory provisions related to co-processed fuels. CAA section 211(o)(1)(J) defines renewable fuel as ''fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.'' [340] However, neither the CAA nor EPA regulations define what it means for a fuel to be produced from renewable biomass. In the 2020–2022 NPRM, we proposed to define in 40 CFR 80.1401 that ''produced from renewable biomass'' means the energy in the finished fuel comes from renewable biomass. After reviewing comments on that proposal, we decided not to finalize a definition for ''produced from renewable biomass'' in that action. In the 2023–2025 NPRM, we re-proposed the definition of ''produced from renewable biomass'' again based on the energy content approach that was in the 2020–2022 NPRM. We also sought comment on alternative definitions and ways that renewable fuel producers could demonstrate that the fuel they produce meets this statutory requirement. These included both a ''mass-based'' definition where the mass in the finished fuel comes from the renewable biomass, as well as a ''broad'' approach whereby either the energy or the mass could come from the renewable biomass.

We received near universal support from stakeholders in comment on the proposal for the broad approach. In order to allow us more time to fully consider the comments received, as well as to determine what would be needed to implement such a broad approach, we are not finalizing a definition of ''produced from renewable biomass'' in this action. Nevertheless, we still believe a definition of ''produced from renewable biomass'' would be useful because we have received multiple questions from stakeholders on this aspect of the renewable fuel definition. Clarifying what it means for a fuel to be produced from renewable biomass will reduce confusion on this issue and avoid a situation where a party expends resources on researching or developing a new fuel technology with the hopes of generating RINs only to later discover that the fuel does not qualify as having been produced from renewable biomass.

Given that we are not finalizing this definition in this action, we are also not finalizing the proposed changes to corresponding regulations in 80.1426(f)(4) nor are we finalizing the proposed changes to the definition of co-processed fuel or co-processed intermediate.

L. Technical Amendments

We are making numerous technical amendments to the RFS and fuel quality regulations. These amendments are being made to correct minor inaccuracies and clarify the current regulations. These changes are described in Table X.L–1.

TABLE X.L–1—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS TO RFS AND FUEL QUALITY REGULATIONS

Part and section of Title 40	Description of revision
80.2	Adding definition of business days consistent with the definition at 40 CFR 1090.80.
80.2	Clarifying the definition of renewable fuel to specify that fuel must be used in the covered location.
80.4; 80.7; 80,11; 80.1415; 80.1416; 80.1426; 80.1431; 80.1441; 80.1443; 80.1449 through 80.1454; 80.1456; 80.1466; 80.1467; 80.1469; 80.1474; and 80.1478.	Removing all references to ''the Administrator'' and replacing them with ''EPA.''
80.2, 80.1408, and 1090.1015	Amending the definition of certified non-transportation distillate fuel (NTDF) at 40 CFR 80.2 and the diesel fuel designation requirements under 40 CFR 1090.1015 to clarify that the certified NTDF provisions at 40 CFR 80.1408 may be used for NTDF other than heating oil or ECA marine fuel.
80.2 and 80.1453(a)(12)	Clarifying that renewable naphtha may be blended to make E85.
80.1450(b)(1)(viii)(E)	Clarifying that independent third-party engineers must visit material recovery facilities as part of the engineering review for facilities that produce renewable fuels from separated MSW.
80.1469(c)(6)	Clarifying that independent third-party auditors must review all relevant documentation required under the RFS program when verifying elements under the QAP program.
1090.55(c)	Amending to correct cross-reference from 40 CFR part 32 to 2 CFR part 1532.
1090.80	Amending to correct the list of states that are part of PADD II.
1090.805(a)(1)(iv)	Clarifying that RCOs may add a delegate, as allowed under 1090.800(d).
1090.1830(a)(3)	Amending to add a missing word.

XI. Statutory and Executive Order Reviews

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

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

Under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, this action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to suggestions or recommendations received as part of the Executive Order 12866 review process have been documented in the docket. EPA prepared an analysis of potential costs and benefits associated with this action. This analysis is presented in the RIA, available in the docket for this action.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for

[340] CAA section 211(o)(2)(A)(i) adds the requirement that renewable fuel must have ''lifecycle [GHG] emissions that are at least 20 percent less than baseline lifecycle [GHG] emissions'' (unless exempted under the statutory grandfather provision as implemented in 40 CFR 80.1403).

approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2722.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

We are finalizing compliance provisions necessary to ensure that the production, distribution, and use of biogas, RNG, and RINs are consistent with Clean Air Act requirements under the RFS program. These compliance provisions include registration, reporting, product transfer documents (PTDs), and recordkeeping requirements. The information requirements are under 40 CFR part 80, subparts E and M, and 40 CFR part 1090. Interested parties may wish to review the following related ICRs: Fuels Regulatory Streamlining (Final Rule), OMB Control Number 2060–0731, expires January 31, 2024; Renewable Fuel Standard (RFS) Program: RFS Final Rules, OMB Control No. 2060–0740, expires October 31, 2025; and Renewable Fuel Standard (RFS) Program (Renewal), OMB Control Number 2060–0725, expires November 30, 2025.

Respondents/affected entities: Biogas producers; RNG producers; RNG importers; biogas closed-distribution RIN generators; QAP providers; RIN separators; parties including renewable fuel producers, biointermediate producers, or feedstock aggregators who use alternative recordkeeping under 80.1479; producers of renewable fuel from biogas used as a biointermediate or RNG used as a feedstock; and third parties, including third-party engineers and attest auditors.

Respondent's obligation to respond: Mandatory, under 40 CFR parts 80 and 1090.

Estimated number of respondents: 7,835.

Frequency of response: On occasion, monthly, quarterly, or annually.

Total estimated burden: 82,441 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $5,684,472 (per year), of which $5,659,472 is purchased services, and which includes $25,000 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, EPA will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA.

For the biogas regulatory reform provisions, we are modifying the previous biogas provisions to make compliance less burdensome for regulated parties. With respect to the other amendments to the RFS and fuel quality regulations, this action makes minor corrections and modifications to those regulations. As such, we do not anticipate that there will be any significant adverse economic impact on directly regulated small entities as a result of these revisions.

The small entities directly regulated by the annual percentage standards associated with the RFS volumes are small refiners that produce gasoline or diesel fuel, which are defined by the Small Business Administration (SBA) at 13 CFR 121.201. To evaluate the impacts of the 2023–2025 volume requirements on small entities, we have conducted a screening analysis [341] to assess whether we should make a finding that this action will not have a significant economic impact on a substantial number of small entities. Currently available information shows that the impact on small entities from implementation of this rule will not be significant. We have reviewed and assessed the available information, which shows that obligated parties, including small entities, are able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[342] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchasing separated RINs. The costs of the RFS program are thus being passed on to consumers in a highly competitive marketplace.

While the rule will not have a significant economic impact on a substantial number of small entities, there are existing compliance flexibilities in the program that are available to small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20 percent RIN rollover allowance (up to 20 percent of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, provided that the deficit is satisfied together with the next year's RVO). In the 2010 RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.[343]

In sum, this rule will not change the compliance flexibilities currently offered to small entities under the RFS program and available information shows that the impact on small entities from implementation of this rule will not be significant.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, for state, local, or tribal governments. This action imposes no enforceable duty on any state, local or tribal governments. This action contains a federal mandate under UMRA that may result in expenditures of $100 million or more for the private sector in any one year. Accordingly, the costs associated with this rule are discussed in Section IV and in the RIA.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This action will be implemented at the Federal level and affects transportation fuel refiners,

[341] See RIA Chapter 11.

[342] For a further discussion of the ability of obligated parties—including small refiners—to recover the cost of RINs, see April 2022 SRE Denial Action and June 2022 SRE Denial Action.

[343] 75 FR 14858–62 (March 26, 2010).

blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments will be affected only to the extent they produce, purchase, or use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

This action is subject to Executive Order 13045 because it is a significant regulatory action under section 3(f)(1) of Executive Order 12866, and EPA believes that the environmental health or safety risks of the pollutants impacted by this action may have a disproportionate effect on children. The 2021 Policy on Children's Health also applies to this action.[344]

Children make up a substantial fraction of the U.S. population, and often have unique factors that contribute to their increased risk of experiencing a health effect from exposures to ambient air pollutants because of their continuous growth and development. Children are more susceptible than adults to many air pollutants because they have: (1) A developing respiratory system; (2) Increased ventilation rates relative to body mass compared with adults; (3) An increased proportion of oral breathing, particularly in boys, relative to adults; and (4) Behaviors that increase chances for exposure. Even before birth, the developing fetus may be exposed to air pollutants through the mother that affect development and permanently harm the individual when the mother is exposed. Certain motor vehicle emissions present greater risks to children as well. Early life stages (*e.g.,* children) are thought to be more susceptible to tumor development than adults when exposed to carcinogenic chemicals that act through a mutagenic mode of action.[345] Exposure at a young age to these carcinogens could lead to a higher risk of developing cancer later in life.

The biofuel volumes associated with this rulemaking may reduce GHGs, potentially mitigating the impacts of climate change on children. Because children have greater susceptibility to the impacts of a changing climate, as referenced in RIA Chapter 9.6, these standards could have particular benefits for children's health.[346] As discussed in RIA Chapter 4, the biofuel volumes associated with the rulemaking may also impact other air pollutant emissions both positively and negatively. Because of their greater susceptibility to air pollution and their increased time spent outdoors these standards could also have more pronounced impacts on children's health.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action establishes the required renewable fuel content of the transportation fuel supply for 2023, 2024, and 2025 pursuant to the CAA. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply by increasing energy independence and security.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. In accordance with the requirements of 1 CFR 51.5, we are incorporating by reference the use of test methods and standards from the American Petroleum Institute (API), American Public Health Association (APHA), ASTM International (ASTM), and European Committee for Standardization (CEN). A detailed discussion of these test methods and standards can be found in Sections IX.I and X.C. The standards and test methods referenced in this action may be obtained through the following avenues:

For API standards, copies of these materials may be obtained from the API website (*www.api.org*) or by calling API at (202) 682–8000. API standards referenced in this rule are also available for public review in read-only format in the API IBR Reading Room at *publications.api.org*.

For APHA standards, copies of these materials may be obtained from the standard methods website (*www.standardmethods.org*) or by calling APHA at (202) 777–2742.

For ASTM standards, copies of these materials may be obtained from the ASTM website (*www.astm.org*) or by calling ASTM at (877) 909–2786. ASTM standards referenced in this rule are also available for public review in read-only format in the ASTM Reading Room at *www.astm.org/epa.htm*.

For CEN standards, copies of these materials may be obtained from the CEN website (*www.cencenelec.eu*) or by calling CEN at + 32 2 550 08 11.

To meet the Office of the Federal Register requirements for incorporation by reference structure and formatting requirements, EPA is moving the centralized IBR section (§ 80.1468, which applies to all of part 80) out of subpart M and into subpart A (which also applies to all of part 80). EPA is also adding standards that were approved for § 80.8 but never consolidated in the original centralized IBR section into the new centralized section at § 80.12.

In addition to the standards and test methods listed below, ASTM D1250, ASTM D4442, ASTM D4444, ASTM D6866, and ASTM E870 are also referenced in the regulatory text of this final rule. They were approved for IBR for the sections referenced as of July 1, 2022, and no changes are being made aside from those described to the centralized IBR section. ASTM D4057, ASTM D4177, ASTM D5842, and ASTM D5854 are also referenced in the regulatory text of this final rule. They were approved for IBR for the sections referenced as of April 28, 2014, and no changes are being made aside from those described to the centralized IBR section. ASTM E711 is also referenced in the regulatory text of this final rule. It was approved for IBR for the section referenced as of July 1, 2010, and no changes are being made aside from those described to the centralized IBR section.

[344] U.S. Environmental Protection Agency (2021). 2021 Policy on Children's Health. Washington, DC. *https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf.*

[345] U.S. Environmental Protection Agency. (2005). Supplemental guidance for assessing susceptibility from early-life exposure to carcinogens. Washington, DC: Risk Assessment Forum. EPA/630/R–03/003F. *https://www.epa.gov/sites/default/files/2013-09/documents/childrens_supplement_final.pdf.*

[346] The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment, USGCRP 2016.

TABLE XI.I–1—STANDARDS AND TEST METHODS TO BE INCORPORATED BY REFERENCE

Organization and standard or test method	Description
API MPMS 14.1–2016, Manual of Petroleum Measurement Standards Chapter 14—Natural Gas Fluids Measurement Section 1—Collecting and Handling of Natural Gas Samples for Custody Transfer, 7th Edition, May 2016.	Standard describing how to collect, handle, and transfer gas samples for chemical analysis.
API MPMS 14.3.1–2012, Manual of Petroleum Measurement Standards Chapter 14.3.1—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 1: General Equations and Uncertainty Guidelines, 4th Edition, including Errata July 2013, Reaffirmed, July 2022.	Standard describing engineering equations, installation requirements, and uncertainty estimations of square-edged orifice meters in measuring the flow of natural gas and similar fluids.
API MPMS 14.3.2–2016, Manual of Petroleum Measurement Standards Chapter 14.3.2—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 2: Specification and Installation Requirements, 5th Edition, March 2016.	Standard describing design and installation of square-edged orifice meters for measuring flow of natural gas and similar fluids.
API MPMS 14.3.3–2013, Manual of Petroleum Measurement Standards Chapter 14.3.3—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 3: Natural Gas Applications, 4th Edition, Reaffirmed, June 2021.	Standard describing applications using square-edged orifice meters for measuring flow of natural gas and similar fluids.
API MPMS 14.3.4–2019, Manual of Petroleum Measurement Standards Chapter 14.3.4—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 4—Background, Development, Implementation Procedure, and Example Calculations, 4th Edition, October 2019.	Standard describing the development of equations for coefficient of discharge, including a calculation procedure, for square-edged orifice meters measuring flow of natural gas and similar fluids.
API MPMS 14.12–2017, Manual of Petroleum Measurement Standards Chapter 14—Natural Gas Fluid Measurement Section 12—Measurement of Gas by Vortex Meters, 1st Edition, March 2017.	Standard describing the calculation of flow using gas vortex meters for measuring the flow of natural gas and similar fluids.
APHA SM 2540, Solids, revised June 10, 2020	Standard describing how to measure the total solids, volatile solids, and other solid properties of wastewater sludge and similar substances.
ASTM D975–21, Standard Specification for Diesel Fuel, approved August 1, 2021.	Diesel fuel specifications that must be met to qualify for RINs for renewable fuels.
ASTM D3588–98(R2017)e1, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, approved April 1, 2017.	Calculation protocol for aggregate properties of gaseous fuels from compositional measurements.
ASTM D4888–20, Standard Test Method for Water Vapor in Natural Gas Using Length-of-Stain Detector Tubes, approved December 15, 2020.	Standard specifying how to measure water vapor concentration in gaseous fuel samples
ASTM D5504–20, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, approved November 1, 2020.	Standard specifying how to measure sulfur-containing compounds in a gaseous fuel sample.
ASTM D6751–20a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, approved August 1, 2020.	Biodiesel fuel specifications that must be met to qualify for RINs for renewable fuels.
ASTM D6866–22, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved March 15, 2022.	Radiocarbon dating test method to determine the renewable content of biogas and RNG.
ASTM D7164–21, Standard Practice for On-line/At-line Heating Value Determination of Gaseous Fuels by Gas Chromatography, approved April 1, 2021.	Standard specifying how to use and maintain an on-line gas chromatogram for determining heating value of a gaseous fuel.
ASTM D8230–19, Standard Test Method for Measurement of Volatile Silicon-Containing Compounds in a Gaseous Fuel Sample Using Gas Chromatography with Spectroscopic Detection, approved June 1, 2019.	Standard specifying how to measure silicon-containing compounds in a gaseous fuel sample.
EN 17526:2021(E), Gas meter—Thermal-mass flow-meter based gas meter, approved July 11, 2021.	Standard specifying the measurement of flow using a thermal mass flow meter.

J. Executive Orders 12898 (Federal Actions To Address Environmental Justice in Minority Populations, and Low-Income Populations) and 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All)

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities with environmental justice concerns.

EPA believes that the human health and environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. A summary of our approach for considering potential EJ concerns as a result of this action can be found in Sections I.B and IV.E, and our EJ analysis (including a discussion of this action's potential impacts on GHGs, air quality, water quality, and fuel and food prices) can be found in RIA Chapter 9.

EPA believes that this action may result in some new disproportionate and adverse effects on communities with environmental justice concerns, while also mitigating some effects on these populations. Some of these effects are not practicable to assess. This rule will reduce GHG emissions, which will benefit communities with

environmental justice concerns. The manner in which the market responds to the provisions in this rule could also have non-GHG impacts. Replacing petroleum fuels with renewable fuels can also have localized impacts on water and air exposure for communities living near facilities that produce renewable fuel, gasoline, or diesel fuel. Replacing petroleum fuels with renewable fuels is projected to have marginal impacts on food and fuel prices. These price impacts may have disproportionate impacts on low-income populations who spend a larger proportion of their income on food and fuel. EPA received public comment from several groups concerned about the use of biogas in the RFS, particularly from landfills and concentrated animal feeding operations. EPA solicited further discussion from these groups when considering the environmental justice impacts of this rule. The majority of the comments and feedback received was focused on potential impacts of the proposed renewable electricity provisions, which we have decided not to finalize with this action. However, EPA will continue to engage with stakeholders on impacts of the RFS program related to biogas use and expansion.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

XII. Statutory Authority

Statutory authority for this action comes from sections 114, 203–05, 208, 211, and 301 of the Clean Air Act, 42 U.S.C. 7414, 7522–24, 7542, 7545, and 7601.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Incorporation by reference, Oil imports, Petroleum, Renewable fuel.

40 CFR Part 1090

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR parts 80 and 1090 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart A—General Provisions

■ 2. Revise § 80.2 to read as follows:

§ 80.2 Definitions.

The definitions of this section apply in this part unless otherwise specified. Note that many terms defined here are common terms that have specific meanings under this part.

Actual peak capacity means 105% of the maximum annual volume of renewable fuels produced from a specific renewable fuel production facility on a calendar year basis.

(1) For facilities that commenced construction prior to December 19, 2007, the actual peak capacity is based on the last five calendar years prior to 2008, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

(2) For facilities that commenced construction after December 19, 2007 and before January 1, 2010, that are fired with natural gas, biomass, or a combination thereof, the actual peak capacity is based on any calendar year after startup during the first three years of operation.

(3) For all other facilities not included above, the actual peak capacity is based on the last five calendar years prior to the year in which the owner or operator registers the facility under the provisions of § 80.1450, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

Adjusted cellulosic content means the percent of organic material that is cellulose, hemicellulose, and lignin.

Advanced biofuel means renewable fuel, other than ethanol derived from cornstarch, that has lifecycle greenhouse gas emissions that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.

Agricultural digester means an anaerobic digester that processes only animal manure, crop residues, or separated yard waste with an adjusted cellulosic content of at least 75%. Each and every material processed in an agricultural digester must have an adjusted cellulosic content of at least 75%.

Algae grown photosynthetically are algae that are grown such that their energy and carbon are predominantly derived from photosynthesis.

Annual cover crop means an annual crop, planted as a rotation between primary planted crops, or between trees and vines in orchards and vineyards, typically to protect soil from erosion and to improve the soil between periods of regular crops. An annual cover crop has no existing market to which it can be sold except for its use as feedstock for the production of renewable fuel.

Approved pathway means a pathway listed in table 1 to § 80.1426 or in a petition approved under § 80.1416 that is eligible to generate RINs of a particular D code.

Areas at risk of wildfire are those areas in the ''wildland-urban interface'', where humans and their development meet or intermix with wildland fuel. Note that, for guidance, the SILVIS laboratory at the University of Wisconsin maintains a website that provides a detailed map of areas meeting this criteria at: *www.silvis.forest.wisc.edu/projects/US_WUI_2000.asp.* The SILVIS laboratory is located at 1630 Linden Drive, Madison, Wisconsin 53706 and can be contacted at (608) 263–4349.

A–RIN means a RIN verified during the interim period by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(a) following the audit process specified in § 80.1472.

Assigned RIN means a RIN assigned to a volume of renewable fuel or RNG pursuant to § 80.1426(e) or § 80.125(c), respectively, with a K code of 1.

Audited facility means any facility audited under an approved quality assurance plan under this part.

Audited party means a party that pays for or receives services from an independent third party under this part.

Baseline lifecycle greenhouse gas emissions means the average lifecycle greenhouse gas emissions for gasoline or diesel (whichever is being replaced by the renewable fuel) sold or distributed as transportation fuel in 2005.

Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity or nameplate capacity as applicable pursuant to § 80.1450(b)(1)(v)(A) through (C), of a specific renewable fuel

production facility on a calendar year basis.

Batch pathway means each combination of approved pathway, equivalence value as determined under § 80.1415, and verification status for which a facility is registered.

Biocrude means a liquid biointermediate that meets all the following requirements:

(1) It is produced at a biointermediate production facility using one or more of the following processes:

(i) A process identified in row M under table 1 to § 80.1426.

(ii) A process identified in a pathway listed in a petition approved under § 80.1416 for the production of renewable fuel produced from biocrude.

(2) It is to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.

Biodiesel means a mono-alkyl ester that meets ASTM D6751 (incorporated by reference, see § 80.12).

Biodiesel distillation bottoms means the heavier product from distillation at a biodiesel production facility that does not meet the definition of biodiesel.

Biogas means a mixture of biomethane, inert gases, and impurities that meets all the following requirements:

(1) It is produced through the anaerobic digestion of renewable biomass under an approved pathway.

(2) Non-renewable components have not been added.

(3) It requires removal of additional components to be suitable for its designated use (*e.g.,* as a biointermediate, to produce RNG, or to produce biogas-derived renewable fuel).

Biogas closed distribution system means the infrastructure contained between when biogas is produced and when biogas or treated biogas is used to produce biogas-derived renewable fuel within a discrete location or series of locations that does not include placement of biogas, treated biogas, or RNG on a natural gas commercial pipeline system.

Biogas closed distribution system RIN generator means any party that generates RINs for renewable CNG/LNG in a biogas closed distribution system.

Biogas-derived renewable fuel means renewable CNG/LNG or any other renewable fuel that is produced from biogas or RNG, including from biogas used as a biointermediate.

Biogas producer means any person who owns, leases, operates, controls, or supervises a biogas production facility.

Biogas production facility means any facility where biogas is produced from renewable biomass under an approved pathway.

Biogas used as a biointermediate means biogas or treated biogas that a renewable fuel producer uses to produce renewable fuel other than renewable CNG/LNG at a separate facility from where the biogas is produced.

Biointermediate means any feedstock material that is intended for use to produce renewable fuel and meets all the following requirements:

(1) It is produced from renewable biomass.

(2) It has not previously had RINs generated for it.

(3) It is produced at a facility registered with EPA that is different than the facility at which it is used as feedstock material to produce renewable fuel.

(4) It is produced from the feedstock material identified in an approved pathway, will be used to produce the renewable fuel listed in that approved pathway, and is produced and processed in accordance with the process(es) listed in that approved pathway.

(5) Is one of the following types of biointermediate:

(i) Biocrude.

(ii) Biodiesel distillate bottoms.

(iii) Biomass-based sugars.

(iv) Digestate.

(v) Free fatty acid (FFA) feedstock.

(vi) Glycerin.

(vii) Soapstock.

(viii) Undenatured ethanol.

(ix) Biogas used to make a renewable fuel other than renewable CNG/LNG.

(6) It is not a feedstock material identified in an approved pathway that is used to produce the renewable fuel specified in that approved pathway.

Biointermediate import facility means any facility as defined in 40 CFR 1090.80 where a biointermediate is imported from outside the covered location into the covered location.

Biointermediate importer means any person who owns, leases, operates, controls, or supervises a biointermediate import facility.

Biointermediate producer means any person who owns, leases, operates, controls, or supervises a biointermediate production facility.

Biointermediate production facility means all of the activities and equipment associated with the production of a biointermediate starting from the point of delivery of feedstock material to the point of final storage of the end biointermediate product, which are located on one property, and are under the control of the same person (or persons under common control).

Biomass-based diesel means a renewable fuel that has lifecycle greenhouse gas emissions that are at least 50 percent less than baseline lifecycle greenhouse gas emissions and meets all of the requirements of paragraph (1) of this definition:

(1)(i) Is a transportation fuel, transportation fuel additive, heating oil, or jet fuel.

(ii) Meets the definition of either biodiesel or non-ester renewable diesel.

(iii) Is registered as a motor vehicle fuel or fuel additive under 40 CFR part 79, if the fuel or fuel additive is intended for use in a motor vehicle.

(2) Renewable fuel produced from renewable biomass that is co-processed with petroleum is not biomass-based diesel.

Biomass-based sugars means sugars (*e.g.,* dextrose, sucrose, etc.) extracted from renewable biomass under an approved pathway, other than through a form change specified in § 80.1460(k)(2).

Biomethane means methane produced from renewable biomass.

B–RIN means a RIN verified during the interim period by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(b) following the audit process specified in § 80.1472.

Business day has the meaning given in 40 CFR 1090.80.

Canola/Rapeseed oil means either of the following:

(1) *Canola oil* is oil from the plants *Brassica napus, Brassica rapa, Brassica juncea, Sinapis alba,* or *Sinapis arvensis,* and which typically contains less than 2 percent erucic acid in the component fatty acids obtained.

(2) *Rapeseed oil* is the oil obtained from the plants *Brassica napus, Brassica rapa,* or *Brassica juncea.*

Carrier means any distributor who transports or stores or causes the transportation or storage of gasoline or diesel fuel without taking title to or otherwise having any ownership of the gasoline or diesel fuel, and without altering either the quality or quantity of the gasoline or diesel fuel.

Category 3 (C3) marine vessels, for the purposes of this part 80, are vessels that are propelled by engines meeting the definition of ''Category 3'' in 40 CFR 1042.901.

CBOB means gasoline blendstock that could become conventional gasoline solely upon the addition of oxygenate.

Cellulosic biofuel means renewable fuel derived from any cellulose, hemicellulose, or lignin that has lifecycle greenhouse gas emissions that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

Cellulosic biogas feedstock means an individual feedstock used to produce biogas that contains at least 75%

average adjusted cellulosic content and whose batch pathway has been assigned a D code of 3 or 7.

Cellulosic diesel is any renewable fuel which meets both the definitions of cellulosic biofuel and biomass-based diesel. Cellulosic diesel includes heating oil and jet fuel produced from cellulosic feedstocks.

Certified non-transportation 15 ppm distillate fuel or *certified NTDF* means distillate fuel that meets all the following:

(1) The fuel has been certified under 40 CFR 1090.1000 as meeting the ULSD standards in 40 CFR 1090.305.

(2) The fuel has been designated under 40 CFR 1090.1015 as certified NTDF.

(3) The fuel has also been designated under 40 CFR 1090.1015 as 15 ppm heating oil, 15 ppm ECA marine fuel, or other non-transportation fuel (*e.g.,* jet fuel, kerosene, or distillate global marine fuel).

(4) The fuel has not been designated under 40 CFR 1090.1015 as ULSD or 15 ppm MVNRLM diesel fuel.

(5) The PTD for the fuel meets the requirements in § 80.1453(e).

Combined heat and power (CHP), also known as cogeneration, refers to industrial processes in which waste heat from the production of electricity is used for process energy in a biointermediate or renewable fuel production facility.

Continuous measurement means the automated measurement of specified parameters of biogas, treated biogas, or natural gas as follows:

(1) For in-line GC meters, automated measurement must occur and be recorded no less frequent than once every 15 minutes.

(2) For flow meters, automated measurement must occur no less frequent than once every 6 seconds, and weighted totals of such measurement must be recorded at no more than 1 minute intervals.

(3) For all other meters, automated measurement and recording must occur at a frequency specified at registration.

Contractual affiliate means one of the following:

(1) Two parties are contractual affiliates if they have an explicit or implicit agreement in place for one to purchase or hold RINs on behalf of the other or to deliver RINs to the other. This other party may or may not be registered under the RFS program.

(2) Two parties are contractual affiliates if one RIN-owning party purchases or holds RINs on behalf of the other. This other party may or may not be registered under the RFS program.

Control area means a geographic area in which only oxygenated gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined by Clean Air Act section 211(m) (42 U.S.C. 7545(m)).

Control period means the period during which oxygenated gasoline must be sold or dispensed in any control area, pursuant to Clean Air Act section 211(m)(2) (42 U.S.C. 7545(m)(2)).

Conventional gasoline (CG) means any gasoline that has been certified under 40 CFR 1090.1000(b) and is not RFG.

Co-processed means that renewable biomass or a biointermediate was simultaneously processed with fossil fuels or other non-renewable feedstock in the same unit or units to produce a fuel that is partially derived from renewable biomass or a biointermediate.

Co-processed cellulosic diesel is any renewable fuel that meets the definition of cellulosic biofuel and meets all the requirements of paragraph (1) of this definition:

(1)(i) Is a transportation fuel, transportation fuel additive, heating oil, or jet fuel.

(ii) Meets the definition of either biodiesel or non-ester renewable diesel.

(iii) Is registered as a motor vehicle fuel or fuel additive under 40 CFR part 79, if the fuel or fuel additive is intended for use in a motor vehicle.

(2) Co-processed cellulosic diesel includes all the following:

(i) Heating oil and jet fuel produced from cellulosic feedstocks.

(ii) Cellulosic biofuel produced from cellulosic feedstocks co-processed with petroleum.

Corn oil extraction means the recovery of corn oil from the thin stillage and/or the distillers grains and solubles produced by a dry mill corn ethanol plant, most often by mechanical separation.

Corn oil fractionation means a process whereby seeds are divided in various components and oils are removed prior to fermentation for the production of ethanol.

Corporate affiliate means one of the following:

(1) Two RIN-holding parties are corporate affiliates if one owns or controls ownership of more than 20 percent of the other.

(2) Two RIN-holding parties are corporate affiliates if one parent company owns or controls ownership of more than 20 percent of both.

Corporate affiliate group means a group of parties in which each party is a corporate affiliate to at least one other party in the group.

Covered location means the contiguous 48 states, Hawaii, and any state or territory that has received an approval from EPA to opt-in to the RFS program under § 80.1443.

Crop residue means biomass left over from the harvesting or processing of planted crops from existing agricultural land and any biomass removed from existing agricultural land that facilitates crop management (including biomass removed from such lands in relation to invasive species control or fire management), whether or not the biomass includes any portion of a crop or crop plant. Biomass is considered crop residue only if the use of that biomass for the production of renewable fuel has no significant impact on demand for the feedstock crop, products produced from that feedstock crop, and all substitutes for the crop and its products, nor any other impact that would result in a significant increase in direct or indirect GHG emissions.

Cropland is land used for production of crops for harvest and includes cultivated cropland, such as for row crops or close-grown crops, and non-cultivated cropland, such as for horticultural or aquatic crops.

Diesel fuel means any of the following:

(1) Any fuel sold in any State or Territory of the United States and suitable for use in diesel engines, and that is one of the following:

(i) A distillate fuel commonly or commercially known or sold as No. 1 diesel fuel or No. 2 diesel fuel.

(ii) A non-distillate fuel other than residual fuel with comparable physical and chemical properties (*e.g.,* biodiesel fuel).

(iii) A mixture of fuels meeting the criteria of paragraphs (1)(i) and (ii) of this definition.

(2) For purposes of subpart M of this part, any and all of the products specified at § 80.1407(e).

Digestate means the material that remains following the anaerobic digestion of renewable biomass in an anaerobic digester. Digestate must only contain the leftovers that were unable to be completely converted to biogas in an anaerobic digestor that is part of an EPA-accepted registration under § 80.1450.

Distillate fuel means diesel fuel and other petroleum fuels that can be used in engines that are designed for diesel fuel. For example, jet fuel, heating oil, kerosene, No. 4 fuel, DMX, DMA, DMB, and DMC are distillate fuels; and natural gas, LPG, gasoline, and residual fuel are not distillate fuels. Blends containing residual fuel may be distillate fuels.

Distillers corn oil means corn oil recovered at any point downstream of when a dry mill ethanol or butanol plant grinds the corn, provided that the

corn starch is converted to ethanol or butanol, the recovered oil is unfit for human food use without further refining, and the distillers grains remaining after the dry mill and oil recovery processes are marketable as animal feed.

Distillers sorghum oil means grain sorghum oil recovered at any point downstream of when a dry mill ethanol or butanol plant grinds the grain sorghum, provided that the grain sorghum is converted to ethanol or butanol, the recovered oil is unfit for human food use without further refining, and the distillers grains remaining after the dry mill and oil recovery processes are marketable as animal feed.

Distributor means any person who transports or stores or causes the transportation or storage of gasoline or diesel fuel at any point between any gasoline or diesel fuel refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

DX RIN means a RIN with a D code of X, where X is the D code of the renewable fuel as identified under § 80.1425(g), generated under § 80.1426, and submitted under § 80.1452. For example, a D6 RIN is a RIN with a D code of 6.

ECA marine fuel is diesel, distillate, or residual fuel that meets the criteria of paragraph (1) of this definition, but not the criteria of paragraph (2) of this definition.

(1) All diesel, distillate, or residual fuel used, intended for use, or made available for use in Category 3 marine vessels while the vessels are operating within an Emission Control Area (ECA), or an ECA associated area, is ECA marine fuel, unless it meets the criteria of paragraph (2) of this definition.

(2) ECA marine fuel does not include any of the following fuel:

(i) Fuel used by exempted or excluded vessels (such as exempted steamships), or fuel used by vessels allowed by the U.S. government pursuant to MARPOL Annex VI Regulation 3 or Regulation 4 to exceed the fuel sulfur limits while operating in an ECA or an ECA associated area (see 33 U.S.C. 1903).

(ii) Fuel that conforms fully to the requirements of this part for MVNRLM diesel fuel (including being designated as MVNRLM).

(iii) Fuel used, or made available for use, in any diesel engines not installed on a Category 3 marine vessel.

Ecologically sensitive forestland means forestland that meets either of the following criteria:

(1) An ecological community with a global or state ranking of critically imperiled, imperiled or rare pursuant to a State Natural Heritage Program. For examples of such ecological communities, see ''Listing of Forest Ecological Communities Pursuant to 40 CFR 80.1401; S1–S3 communities,'' which is number EPA–HQ–OAR–2005–0161–1034.1 in the public docket, and ''Listing of Forest Ecological Communities Pursuant to 40 CFR 80.1401; G1–G2 communities,'' which is number EPA–HQ–OAR–2005–0161–2906.1 in the public docket. This material is available for inspection at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Air Docket is (202) 566–1742.

(2) Old growth or late successional, characterized by trees at least 200 years in age.

End of day means 7 a.m. Coordinated Universal Time (UTC).

Energy cane means a complex hybrid in the Saccharum genus that has been bred to maximize cellulosic rather than sugar content. For the purposes of this part:

(1) Energy cane excludes the species *Saccharum spontaneum,* but may include hybrids derived from *S. spontaneum* that have been developed and publicly released by USDA; and

(2) Energy cane only includes cultivars that have, on average, at least 75% adjusted cellulosic content on a dry mass basis.

EPA Moderated Transaction System (EMTS) means a closed, EPA moderated system that provides a mechanism for screening and tracking RINs under § 80.1452.

Existing agricultural land is cropland, pastureland, and land enrolled in the Conservation Reserve Program (administered by the U.S. Department of Agriculture's Farm Service Agency) that was cleared or cultivated prior to December 19, 2007, and that, on December 19, 2007, was:

(1) Nonforested; and

(2) Actively managed as agricultural land or fallow, as evidenced by records which must be traceable to the land in question, which must include one of the following:

(i) Records of sales of planted crops, crop residue, or livestock, or records of purchases for land treatments such as fertilizer, weed control, or seeding.

(ii) A written management plan for agricultural purposes.

(iii) Documented participation in an agricultural management program administered by a Federal, state, or local government agency.

(iv) Documented management in accordance with a certification program for agricultural products.

Exporter of renewable fuel means all buyers, sellers, and owners of the renewable fuel in any transaction that results in renewable fuel being transferred from a covered location to a destination outside of the covered locations.

Facility means all of the activities and equipment associated with the production of renewable fuel, biogas, treated biogas, RNG, or a biointermediate—starting from the point of delivery of feedstock material to the point of final storage of the end product—that are located on one property and are under the control of the same person (or persons under common control).

Fallow means cropland, pastureland, or land enrolled in the Conservation Reserve Program (administered by the U.S. Department of Agriculture's Farm Service Agency) that is intentionally left idle to regenerate for future agricultural purposes with no seeding or planting, harvesting, mowing, or treatment during the fallow period.

Feedstock aggregator means any person who collects feedstock from feedstock suppliers or other feedstock aggregators and distributes such feedstock to a renewable fuel producer, biointermediate producer, or other feedstock aggregator.

Feedstock supplier means any person who generates and supplies feedstock to a feedstock aggregator, renewable fuel producer, biogas producer, or biointermediate producer.

Foreign biogas producer means any person who owns, leases, operates, controls, or supervises a biogas production facility outside of the United States.

Foreign ethanol producer means a foreign renewable fuel producer who produces ethanol for use in transportation fuel, heating oil, or jet fuel but who does not add ethanol denaturant to their product as specified in paragraph (2) of the definition of ''renewable fuel'' in this section.

Foreign renewable fuel producer means a person from a foreign country or from an area outside the covered location who produces renewable fuel for use in transportation fuel, heating oil, or jet fuel for export to the covered location. Foreign ethanol producers are considered foreign renewable fuel producers.

Foreign RNG producer means any person who owns, leases, operates, controls, or supervises an RNG production facility outside of the United States.

Forestland is generally undeveloped land covering a minimum area of 1 acre upon which the primary vegetative species are trees, including land that formerly had such tree cover and that will be regenerated and tree plantations. Tree-covered areas in intensive agricultural crop production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forestland.

Free fatty acid (FFA) feedstock means a biointermediate that is composed of at least 50 percent free fatty acids. FFA feedstock must not include any free fatty acids from the refining of crude palm oil.

Fuel for use in an ocean-going vessel means, for this part only:

(1) Any marine residual fuel (whether burned in ocean waters, Great Lakes, or other internal waters);

(2) Emission Control Area (ECA) marine fuel, pursuant to § 80.2 and 40 CFR 1090.80 (whether burned in ocean waters, Great Lakes, or other internal waters); and

(3) Any other fuel intended for use only in ocean-going vessels.

Gasoline means any of the following:

(1) Any fuel sold in the United States for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(2) For purposes of subpart M of this part, any and all of the products specified at § 80.1407(c).

Gasoline blendstock or *component* means any liquid compound that is blended with other liquid compounds to produce gasoline.

Gasoline blendstock for oxygenate blending (BOB) has the meaning given in 40 CFR 1090.80.

Gasoline treated as blendstock (GTAB) means imported gasoline that is excluded from an import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.

Glycerin means a coproduct from the production of biodiesel that primarily contains glycerol.

Heating oil means any of the following:

(1) Any No. 1, No. 2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.

(2) Any fuel oil that is used to heat or cool interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at STP and contain no more than 2.5% mass solids.

Importer means any person who imports transportation fuel or renewable fuel into the covered location from an area outside of the covered location.

Independent third-party auditor means a party meeting the requirements of § 80.1471(b) that conducts QAP audits and verifies RINs, biointermediates, or biogas.

Interim period means the period between February 21, 2013, and December 31, 2014.

Jet fuel means any distillate fuel used, intended for use, or made available for use in aircraft.

Kerosene means any No.1 distillate fuel commonly or commercially sold as kerosene.

Liquefied petroleum gas (LPG) means a liquid hydrocarbon fuel that is stored under pressure and is composed primarily of species that are gases at atmospheric conditions (temperature = 25 °C and pressure = 1 atm), excluding natural gas.

Locomotive engine means an engine used in a locomotive as defined under 40 CFR 92.2.

Marine engine has the meaning given in 40 CFR 1042.901.

Membrane separation means the process of dehydrating ethanol to fuel grade (>99.5% purity) using a hydrophilic membrane.

Mixed digester means an anaerobic digester that has received feedstocks under both an approved pathway with D code 3 or 7 and an approved pathway with D code 5 during the current calendar month or the previous two calendar months.

Motor vehicle has the meaning given in Section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)).

Municipal wastewater treatment facility digester means an anaerobic digester that processes only municipal wastewater treatment plant sludge with an adjusted cellulosic content of at least 75%.

MVNRLM diesel fuel means any diesel fuel or other distillate fuel that is used, intended for use, or made available for use in motor vehicles or motor vehicle engines, or as a fuel in any nonroad diesel engines, including locomotive and marine diesel engines, except the following: Distillate fuel with a T90 at or above 700 °F that is used only in Category 2 and 3 marine engines is not MVNRLM diesel fuel, and ECA marine fuel is not MVNRLM diesel fuel (note that fuel that conforms to the requirements of MVNRLM diesel fuel is excluded from the definition of ''ECA marine fuel'' in this section without regard to its actual use). Use the distillation test method specified in 40 CFR 1065.1010 to determine the T90 of the fuel.

(1) Any diesel fuel that is sold for use in stationary engines that are required to meet the requirements of 40 CFR 1090.300, when such provisions are applicable to nonroad engines, is considered MVNRLM diesel fuel.

(2) [Reserved]

Nameplate capacity means the peak design capacity of a facility for the purposes of registration of a facility under this part.

Naphtha means a blendstock or fuel blending component falling within the boiling range of gasoline, which is composed of only hydrocarbons, is commonly or commercially known as naphtha, and is used to produce gasoline or E85 (as defined in 40 CFR 1090.80) through blending.

Natural gas means a fuel whose primary constituent is methane. Natural gas includes RNG.

Natural gas commercial pipeline system means one or more connected pipelines that transport natural gas that meets all the following:

(1) The natural gas originates from multiple parties.

(2) The natural gas meets specifications set by the pipeline owner or operator.

(3) The natural gas is delivered to multiple parties in the covered location.

Neat renewable fuel is a renewable fuel to which 1% or less of gasoline (as defined in this section) or diesel fuel has been added.

Non-ester renewable diesel or *renewable diesel* means renewable fuel that is not a mono-alkyl ester and that is either:

(1) A fuel or fuel additive that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.12) and can be used in an engine designed to operate on conventional diesel fuel; or

(2) A fuel or fuel additive that is registered under 40 CFR part 79 and can be used in an engine designed to operate using conventional diesel fuel.

Nonforested land means land that is not forestland.

Non-petroleum diesel means a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

Non-qualifying fuel use means a use of renewable fuel in an application other than transportation fuel, heating oil, or jet fuel.

Non-renewable component means any material (or any portion thereof) blended into biogas or RNG that does

not meet the definition of renewable biomass.

Non-renewable feedstock means a feedstock (or any portion thereof) that does not meet the definition of renewable biomass or biointermediate.

Non-RIN-generating foreign producer means a foreign renewable fuel producer that has been registered by EPA to produce renewable fuel for which RINs have not been generated.

Nonroad diesel engine means an engine that is designed to operate with diesel fuel that meets the definition of nonroad engine in 40 CFR 1068.30, including locomotive and marine diesel engines.

Nonroad vehicle has the meaning given in Section 216(11) of the Clean Air Act (42 U.S.C. 7550(11)).

Obligated party means any refiner that produces gasoline or diesel fuel within the covered location, or any importer that imports gasoline or diesel fuel into the covered location, during a compliance period. A party that simply blends renewable fuel into gasoline or diesel fuel, as specified in § 80.1407(c) or (e), is not an obligated party.

Ocean-going vessel means vessels that are equipped with engines meeting the definition of ''Category 3'' in 40 CFR 1042.901.

Oxygenate means any substance which, when added to gasoline, increases the oxygen content of that gasoline. Lawful use of any of the substances or any combination of these substances requires that they be ''substantially similar'' under section 211(f)(1) of the Clean Air Act (42 U.S.C. 7545(f)(1)), or be permitted under a waiver granted by EPA under the authority of section 211(f)(4) of the Clean Air Act (42 U.S.C. 7545(f)(4)).

Oxygenated gasoline means gasoline which contains a measurable amount of oxygenate.

Pastureland is land managed for the production of select indigenous or introduced forage plants for livestock grazing or hay production, and to prevent succession to other plant types.

Permitted capacity means 105% of the maximum permissible volume output of renewable fuel that is allowed under operating conditions specified in the most restrictive of all applicable preconstruction, construction and operating permits issued by regulatory authorities (including local, regional, state or a foreign equivalent of a state, and federal permits, or permits issued by foreign governmental agencies) that govern the construction and/or operation of the renewable fuel facility, based on an annual volume output on a calendar year basis. If the permit specifies maximum rated volume output on an hourly basis, then annual volume output is determined by multiplying the hourly output by 8,322 hours per year.

(1) For facilities that commenced construction prior to December 19, 2007, the permitted capacity is based on permits issued or revised no later than December 19, 2007.

(2) For facilities that commenced construction after December 19, 2007 and before January 1, 2010 that are fired with natural gas, biomass, or a combination thereof, the permitted capacity is based on permits issued or revised no later than December 31, 2009.

(3) For facilities other than those specified in paragraphs (1) and (2) of this definition, permitted capacity is based on the most recent applicable permits.

Pipeline interconnect means the physical injection or withdrawal point where RNG is injected or withdrawn into or from the natural gas commercial pipeline system.

Planted crops are all annual or perennial agricultural crops from existing agricultural land that may be used as feedstocks for renewable fuel, such as grains, oilseeds, sugarcane, switchgrass, prairie grass, duckweed, and other species (but not including algae species or planted trees), providing that they were intentionally applied by humans to the ground, a growth medium, a pond or tank, either by direct application as seed or plant, or through intentional natural seeding or vegetative propagation by mature plants introduced or left undisturbed for that purpose.

Planted trees are trees harvested from a tree plantation.

Pre-commercial thinnings are trees, including unhealthy or diseased trees, removed to reduce stocking to concentrate growth on more desirable, healthy trees, or other vegetative material that is removed to promote tree growth.

Professional liability insurance means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers, and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

Q–RIN means a RIN verified by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(c) following the audit process specified in § 80.1472.

Quality assurance audit means an audit of a renewable fuel production facility or biointermediate production facility conducted by an independent third-party auditor in accordance with a QAP that meets the requirements of §§ 80.1469, 80.1472, and 80.1477.

Quality assurance plan (QAP) means the list of elements that an independent third-party auditor will check to verify that the RINs generated by a renewable fuel producer or importer are valid or to verify the appropriate production of a biointermediate. A QAP includes both general and pathway specific elements.

Raw starch hydrolysis means the process of hydrolyzing corn starch into simple sugars at low temperatures, generally not exceeding 100 °F (38 °C), using enzymes designed to be effective under these conditions.

Refiner means any person who owns, leases, operates, controls, or supervises a refinery.

Refinery means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

Reformulated gasoline (RFG) means any gasoline whose formulation has been certified under 40 CFR 1090.1000(b), and which meets each of the standards and requirements prescribed under 40 CFR 1090.220.

Reformulated gasoline blendstock for oxygenate blending (RBOB) means a petroleum product that, when blended with a specified type and percentage of oxygenate, meets the definition of reformulated gasoline, and to which the specified type and percentage of oxygenate is added other than by the refiner or importer of the RBOB at the refinery or import facility where the RBOB is produced or imported.

Renewable biomass means each of the following (including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport):

(1) Planted crops and crop residue harvested from existing agricultural land cleared or cultivated prior to December 19, 2007 and that was nonforested and either actively managed or fallow on December 19, 2007.

(2) Planted trees and tree residue from a tree plantation located on non-federal land (including land belonging to an Indian tribe or an Indian individual that is held in trust by the U.S. or subject to a restriction against alienation imposed

by the U.S.) that was cleared at any time prior to December 19, 2007 and actively managed on December 19, 2007.

(3) Animal waste material and animal byproducts.

(4) Slash and pre-commercial thinnings from non-federal forestland (including forestland belonging to an Indian tribe or an Indian individual, that are held in trust by the United States or subject to a restriction against alienation imposed by the United States) that is not ecologically sensitive forestland.

(5) Biomass (organic matter that is available on a renewable or recurring basis) obtained from within 200 feet of buildings and other areas regularly occupied by people, or of public infrastructure, in an area at risk of wildfire.

(6) Algae.

(7) Separated yard waste or food waste, including recycled cooking and trap grease.

Renewable compressed natural gas or *renewable CNG* means biogas, treated biogas, or RNG that is compressed for use as transportation fuel and meets the definition of renewable fuel.

Renewable electricity means electricity that meets the definition of renewable fuel.

Renewable fuel means a fuel that meets all the following requirements:

(1)(i) Fuel that is produced either from renewable biomass or from a biointermediate produced from renewable biomass.

(ii) Fuel that is used in the covered location to replace or reduce the quantity of fossil fuel present in a transportation fuel, heating oil, or jet fuel.

(iii) Has lifecycle greenhouse gas emissions that are at least 20 percent less than baseline lifecycle greenhouse gas emissions, unless the fuel is exempt from this requirement pursuant to § 80.1403.

(2) Ethanol covered by this definition must be denatured using an ethanol denaturant as required in 27 CFR parts 19 through 21. Any volume of ethanol denaturant added to the undenatured ethanol by a producer or importer in excess of 2 volume percent must not be included in the volume of ethanol for purposes of determining compliance with the requirements of this part.

Renewable gasoline means renewable fuel produced from renewable biomass that is composed of only hydrocarbons and that meets the definition of gasoline.

Renewable gasoline blendstock means a blendstock produced from renewable biomass that is composed of only hydrocarbons and which meets the definition of gasoline blendstock in § 80.2.

Renewable Identification Number (RIN) is a unique number generated to represent a volume of renewable fuel pursuant to §§ 80.1425 and 80.1426.

(1) *Gallon-RIN* is a RIN that represents an individual gallon of renewable fuel used for compliance purposes pursuant to § 80.1427 to satisfy a renewable volume obligation.

(2) *Batch-RIN* is a RIN that represents multiple gallon-RINs.

Renewable liquefied natural gas or *renewable LNG* means biogas, treated biogas, or RNG that is liquified (*i.e.,* it is cooled below its boiling point) for use as transportation fuel and meets the definition of renewable fuel.

Renewable natural gas (RNG) means a product that meets all the following requirements:

(1) It is produced from biogas.

(2) It does not require removal of additional components to be suitable for injection into the natural gas commercial pipeline system.

(3) It is used to produce renewable fuel.

Residual fuel means a petroleum fuel that can only be used in diesel engines if it is preheated before injection. For example, No. 5 fuels, No. 6 fuels, and RM grade marine fuels are residual fuels. Note: Residual fuels do not necessarily require heating for storage or pumping.

Responsible corporate officer (RCO) has the meaning given in 40 CFR 1090.80.

Retail outlet means any establishment at which gasoline, diesel fuel, natural gas or liquefied petroleum gas is sold or offered for sale for use in motor vehicles or nonroad engines, including locomotive or marine engines.

Retailer means any person who owns, leases, operates, controls, or supervises a retail outlet.

RIN-generating foreign producer means a foreign renewable fuel producer that has been registered by EPA to generate RINs for renewable fuel it produces.

RIN generator means any party allowed to generate RINs under this part.

RIN-less RNG means RNG produced by a foreign RNG producer and for which RINs were not generated by the foreign RNG producer.

RNG importer means any person who imports RNG into the covered location and generates RINs for the RNG as specified in § 80.125.

RNG producer means any person who owns, leases, operates, controls, or supervises an RNG production facility.

RNG production facility means a facility where biogas is upgraded to RNG under an approved pathway.

RNG RIN separator means any person registered to separate RINs for RNG under § 80.125(d).

RNG used as a feedstock or *RNG as a feedstock* means any RNG used to produce renewable fuel under § 80.125.

Separated food waste means a feedstock stream consisting of food waste kept separate since generation from other waste materials, and which includes food and beverage production waste and post-consumer food and beverage waste.

Separated municipal solid waste or *separated MSW* means material remaining after separation actions have been taken to remove recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass from municipal solid waste, and which is composed of both cellulosic and non-cellulosic materials.

Separated RIN means a RIN with a K code of 2 that has been separated from a volume of renewable fuel or RNG pursuant to § 80.1429.

Separated yard waste means a feedstock stream consisting of yard waste kept separate since generation from other waste materials.

Slash is the residue, including treetops, branches, and bark, left on the ground after logging or accumulating as a result of a storm, fire, delimbing, or other similar disturbance.

Small refinery means a refinery for which the average aggregate daily crude oil throughput (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

Soapstock means an emulsion, or the oil obtained from separation of that emulsion, produced by washing oils listed as a feedstock in an approved pathway with water.

Standard temperature and pressure (STP) means 60 degrees Fahrenheit and 1 atmosphere of pressure.

Transportation fuel means fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except fuel for use in ocean-going vessels).

Treated biogas means a product that meets all the following requirements:

(1) It is produced from biogas.

(2) It does not require removal of additional components to be suitable for its designated use (*e.g.,* as a biointermediate or to produce biogas-derived renewable fuel).

(3) It is used in a biogas closed distribution system as a biointermediate or to produce biogas-derived renewable fuel.

Tree plantation is a stand of no less than 1 acre composed primarily of trees established by hand- or machine-planting of a seed or sapling, or by coppice growth from the stump or root of a tree that was hand- or machine-planted. Tree plantations must have been cleared prior to December 19, 2007 and must have been actively managed on December 19, 2007, as evidenced by records which must be traceable to the land in question, which must include:

(1) Sales records for planted trees or tree residue together with other written documentation connecting the land in question to these purchases;

(2) Purchasing records for seeds, seedlings, or other nursery stock together with other written documentation connecting the land in question to these purchases;

(3) A written management plan for silvicultural purposes;

(4) Documentation of participation in a silvicultural program sponsored by a Federal, state, or local government agency;

(5) Documentation of land management in accordance with an agricultural or silvicultural product certification program;

(6) An agreement for land management consultation with a professional forester that identifies the land in question; or

(7) Evidence of the existence and ongoing maintenance of a road system or other physical infrastructure designed and maintained for logging use, together with one of the above-mentioned documents.

Tree residue is slash and any woody residue generated during the processing of planted trees from tree plantations for use in lumber, paper, furniture, or other applications, provided that such woody residue is not mixed with similar residue from trees that do not originate in tree plantations.

Undenatured ethanol means a liquid that meets one of the definitions in paragraph (1) of this definition:

(1)(i) Ethanol that has not been denatured as required in 27 CFR parts 19 through 21.

(ii) Specially denatured alcohol as defined in 27 CFR 21.11.

(2) Undenatured ethanol is not renewable fuel.

United States has the meaning given in 40 CFR 1090.80.

Verification status means a description of whether biogas, treated biogas, RNG, or a RIN has been verified under an EPA-approved quality assurance plan.

Verified RIN means a RIN generated by a renewable fuel producer that was subject to a QAP audit executed by an independent third-party auditor, and determined by the independent third-party auditor to be valid. Verified RINs includes A–RINs, B–RINs, and Q–RINs.

Wholesale purchaser-consumer means any person that is an ultimate consumer of gasoline, diesel fuel, natural gas, or liquefied petroleum gas and which purchases or obtains gasoline, diesel fuel, natural gas or liquefied petroleum gas from a supplier for use in motor vehicles or nonroad engines, including locomotive or marine engines and, in the case of gasoline, diesel fuel, or liquefied petroleum gas, receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that person.

■ 3. Add § 80.3 to read as follows:

§ 80.3 Acronyms and abbreviations.

AB	Advanced biofuel.
APHA	American Public Health Association.
API	American Petroleum Institute.
ASTM	ASTM International.
BBD	Biomass-based diesel.
BMP	Best management practices.
BOB	Gasoline before oxygenate blending.
CAA	Clean Air Act.
CB	Cellulosic biofuel.
CBOB	Conventional gasoline before oxygenate blending.
CF	Converted fraction.
CG	Conventional gasoline.
CHP	Combined heat and power.
CNG	Compressed natural gas.
CPI–U	Consumer Price Index for All Urban Consumers.
ECA	Emission Control Area.
EDRR	Early detection and rapid response.
EIA	Energy Information Administration.
EMTS	EPA Moderated Transaction System.
EPA	Environmental Protection Agency.
EqV	Equivalence value.
ERVO	Exporter renewable volume obligation.
FE	Feedstock energy.
FFA	Free-fatty acid.
GC	Gas chromatography.
GHG	Greenhouse gas.
GTAB	Gasoline treated as blendstock.
HACCP	Hazard Analysis Critical Control Point.
HHV	Higher heating value.
IBR	Incorporation by reference.
ID	Identification.
kWh	Kilowatt-hour.
LE	Limited exemption.
LHV	Lower heating value.
LNG	Liquified natural gas.
MSW	Municipal solid waste.
MVNRLM	Motor vehicle, nonroad, locomotive, or marine.
NARA	National Archives and Records Administration.
NTDF	Non-transportation 15 ppm distillate fuel.
PIR	Potentially invalid RIN.
PM_{10}	Particulate matter generally 10 micrometers or smaller.
$PM_{2.5}$	Particulate matter generally 2.5 micrometers or smaller.
PTD	Product transfer document.
QAP	Quality assurance plan.
RBOB	Reformulated gasoline before oxygenate blending.
RCO	Responsible corporate officer.
RF	Renewable fuel.
RFS	Renewable Fuel Standard.
RFS–FRRF	RFS foreign refiner renewable fuel.
RIN	Renewable identification number.
RNG	Renewable natural gas.
RVO	Renewable volume obligation.
STP	Standard temperature and pressure.
U.S.	United States.
ULSD	Ultra-low-sulfur diesel fuel.
USDA	United States Department of Agriculture.
UTC	Coordinated Universal Time.
VCSB	Voluntary consensus standards body.

§ 80.4 [Amended]

■ 4. Amend § 80.4 by removing the text ''The Administrator or his authorized representative'' and adding in its place the text ''EPA''.

■ 5. Amend § 80.7 by:

■ a. Revising paragraph (a) introductory text;

■ b. In paragraph (b), removing the text ''the Administrator, the Regional Administrator, or their delegates'' and adding in its place the text ''EPA''; and

■ c. Revising the first sentence of paragraph (c).

The revisions read as follows:

§ 80.7 Requests for information.

(a) When EPA has reason to believe that a violation of section 211(c) or section 211(n) of the Clean Air Act and the regulations thereunder has occurred, EPA may require any refiner, distributor, wholesale purchaser-consumer, or retailer to report the following information regarding receipt, transfer, delivery, or sale of gasoline represented to be unleaded gasoline and to allow the reproduction of such information at all reasonable times.

* * * * *

(c) Any refiner, distributor, wholesale purchaser-consumer, retailer, or importer must provide such other information as EPA may reasonably require to enable the Agency to

determine whether such refiner, distributor, wholesale purchaser-consumer, retailer, or importer has acted or is acting in compliance with sections 211(c) and 211(n) of the Clean Air Act and the regulations thereunder and must, upon request of EPA, produce and allow reproduction of any relevant records at all reasonable times. * * * * * * * * * *

■ 6. Revise § 80.8 to read as follows:

§ 80.8 Sampling methods for gasoline, diesel fuel, fuel additives, and renewable fuels.

(a) *Manual sampling.* Manual sampling of tanks and pipelines shall be performed according to the applicable procedures specified in ASTM D4057 (incorporated by reference, see § 80.12).

(b) *Automatic sampling.* Automatic sampling of petroleum products in pipelines shall be performed according to the applicable procedures specified in ASTM D4177 (incorporated by reference, see § 80.12).

(c) *Sampling and sample handling for volatility measurement.* Samples to be analyzed for Reid Vapor Pressure (RVP) shall be collected and handled according to the applicable procedures specified in ASTM D5842 (incorporated by reference, see § 80.12).

(d) *Sample compositing.* Composite samples shall be prepared using the applicable procedures specified in ASTM D5854 (incorporated by reference, see § 80.12).

■ 7. Revise § 80.9 to read as follows:

§ 80.9 Rounding.

(a) Test results and calculated values reported to EPA under this part must be rounded according to 40 CFR 1090.50(a) through (d).

(b) Calculated values under this part may only be rounded when reported to EPA.

(c) Reported values under this part must be submitted using forms and procedures specified by EPA.

■ 8. Add § 80.12 to subpart A to read as follows:

§ 80.12 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at U.S. EPA and at the National Archives and Records Administration (NARA). Contact U.S. EPA at: U.S. EPA, Air and Radiation Docket and Information Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460; (202) 566–1742. For information on the availability of this material at NARA, visit: *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(a) American Petroleum Institute (API), 200 Massachusetts Avenue NW, Suite 1100, Washington, DC 20001–5571; (202) 682–8000; *www.api.org.*

(1) API MPMS 14.1–2016, Manual of Petroleum Measurement Standards Chapter 14—Natural Gas Fluids Measurement Section 1—Collecting and Handling of Natural Gas Samples for Custody Transfer, 7th Edition, May 2016 (''API MPMS 14.1''); IBR approved for § 80.155(b).

(2) API MPMS 14.3.1–2012, Manual of Petroleum Measurement Standards Chapter 14.3.1—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 1: General Equations and Uncertainty Guidelines, 4th Edition, including Errata July 2013, Reaffirmed, July 2022 (''API MPMS 14.3.1''); IBR approved for § 80.155(a).

(3) API MPMS 14.3.2–2016, Manual of Petroleum Measurement Standards Chapter 14.3.2—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 2: Specification and Installation Requirements, 5th Edition, March 2016 (''API MPMS 14.3.2''); IBR approved for § 80.155(a).

(4) API MPMS 14.3.3–2013, Manual of Petroleum Measurement Standards Chapter 14.3.3—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 3: Natural Gas Applications, 4th Edition, Reaffirmed, June 2021 (''API MPMS 14.3.3''); IBR approved for § 80.155(a).

(5) API MPMS 14.3.4–2019, Manual of Petroleum Measurement Standards Chapter 14.3.4—Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids—Concentric, Square-edged Orifice Meters Part 4—Background, Development, Implementation Procedure, and Example Calculations, 4th Edition, October 2019 (''API MPMS 14.3.4''); IBR approved for § 80.155(a).

(6) API MPMS 14.12–2017, Manual of Petroleum Measurement Standards Chapter 14—Natural Gas Fluid Measurement Section 12—Measurement of Gas by Vortex Meters, 1st Edition, March 2017 (''API MPMS 14.12''); IBR approved for § 80.155(a).

Note 1 to paragraph (a): API MPMS 14.3.1, 14.3.2, 14.3.3, and 141.3.4, are co-published as AGA Report 3, Parts 1, 2, 3, and 4, respectively.

(b) American Public Health Association (APHA), 1015 15th Street NW, Washington, DC 20005; (202) 777–2742; *www.standardmethods.org.*

(1) SM 2540, revised June 10, 2020; IBR approved for § 80.155(c).

(2) [Reserved]

(c) ASTM International (ASTM), 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959; (877) 909–2786; *www.astm.org.*

(1) ASTM D975–21, Standard Specification for Diesel Fuel, approved August 1, 2021 (''ASTM D975''); IBR approved for §§ 80.2; 80.1426(f); 80.1450(b); 80.1451(b); 80.1454(l).

(2) ASTM D1250–19e1, Standard Guide for the Use of the Joint API and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API MPMS Chapter 11.1, approved May 1, 2019 (''ASTM D1250''); IBR approved for § 80.1426(f).

(3) ASTM D3588–98 (Reapproved 2017)e1, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, approved April 1, 2017 (''ASTM D3588''); IBR approved for § 80.155(b) and (f).

(4) ASTM D4057–12, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, approved December 1, 2012 (''ASTM D4057''); IBR approved for § 80.8(a).

(5) ASTM D4177–95 (Reapproved 2010), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, approved May 1, 2010 (''ASTM D4177''); IBR approved for § 80.8(b).

(6) ASTM D4442–20, Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials, approved March 1, 2020 (''ASTM D4442''); IBR approved for § 80.1426(f).

(7) ASTM D4444–13 (Reapproved 2018), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, reapproved July 1, 2018 (''ASTM D4444''); IBR approved for § 80.1426(f).

(8) ASTM D4888–20, Standard Test Method for Water Vapor in Natural Gas Using Length-of-Stain Detector Tubes, approved December 15, 2020 (''ASTM D4888''); IBR approved for § 80.155(b).

(9) ASTM D5504–20, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, approved

November 1, 2020 (''ASTM D5504''); IBR approved for § 80.155(b).

(10) ASTM D5842–14, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement, approved January 15, 2014 (''ASTM D5842''); IBR approved for § 80.8(c).

(11) ASTM D5854–96 (Reapproved 2010), Standard Practice for Mixing and Handling of Liquid Samples of Petroleum and Petroleum Products, approved May 1, 2010 (''ASTM D5854''); IBR approved for § 80.8(d).

(12) ASTM D6751–20a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, approved August 1, 2020 (''ASTM D6751''); IBR approved for § 80.2.

(13) ASTM D6866–22, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved March 15, 2022 (''ASTM D6866''); IBR approved for §§ 80.155(b); 80.1426(f); 80.1430(e).

(14) ASTM D7164–21, Standard Practice for On-line/At-line Heating Value Determination of Gaseous Fuels by Gas Chromatography, approved April 1, 2021 (''ASTM D7164''); IBR approved for § 80.155(a).

(15) ASTM D8230–19, Standard Test Method for Measurement of Volatile Silicon-Containing Compounds in a Gaseous Fuel Sample Using Gas Chromatography with Spectroscopic Detection, approved June 1, 2019 (''ASTM D8230''); IBR approved for § 80.155(b).

(16) ASTM E711–87 (Reapproved 2004), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, reapproved 2004 (''ASTM E711''); IBR approved for § 80.1426(f).

(17) ASTM E870–82 (Reapproved 2019), Standard Test Methods for Analysis of Wood Fuels, reapproved April 1, 2019 (''ASTM E870''); IBR approved for § 80.1426(f).

(d) European Committee for Standardization (CEN), Rue de la Science 23, B–1040 Brussels, Belgium; + 32 2 550 08 11; *www.cencenelec.eu.*

(1) EN 17526:2021(E), Gas meter—Thermal-mass flow-meter based gas meter, approved July 11, 2021 (''EN 17526''); IBR approved for § 80.155(a).

(2) [Reserved]

■ 9. Add subpart E, consisting of §§ 80.100 through 80.185, to read as follows:

Subpart E—Biogas-Derived Renewable Fuel

Sec.

§ 80.100 Scope and application.

(a) *Applicability.*

(1) The provisions of this subpart E apply to all the following:

(i) Biogas.

(ii) Treated biogas.

(iii) Biogas-derived renewable fuel.

(iv) RNG used to produce a biogas-derived renewable fuel.

(v) RINs generated for RNG or a biogas-derived renewable fuel.

(2) This subpart also specifies requirements for specified parties that engage in activities associated with the production, distribution, transfer, or use of biogas, treated biogas, biogas-derived renewable fuel, RNG used to produce a biogas-derived renewable fuel, and RINs generated for a biogas-derived renewable fuel under the RFS program.

(b) *Relationship to other fuels regulations.* (1) The provisions of subpart M of this part also apply to the parties and products regulated under this subpart E.

(2) The provisions of 40 CFR part 1090 include provisions that may apply to the parties and products regulated under this subpart E.

(3) Parties and products subject to this subpart E may need to register a fuel or fuel additive under 40 CFR part 79.

(c) *Geographic scope.* RINs must only be generated for biogas-derived renewable fuel used in the covered location.

(d) *Implementation dates.* (1) *General.* The provisions of this subpart E apply beginning July 1, 2024, unless otherwise specified.

(2) *Registration.* (i) Parties not registered to generate RINs under § 80.1426(f)(10)(ii) or (11)(ii) prior to July 1, 2024, must register with EPA under § 80.135. EPA will not accept registration submissions for the generation of RINs under § 80.1426(f)(10)(ii) and (11)(ii) on or after July 1, 2024.

(ii) Parties registered to generate RINs under § 80.1426(f)(10)(ii) or (11)(ii) must submit updated registration information under § 80.135 no later than October 1, 2024.

(iii) Independent third-party engineers may conduct engineering reviews for parties required to register under § 80.135 prior to July 1, 2024, as long as the engineering review satisfies all applicable requirements under §§ 80.135 and 80.1450.

(3) *Generation of RINs for RNG.* RNG producers may only generate RINs for RNG produced on or after July 1, 2024, as specified in § 80.125.

(4) *Generation of RINs for renewable CNG/LNG for previously registered facilities.* (i)(A) Prior to January 1, 2025, RIN generators may generate RINs as specified in § 80.1426(f)(10)(ii) or (11)(ii) for renewable CNG/LNG produced from a facility covered by a registration accepted by EPA under § 80.1450(b) prior to July 1, 2024.

(B) Biogas or RNG produced under a registration accepted by EPA under § 80.1450(b) for the generation of RINs as specified in § 80.1426(f)(10)(ii) or (11)(ii) prior to July 1, 2024, may only be used to generate RINs for renewable CNG/LNG.

(ii) For biogas produced on or after January 1, 2025, biogas closed distribution system RIN generators must generate RINs for renewable CNG/LNG as specified in § 80.130.

(5) *Generation of RINs for renewable fuel produced from biogas used as a biointermediate.* Renewable fuel producers must only generate RINs for renewable fuel produced from biogas used as a biointermediate produced on or after July 1, 2024.

§ 80.105 Biogas producers.

(a) *General requirements.* (1) Any biogas producer that produces biogas for use to produce RNG or a biogas-derived renewable fuel, or that produces biogas used as a biointermediate, must comply with the requirements of this section.

(2) The biogas producer must also comply with all other applicable requirements of this part and 40 CFR part 1090.

(3) If the biogas producer meets the definition of more than one type of regulated party under this part or 40 CFR part 1090, the biogas producer must comply with the requirements applicable to each of those types of regulated parties.

(4) The biogas producer must comply with all applicable requirements of this part, regardless of whether the requirements are identified in this section.

(b) *Registration.* The biogas producer must register with EPA under §§ 80.135, 80.1450, and 40 CFR part 1090, subpart I, as applicable.

(c) *Reporting.* The biogas producer must submit reports to EPA under §§ 80.140 and 80.1451, as applicable.

(d) *Recordkeeping.* The biogas producer must create and maintain records under §§ 80.145 and 80.1454.

(e) *PTDs.* On each occasion when the biogas producer transfers title of any biogas, the transferor must provide to the transferee PTDs under § 80.150.

(f) *Sampling, testing, and measurement.*

(1) All sampling, testing, and measurements must be done in accordance with § 80.155.

(2)(i) A biogas producer must measure the volume of biogas, in Btu HHV, prior to converting biogas to any of the following:

(A) RNG.

(B) Treated biogas.

(C) Biointermediate.

(D) Biogas-derived renewable fuel.

(E) Process heat or energy under § 80.1426(f)(12) or (13).

(ii) Except for biogas produced from a mixed digester, a biogas producer must measure the volume of biogas, in Btu HHV, for each batch pathway prior to mixing with biogas produced under a different batch pathway or with non-qualifying gas.

(iii) For biogas produced from a mixed digester, a biogas producer must do all the following for each mixed digester:

(A) Measure the volume of biogas, in Btu HHV, prior to mixing with any other gas.

(B) Measure the daily mass of the cellulosic biogas feedstock, in pounds, added to the mixed digester.

(C) Collect a daily representative sample of each cellulosic biogas feedstock and test for total solids and volatile solids as specified in § 80.155(c).

(D) Measure and calculate the digester operating conditions as specified in § 80.155(d).

(iv) A biogas producer must measure each volume of gas containing biogas, in Btu HHV, that leaves the facility.

(g) *Foreign biogas producer requirements.* A foreign biogas producer must meet all the requirements that apply to a biogas producer under this part, as well as the additional requirements for foreign biogas producers specified in § 80.160.

(h) *Attest engagements.* The biogas producer must submit annual attest engagement reports to EPA under §§ 80.165 and 80.1464 using procedures specified in 40 CFR 1090.1800 and 1090.1805.

(i) *QAP.* Prior to the generation of Q–RINs for a biogas-derived renewable fuel, the biogas producer must meet all applicable requirements specified in § 80.170.

(j) *Batches.* (1) Except for biogas produced from a mixed digester, the batch volume of biogas is the volume of biogas measured under paragraph (f) of this section for a single batch pathway at a single facility for a calendar month, in Btu HHV.

(2) For biogas produced from a mixed digester, the batch volume of biogas must be calculated as follows:

(i) The batch volume of biogas produced under an approved pathway with a D code of 5 must be calculated as follows:

$$V_{BG,D5} = V_{BG} - V_{BG,D3/7}$$

Where:

$V_{BG,D5}$ = The batch volume of biogas for an approved pathway with a D code of 5 for the calendar month, in Btu HHV. If the result of this equation is negative, then $V_{BG,D5,p}$ equals 0.

V_{BG} = The total volume of biogas produced by the mixed digester for the calendar month, in Btu HHV, as measured under paragraph (f)(2)(iii)(A) of this section.

$V_{BG,D3/7}$ = The total batch volume of biogas produced under approved pathways with a D code of 3 or 7 for the calendar month, in Btu HHV, per paragraph (j)(2)(ii) of this section.

(ii) The batch volume of biogas produced under an approved pathway with a D code of 3 or 7 must be calculated as follows:

$$V_{BG,D3/7,p} = BE_{D3/7,i}$$

$V_{BG,D3/7,p}$ = The batch volume of biogas for batch pathway p with a D code of 3 or 7 for the calendar month, in Btu HHV.

$BE_{D3/7,i}$ = The total energy from cellulosic biogas feedstock i that forms energy in the biogas and whose batch pathway has been assigned a D code of 3 or 7 for the calendar month, in Btu HHV, per paragraph (j)(2)(iii) of this section.

(iii) The biogas energy value for each cellulosic biogas feedstock must be calculated as follows:

$$BE_{D3/7,i,j} = M_{i,j} * TS_{i,j} * VS_{i,j} * CF_{i,j}$$

Where:

$BE_{D3/7,i,j}$ = The amount of energy from cellulosic biogas feedstock i that forms energy in the biogas and whose batch pathway has been assigned a D code of 3 or 7 on day j, in Btu HHV.

$M_{i,j}$ = Mass of cellulosic biogas feedstock i, in pounds, measured on day j, per paragraph (f)(2)(iii)(B) of this section.

$TS_{i,j}$ = Total solids of cellulosic biogas feedstock i, as a mass fraction, in pounds total solids per pound feedstock, for the sample obtained on day j, per paragraph (f)(2)(iii)(C) of this section. If sample results are not available, then $TS_{i,j}$ equals 0.

$VS_{i,j}$ = Volatile solids of cellulosic biogas feedstock i, as a mass fraction, in pounds volatile solids per pound total solids, for the sample obtained on day j, per paragraph (f)(2)(iii)(C) of this section. If sample results are not available, then $VS_{i,j}$ equals 0.

$CF_{i,j}$ = Converted fraction in annual average Btu HHV/lb, representing the portion of cellulosic biogas feedstock i that is converted to biomethane by the producer on day j, per paragraph (j)(2)(iv) of this section. If data for digester operating conditions required under paragraph (f)(2)(iii)(D) of this section are outside the range of operating conditions specified in paragraph (j)(2)(v) of this section or such data to determine the operating conditions does not meet the requirements in § 80.155(d), then $CF_{i,j}$ equals 0.

(iv) Biogas producers must use one of the following cellulosic conversion factors, as applicable:

(A) Swine manure: 1,936 Btu HHV/lb.

(B) Bovine manure: 2,077 Btu HHV/lb.

(C) Chicken manure: 3,001 Btu HHV/lb.

(D) Municipal wastewater treatment sludge: 3,479 Btu HHV/lb.

(E) A cellulosic conversion factor accepted at registration under § 80.135(c)(10)(vi).

(v) Applicable operating conditions for the cellulosic converted fractions specified in paragraph (j)(2)(iv) of this section are the following:

(A) For the cellulosic converted fraction values specified in paragraphs (j)(2)(iv)(A) through (D) of this section, the mixed digester must continuously operate above 95 degrees Fahrenheit with hydraulic and solids mean residence times greater than 20 days.

(B) For the cellulosic converted fraction value specified in paragraph (j)(2)(iv)(E) of this section, the mixed digester must operate according to the conditions accepted at registration under § 80.135(c)(10)(vi)(A)(*4*).

(3) The biogas producer must assign a number (the ''batch number'') to each batch of biogas consisting of their EPA-issued company registration number, the EPA-issued facility registration number, the last two digits of the calendar year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (*e.g.,* 4321–54321–23–000001, 4321–54321–23–000002, etc.).

(k) *Limitations.* (1) For each biogas production facility, the biogas producer must only supply biogas for only one of the following uses:

(i) Production of renewable CNG/LNG via a biogas closed distribution system.

(ii) As a biointermediate via a biogas closed distribution system.

(iii) Production of RNG.

(2) For each biogas production facility producing biogas for use as a biointermediate in a biogas closed distribution system, the biogas producer must only supply biogas or treated biogas to a single renewable fuel production facility.

(3) If the biogas producer operates a municipal wastewater treatment facility digester, the biogas producer must not introduce any feedstocks into that digester that do not contain at least 75% average adjusted cellulosic content.

(4) The transfer and batch segregation limits specified in § 80.1476(g) do not apply.

§ 80.110 RNG producers, RNG importers, and biogas closed distribution system RIN generators.

(a) *General requirements.* (1) Any RNG producer, RNG importer, or biogas closed distribution system RIN generator that generates RINs must comply with the requirements of this section.

(2) The RNG producer, RNG importer, or biogas closed distribution system RIN generator must also comply with all other applicable requirements of this part and 40 CFR part 1090.

(3) If the RNG producer, RNG importer, or biogas closed distribution system RIN generator meets the definition of more than one type of regulated party under this part or 40 CFR 1090, the RNG producer, RNG importer, or biogas closed distribution system RIN generator must comply with the requirements applicable to each of those types of regulated parties.

(4) The RNG producer, RNG importer, or biogas closed distribution system RIN generator must comply with all applicable requirements of this part, regardless of whether the requirements are identified in this section.

(5) The transfer and batch segregation limits specified in § 80.1476(g) do not apply.

(b) *Registration.* The RNG producer, RNG importer, or biogas closed distribution system RIN generator must register with EPA under §§ 80.135, 80.1450, and 40 CFR part 1090, subpart I, as applicable.

(c) *Reporting.* The RNG producer, RNG importer, or biogas closed distribution system RIN generator must submit reports to EPA under §§ 80.140, 80.1451, and 80.1452, as applicable.

(d) *Recordkeeping.* The RNG producer, RNG importer, or biogas closed distribution system RIN generator must create and maintain records under §§ 80.145 and 80.1454.

(e) *PTDs.* On each occasion when the RNG producer, RNG importer, or biogas closed distribution system RIN generator transfers RNG, renewable fuel, or RINs to another party, the transferor must provide to the transferee PTDs under §§ 80.150 and 80.1453, as applicable.

(f) *Sampling, testing, and measurement.* (1) All sampling, testing, and measurements must be done in accordance with § 80.155.

(2)(i) An RNG producer must measure the volume of RNG, in Btu LHV, prior to injection of RNG from the RNG production facility into a natural gas commercial pipeline system.

(ii) An RNG producer that trucks RNG from the RNG production facility to a pipeline interconnect must measure the volume of RNG, in Btu LHV, upon loading and unloading of each truck.

(iii) An RNG producer that injects RNG from an RNG production facility into a natural gas commercial pipeline system must sample and test a representative sample of all the following at least once per calendar year, as applicable:

(A) Biogas used to produce RNG.

(B) RNG before blending with non-renewable components.

(C) RNG after blending with non-renewable components.

(iv) A party that upgrades biogas to treated biogas must separately measure all the following, as applicable:

(A) The volume of biogas, in Btu HHV, used to produce treated biogas, a biogas-derived renewable fuel, or as a biointermediate.

(B) The volume of treated biogas, in Btu HHV, prior to addition of any non-renewable components.

(C) The volume of biointermediate or biogas-derived renewable fuel produced from the biogas or treated biogas. If the biogas-derived renewable fuel is renewable CNG/LNG, then this volume must be measured in both Btu HHV and Btu LHV.

(3) A biogas closed distribution RIN generator must measure renewable CNG/LNG in Btu LHV.

(g) *Foreign RNG producer, RNG importer, and foreign biogas closed distribution system RIN generator requirements.* (1)(i) A foreign RNG producer must meet all the requirements that apply to an RNG producer under this part, as well as the additional requirements for foreign RNG producers specified in § 80.160.

(ii) A foreign RNG producer must either generate RINs under § 80.125 or enter into a contract with an RNG importer as specified in § 80.160(e).

(2) An RNG importer must meet all the requirements specified in § 80.160(h).

(3) A foreign biogas closed distribution system RIN generator must meet all the requirements that apply to a biogas closed distribution system RIN generator under this part, as well as the additional requirements for foreign biogas closed distribution system RIN generators specified in § 80.160 and for RIN-generating foreign renewable fuel producers specified in § 80.1466.

(h) *Attest engagements.* The RNG producer, RNG importer, or biogas closed distribution system RIN generator must submit annual attest engagement reports to EPA under §§ 80.165 and 80.1464 using procedures specified in 40 CFR 1090.1800 and 1090.1805.

(i) *QAP.* Prior to the generation of a Q–RIN for RNG or biogas-derived renewable fuel, the RNG producer, RNG importer, or biogas closed distribution system RIN generator must meet all applicable requirements specified in § 80.170.

(j) *Batches.* (1) A batch of RNG is the total volume of RNG produced at an RNG production facility under a single batch pathway for the calendar month, in Btu LHV, as determined under paragraph (j)(4) of this section.

(2) A batch of biogas-derived renewable fuel must comply with the requirements specified in § 80.1426(d).

(3) The RNG producer, RNG importer, or biogas closed distribution system RIN generator must assign a number (the ''batch number'') to each batch of RNG or biogas-derived renewable fuel consisting of their EPA-issued company registration number, the EPA-issued facility registration number, the last two digits of the calendar year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (*e.g.,* 4321–54321–23–000001, 4321–54321–23–000002, etc.).

(4) The batch volume of RNG must be calculated as follows:

$$V_{RNG,p} = V_{NG} * \frac{V_{BG,p}}{V_{BG,total}} * R$$

Where:

$V_{RNG,p}$ = The batch volume of RNG for batch pathway p, in Btu LHV.

V_{NG} = The total volume of natural gas produced at the RNG production facility for the calendar month, in Btu LHV, as measured under § 80.155.

$V_{BG,p}$ = The total volume of biogas used to produce RNG under batch pathway p for the calendar month, in Btu HHV, per § 80.105(j).

$V_{BG,total}$ = The total volume of biogas used to produce RNG under all batch pathways for the calendar month, in Btu HHV, per § 80.105(j).

R = The renewable fraction of the natural gas produced at the RNG production facility for the calendar month. For natural gas produced only from renewable feedstocks, R is equal to 1. For natural gas produced from both renewable and non-renewable feedstocks, R must be measured by a carbon-14 dating test method, per § 80.1426(f)(9).

§ 80.115 RNG RIN separators.

(a) *General requirements.* (1) Any RNG RIN separator must comply with the requirements of this section.

(2) The RNG RIN separator must also comply with all other applicable requirements of this part and 40 CFR part 1090.

(3) If the RNG RIN separator meets the definition of more than one type of regulated party under this part or 40 CFR 1090, the RNG RIN separator must comply with the requirements applicable to each of those types of regulated parties.

(4) The RNG RIN separator must comply with all applicable requirements of this part, regardless of whether the requirements are identified in this section.

(b) *Registration.* (1) The RNG RIN separator must register with EPA under §§ 80.135, 80.1450, and 40 CFR part 1090, subpart I, as applicable.

(2) A dispensing location may only be included in one RNG RIN separator's registration at a time.

(c) *Reporting.* The RNG RIN separator must submit reports to EPA under §§ 80.140, 80.1451, and 80.1452, as applicable.

(d) *Recordkeeping.* The RNG RIN separator must create and maintain records under §§ 80.145 and 80.1454.

(e) *PTDs.* On each occasion when the RNG RIN separator transfers title of renewable fuel and RINs to another party, the transferor must provide to the transferee PTDs under § 80.1453.

(f) *Measurement.* (1) All measurements must be done in accordance with § 80.155.

(2) An RNG RIN separator must measure the volume of natural gas, in Btu LHV, withdrawn from the natural gas commercial pipeline system.

(g) *Attest engagements.* The RNG RIN separator must submit annual attest engagement reports to EPA under §§ 80.165 and 80.1464 using procedures specified in 40 CFR 1090.1800 and 1090.1805.

§ 80.120 Parties that use biogas as a biointermediate or RNG as a feedstock or as process heat or energy.

(a) *General requirements.* (1) Any renewable fuel producer that uses biogas as a biointermediate or RNG as a feedstock or as process heat or energy under § 80.1426(f)(12) or (13) must comply with the requirements of this section.

(2) The renewable fuel producer must also comply with all other applicable requirements of this part and 40 CFR part 1090.

(3) If the renewable fuel producer meets the definition of more than one type of regulated party under this part or 40 CFR 1090, the renewable fuel producer must comply with the requirements applicable to each of those types of regulated parties.

(4) The renewable fuel producer must comply with all applicable requirements of this part, regardless of whether they are identified in this section.

(5) The transfer and batch segregation limits specified in § 80.1476(g) do not apply.

(b) *Registration.* The renewable fuel producer must register with EPA under §§ 80.135, 80.1450, and 40 CFR part 1090, subpart I, as applicable.

(c) *Reporting.* The renewable fuel producer must submit reports to EPA under §§ 80.140, 80.1451, and 80.1452, as applicable.

(d) *Recordkeeping.* The renewable fuel producer must create and maintain records under §§ 80.145 and 80.1454.

(e) *PTDs.* On each occasion when the renewable fuel producer transfers title of biogas-derived renewable fuel and RINs to another party, the transferor must provide to the transferee PTDs under §§ 80.150 and 80.1453.

(f) *Measurement.* (1) All measurements must be done in accordance with § 80.155.

(2) A renewable fuel producer must measure the volume of natural gas, in Btu LHV, withdrawn from the natural gas commercial pipeline system.

(g) *Attest engagements.* The renewable fuel producer must submit annual attest engagement reports to EPA under §§ 80.165 and 80.1464 using procedures specified in 40 CFR 1090.1800 and 1090.1805.

(h) *QAP.* Prior to the generation of a Q–RIN for biogas-derived renewable fuel produced from biogas used as a biointermediate or RNG used as a feedstock, the renewable fuel producer must meet all applicable requirements specified in § 80.170.

§ 80.125 RINs for RNG.

(a) *General requirements.* (1) Any party that generates, assigns, transfers, receives, separates, or retires RINs for RNG must comply with the requirements of this section.

(2) Any party that transacts RINs for RNG under this section must transact the RINs as specified in § 80.1452.

(b) *RIN generation.* (1) Only RNG producers may generate RINs for RNG injected into a natural gas commercial pipeline system.

(2) RNG producers must generate RINs for only the biomethane content of biogas supplied by a biogas producer registered under § 80.135.

(3) RNG producers must generate RINs using the applicable requirements for RIN generation in § 80.1426.

(4) If non-renewable components are blended into RNG, the RNG producer must generate RINs for only the biomethane content of the RNG prior to blending.

(5) RNG producers must use the measurement procedures specified in § 80.155 to determine the heating value of RNG for the generation of RINs.

(6) The number of RINs generated for a batch volume of RNG under each batch pathway must be calculated as follows:

$$RIN_{RNG,p} = \frac{V_{RNG,p}}{EqV_{RNG}}$$

Where:

$RIN_{RNG,p}$ = The number of RINs generated for a batch of RNG under batch pathway p, in gallon-RINs.

$V_{RNG,p}$ = The batch volume of RNG for batch pathway p, in Btu LHV, per § 80.110(j)(4).

EqV_{RNG} = The equivalence value for RNG, in Btu LHV per RIN, per § 80.1415(b)(5).

(7) When RNG is injected from multiple RNG production facilities at a pipeline interconnect, the total number of RINs generated must not be greater than the total number of RINs eligible to be generated under § 80.1415(b)(5) for the total volume of RNG injected by all RNG production facilities at that pipeline interconnect.

(8) For RNG that is trucked prior to injection into a natural gas commercial pipeline system, the total volume of RNG injected for the calendar month, in Btu LHV, must not be greater than the lesser of the total loading or unloading volume measurement for the month, in Btu LHV, as required under § 80.110(f)(2)(ii).

(9) Renewable fuel producers that retire RINs for RNG used as a feedstock under paragraph (e) of this section may only generate RINs for the renewable fuel produced from RNG if all applicable requirements under this part are met.

(c) *RIN assignment and transfer.* (1) RNG producers must assign the RINs generated for a batch of RNG to the specific volume of RNG injected into the natural gas commercial pipeline system.

(2) Except as specified in paragraph (c)(1) of this section, no party may assign a RIN to a volume of RNG.

(3) Each party that transfers title of a volume of RNG to another party must

transfer title of any assigned RINs for the volume of RNG to the transferee.

(d) *RIN separation.* (1) Only the following parties may separate a RIN from RNG:

(i) The party that withdrew the RNG from the natural gas commercial pipeline system.

(ii) The party that produced or oversaw the production of the renewable CNG/LNG from the RNG.

(iii) The party that used or dispensed for use the renewable CNG/LNG as transportation fuel.

(2) An RNG RIN separator must only separate a RIN from RNG if all the following requirements are met:

(i) The RNG used to produce the renewable CNG/LNG was measured using the procedures specified in § 80.155.

(ii) The RNG RIN separator has the following documentation demonstrating that the volume of renewable CNG/LNG was used as transportation fuel:

(A) If the RNG RIN separator sold or used the renewable CNG/LNG, records demonstrating the date, location, and volume of renewable CNG/LNG sold or used as transportation fuel.

(B) If the RNG RIN separator is relying on documentation from another party, all the following as applicable:

(*1*) A written contract with the other party for the sale or use of the renewable CNG/LNG as transportation fuel.

(*2*) Records from the other party demonstrating the date, location, and volume of renewable CNG/LNG sold or used as transportation fuel.

(*3*) An affidavit from each other party confirming all the following:

(*i*) That the volume of renewable CNG/LNG was used as transportation fuel and for no other purpose.

(*ii*) That the party will not separate RINs for this volume of RNG.

(*iii*) That the party has not provided affidavits to any other party for the purpose of complying with the requirements of this paragraph (d)(2)(ii).

(iii) The volume of RNG was only used to produce renewable CNG/LNG that is used as transportation fuel and for no other purpose.

(iv) No other party used the measurement information under paragraph (d)(2)(i) of this section or the information required under paragraph (d)(2)(ii) of this section to separate RINs for the RNG.

(v) No other party has separated RINs for the RNG using the same dispensing location during the calendar month.

(vi) The RNG RIN separator follows the applicable provisions under § 80.1429(a), (b)(10), and (c) through (e).

(3) An obligated party must not separate RINs for RNG under § 80.1429(b)(1) unless the obligated party meets the requirements in paragraph (d)(1) of this section.

(4) A party must only separate a number of RINs equal to the total volume of RNG (where the Btu LHV are converted to gallon-RINs using the conversion specified in § 80.1415(b)(5)) that the party demonstrates is used as renewable CNG/LNG under paragraph (d)(2) of this section.

(e) *RIN retirement.* (1) A party must retire RINs generated for RNG if any of the conditions specified in § 80.1434(a) apply and must comply with § 80.1434(b).

(2)(i) A party must retire all assigned RINs for a volume of RNG if the RINs are not separated under paragraph (d) of this section by the date the assigned RINs expire under § 80.1428(c).

(ii) A party must retire any expired RINs under paragraph (e)(2)(i) of this section by March 31 of the subsequent year. For example, if an RNG producer assigns RINs for RNG in 2025, the RINs expire if they are not separated under paragraph (d) of this section by December 31, 2026, and must be retired by March 31, 2027.

(3) A party that uses RNG for a purpose other than to produce renewable CNG/LNG (*e.g.,* as a feedstock, as process heat under § 80.1426(f)(12), or as process energy under § 80.1426(f)(13)) must retire any assigned RINs for the volume of RNG within 5 business days of such use of the RNG.

§ 80.130 RINs for renewable CNG/LNG from a biogas closed distribution system.

(a) *General requirements.* (1) Any party that generates, assigns, separates, or retires RINs for renewable CNG/LNG from a biogas closed distribution system must comply with the requirements of this section.

(2) Parties must report all RIN transactions to EMTS as specified in § 80.1452.

(b) *RIN generation.* (1) Biogas closed distribution system RIN generators must generate RINs using the applicable requirements for RIN generation in under this part.

(2) RINs for renewable CNG/LNG from a biogas closed distribution system may be generated if all the following requirements are met:

(i) The renewable CNG/LNG is produced from renewable biomass and qualifies to generate RINs under an approved pathway.

(ii) The biogas closed distribution system RIN generator has entered into a written contract for the sale or use of a specific quantity of renewable CNG/LNG for use as transportation fuel, and has obtained affidavits from all parties selling or using the renewable CNG/LNG certifying that the renewable CNG/LNG was used as transportation fuel.

(iii) The renewable CNG/LNG is used as transportation fuel and for no other purpose.

(c) *RIN separation.* A biogas closed distribution system RIN generator must separate RINs generated for renewable CNG/LNG under § 80.1429(b)(5)(ii).

(d) *RIN retirement.* A party must retire RINs generated for renewable CNG/LNG from a biogas closed distribution if any of the conditions specified in § 80.1434(a) apply and must comply with § 80.1434(b).

§ 80.135 Registration.

(a) *Applicability.* The following parties must register using the procedures specified in this section, § 80.1450 and 40 CFR 1090.800:

(1) Biogas producers.

(2) RNG producers.

(3) RNG importers.

(4) Biogas closed distribution system RIN generators.

(5) RNG RIN separators.

(6) Renewable fuel producers using biogas as a biointermediate or RNG as a feedstock.

(b) *General registration requirements.* Parties must submit applicable information for companies and facilities as specified in 40 CFR 1090.805.

(1) *New registrants.* (i) Parties required to register under this subpart must have an EPA-accepted registration prior to engaging in regulated activities under this subpart.

(ii) Registration information must be submitted at least 60 days prior to engaging in regulated activities under this subpart.

(iii) Parties may engage in regulated activities under this subpart once EPA has accepted their registration and they have met all other applicable requirements under this subpart.

(2) *Existing renewable CNG/LNG registrations.* (i) Parties listed in paragraph (a) of this section must submit updated registration information that complies with the applicable requirements of this section for any company or facility covered by a registration accepted under § 80.1450(b) for the generation of RINs under § 80.1426(f)(10)(ii) or (11)(ii) no later than October 1, 2024.

(ii) A biogas closed distribution system RIN generator or biogas producer does not need to submit an updated engineering review for any facility in the biogas closed distribution system as specified in § 80.1450(d)(1) before the next three-year engineering review update is due as specified in § 80.1450(d)(3).

(3) *Engineering reviews.* (i) Any party required to register a facility under this section must undergo all the following:

(A) A third-party engineering review as specified in § 80.1450(b)(2).

(B) Three-year engineering review updates as specified in § 80.1450(d)(3).

(ii) Third-party engineering reviews and three-year engineering review updates required under paragraph (b)(3)(i) of this section must evaluate all applicable registration information submitted under this section as well as all applicable requirements in § 80.1450(b).

(iii) A party may arrange for an independent third-party engineer to conduct a single site visit and submit a single engineering review report for a facility that performs multiple activities (*e.g.,* a facility that both produces biogas and upgrades it to RNG) under this subpart as long as the site visit and engineering review report includes all the requirements for each activity performed.

(4) *Registration updates.* (i) Parties registered under this section must submit updated registration information to EPA within 30 days when any of the following occur:

(A) The registration information previously supplied becomes incomplete or inaccurate.

(B) Facility information is updated under § 80.1450(d)(1), as applicable.

(C) A change of ownership is submitted under 40 CFR 1090.820.

(ii) Parties registered under this section must submit updated registration information to EPA within 7 days when any facility information is updated under § 80.1450(d)(2).

(iii) Parties that register a facility under this section must update their registration information and undergo a three-year engineering review update as specified in § 80.1450(d)(3).

(5) *Registration deactivations.* EPA may deactivate the registration of a party registered under this section as specified in § 80.1450(h), 40 CFR 1090.810, or 40 CFR 1090.815, as applicable.

(c) *Biogas producer.* In addition to the information required under paragraph (b) of this section, a biogas producer must submit all the following information for each biogas production facility:

(1) Information describing the biogas production capacity for the biogas production facility, in Btu HHV, including the following:

(i) Information regarding the permitted capacity in the most recent applicable air permits issued by EPA, a state, a local air pollution control agency, or a foreign governmental agency that governs the biogas production facility, if available.

(ii) Documents demonstrating the biogas production facility's nameplate capacity.

(iii) Information describing the biogas production facility's biogas production for each of the last three calendar years prior to the registration submission, if available.

(2) Whether the biogas will be used to produce RNG, renewable CNG/LNG, or biointermediate and information identifying the facility that will be supplied.

(3) The following information related to biogas measurement:

(i) A description of how biogas will be measured under § 80.155(a), including the specific standards under which the meters are operated.

(ii) A description of the biogas production process, including a process flow diagram that includes metering type(s) and location(s).

(iii) For an alternative measurement protocol under § 80.155(a)(3), all the following:

(A) A description of why the biogas producer is unable to use meters that comply with the requirements specified in § 80.155(a)(1) and (2), as applicable.

(B) A description of how measurement is conducted.

(C) Any standards or specifications that apply.

(D) A description of all routine maintenance and the frequency that such maintenance will be conducted.

(E) A description of the frequency of all measurements and how often such measurements will be recorded under the alternative measurement protocol.

(F) A comparison between the accuracy, precision, and reliability of the alternative measurement protocol and the requirements specified in § 80.155(a)(1) and (2), as applicable, including any supporting data.

(4) For biogas used to produce renewable CNG/LNG in a biogas closed distribution system, all the following additional information:

(i) A process flow diagram of each step of the physical process from feedstock entry to the point where the renewable CNG/LNG is dispensed as transportation fuel. This includes all the following:

(A) Feedstock processing.

(B) Biogas production.

(C) Biogas processing.

(D) Renewable CNG/LNG production.

(E) Points where non-renewable natural gas may be added.

(F) Dispensing stations.

(G) Measurement locations and equipment.

(H) Major equipment (*e.g.,* tanks, pipelines, flares, separation equipment, compressors, and dispensing infrastructure).

(I) Any other process-related information as requested by EPA.

(ii) A description of losses of heating content going from biogas to renewable CNG/LNG and an explanation of how such losses would be accounted for.

(iii) A description of the physical process from biogas production to dispensing of renewable CNG/LNG as transportation fuel, including the biogas closed distribution system.

(iv) A description of the vehicle fleet and dispensing stations that are expected to use and distribute the renewable CNG/LNG as transportation fuel.

(5) For biogas used as a biointermediate, all the information specified in § 80.1450(b)(1)(ii)(B).

(6) For biogas used to produce RNG, all the following additional information:

(i) The RNG producer that will upgrade the biogas.

(ii) A process flow diagram of the physical process from biogas production to entering the RNG production facility, including major equipment (*e.g.,* tanks, pipelines, flares, separation equipment).

(iii) A description of the physical process from biogas production to entering the RNG production facility, including an explanation of how the biogas reaches the RNG production facility.

(7) For biogas produced in an agricultural digester, all the following information:

(i) A separated yard waste plan specified in § 80.1450(b)(1)(vii)(A), as applicable.

(ii) Crop residue information specified in § 80.1450(b)(1)(xv), as applicable.

(iii) A process flow diagram of the physical process from feedstock entry to biogas production, including major equipment (*e.g.,* feedstock preprocessing equipment, tanks, digesters, pipelines, flares).

(8) For biogas produced in a municipal wastewater treatment facility digester, a process flow diagram of the physical process from feedstock entry to biogas production, including major equipment (*e.g.,* feedstock preprocessing equipment, tanks, digesters, pipelines, flares).

(9) For biogas produced in a separated MSW digester, all the following information:

(i) Separated MSW plan specified in § 80.1450(b)(1)(viii).

(ii) A process flow diagram of the physical process from feedstock entry to biogas production, including major equipment (*e.g.,* feedstock preprocessing equipment, tanks, digesters, pipelines, flares).

(10) For biogas produced in other waste digesters, all the following information, as applicable:

(i) A separated MSW plan specified in § 80.1450(b)(1)(viii).

(ii) A separated yard waste plan specified in § 80.1450(b)(1)(vii)(A).

(iii) Crop residues information specified in § 80.1450(b)(1)(xv).

(iv) A separated food waste plan or biogenic waste oils/fats/greases plan specified in § 80.1450(b)(1)(vii)(B).

(v) A process flow diagram of each step of the physical process from feedstock entry to the point where the biogas either leaves the facility or is used to produce RNG, biointermediate, or biogas-derived renewable fuel. This includes all the following:

(A) Feedstock processing.

(B) Biogas production.

(C) Biogas processing.

(D) Major equipment (*e.g.,* feedstock preprocessing equipment, tanks, digesters, pipelines, flares).

(E) Measurement locations and equipment.

(F) Any other process-related information as requested by EPA.

(vi) For biogas produced in a mixed digester, all the following:

(A) For biogas producers using a value under § 80.105(j)(2)(iv)(E), all the following:

(*1*) The cellulosic converted fraction (CF) for each cellulosic biogas feedstock that will be used in § 80.105(j)(2)(iii), in Btu HHV/lb feedstock, rounded to the nearest whole number.

(*2*) Data supporting the cellulosic CF from each cellulosic biogas feedstock. Data must be derived from processing of cellulosic biogas feedstock(s) in anaerobic digesters without simultaneous conversion under similar conditions as will be run in the simultaneously converted process. Data must be either from the facility when it was processing solely the feedstock that does have a minimum 75% adjusted cellulosic content or from a representative sample of other representative facilities processing the feedstock that does have a minimum 75% adjusted cellulosic content.

(*3*) A description of how the cellulosic CF was determined, including any calculations demonstrating how the data were used.

(*4*) A list of ranges of processing conditions, including temperature, solids mean residence time, and hydraulic mean residence time, for which the cellulosic CF is accurate and a description of how such processing conditions will be measured by the facility.

(*5*) A demonstration that no biogas generated from non-cellulosic biogas feedstocks could be used to generate RINs for a batch of renewable fuel with a D code of 3 or 7. EPA may reject this demonstration if it is not sufficiently protective.

(B) A description of the meters used to determine the mass of cellulosic biogas feedstock.

(C) The location of feedstock sampling, additive (*e.g.,* water) addition, and mass measurement for use in § 80.105(j)(2)(iii) included in the process flow diagram required under paragraph (c)(10)(v) of this section.

(D) For facilities using composite sampling under § 80.155(c)(3), a composite sampling plan, including all the following:

(*1*) A description of when and where the samples will be collected.

(*2*) A description of how the samples will be stored prior to testing.

(*3*) A description of how daily representative samples will be mixed, including how the ratio of each sample will be determined.

(*4*) A description of how often testing will occur.

(*5*) A description of how the plan complies with § 80.155(c)(2).

(d) *RNG producer.* In addition to the information required under paragraph (b) of this section, an RNG producer must submit all the following information for each RNG production facility:

(1) All applicable information in § 80.1450(b)(1)(ii).

(2) Information to establish the RNG production capacity for the RNG production facility, in Btu LHV, including all the following, as applicable:

(i) Information regarding the permitted capacity in the most recent applicable air permits issued by EPA, a state, a local air pollution control agency, or a foreign governmental agency that governs the RNG production facility, if available.

(ii) Documents demonstrating the RNG production facility's nameplate capacity.

(iii) Information describing the RNG production facility's RNG production for each of the last three calendar years prior to the registration submission, if available.

(3) The following information related to RNG measurement:

(i) A description of how RNG will be measured under § 80.155(a), including the specific standards under which the meters are operated.

(ii) A description of the RNG production process, including a process flow diagram that includes metering type(s) and location(s).

(iii) For an alternative measurement protocol under § 80.155(a)(3), all the following:

(A) A description of why the RNG producer is unable to use meters that comply with the requirements specified in § 80.155(a)(1) and (2), as applicable.

(B) A description of how measurement is conducted.

(C) Any standards or specifications that apply.

(D) A description of all routine maintenance and the frequency that such maintenance will be conducted.

(E) A description of the frequency of all measurements and how often such measurements will be recorded under the alternative measurement protocol.

(F) A comparison between the accuracy, precision, and reliability of the alternative measurement protocol and the requirements specified in § 80.155(a)(1) and (2), as applicable, including any supporting data.

(4) The natural gas commercial pipeline system name and pipeline interconnect location into which the RNG will be injected.

(5) A description of the natural gas specifications for the natural gas commercial pipeline system into which the RNG will be injected, including information on all parameters regulated by the pipeline (*e.g.,* hydrogen sulfide, total sulfur, carbon dioxide, oxygen, nitrogen, heating content, moisture, siloxanes, and any other available data related to the gas components).

(6) For three-year registration updates, information related to RNG quality, including all the following:

(i) A certificate of analysis—including the major and minor gas components—from an independent laboratory for a representative sample of the biogas produced at the biogas production facility as specified in § 80.155(b).

(ii) A certificate of analysis—including the major and minor gas components—from an independent laboratory for a representative sample of the RNG prior to addition of non-renewable components as specified in § 80.155(b).

(iii) If the RNG is blended with non-renewable components prior to injection into a natural gas commercial pipeline system, a certificate of analysis from an independent laboratory for a representative sample of the RNG after blending with non-renewable components as specified in § 80.155(b).

(iv) A summary table with the results of the certificates of analysis required under paragraphs (d)(6)(i) through (iii) of this section and the natural gas specifications required under paragraph (d)(5) of this section converted to the same units.

(v) EPA may approve an RNG producer's request of an alternative analysis in lieu of the certificates of analysis and summary table required under paragraphs (d)(6)(i) through (iv) of this section if the RNG producer demonstrates that the alternative analysis provides information that is equivalent to that provided in the certificates of analysis and that the RNG will meet all natural gas specifications required under paragraph (d)(5) of this section.

(7) A RIN generation protocol that includes all the following information:

(i) The procedure for allocating RNG injected into the natural gas commercial pipeline system to each RNG production facility and each biogas production facility, including how discrepancies in meter values will be handled.

(ii) A diagram showing the locations of flow meters, gas analyzers, and in-line GC meters used in the allocation procedure.

(iii) A description of when RINs will be generated (*e.g.,* receipt of monthly pipeline statement, etc).

(8) For an RNG production facility that injects RNG at a pipeline interconnect that also has RNG injected from other sources, a description of how the RNG producers will allocate RINs to ensure that all facilities comply with the requirements specified in § 80.125(b)(7).

(9) For a foreign RNG producer, all the following additional information:

(i) The applicable information specified in § 80.160.

(ii) Whether the foreign RNG producer will generate RINs for their RNG.

(iii) For non-RIN generating foreign RNG producers, the name and EPA-issued company and facility IDs of the contracted importer under § 80.160(e).

(e) *RNG importer.* In addition to the information required under paragraph (b) of this section, an RNG importer must submit all the following information:

(1) The name and EPA-issued company and facility IDs of the contracted non-RIN generating foreign RNG producer under § 80.160(e).

(2) The name and contact information for the independent third party specified in § 80.160(h).

(f) *RNG RIN separator.* In addition to the information required under paragraph (b) of this section, an RNG RIN separator must submit a list of locations of any dispensing stations where the RNG RIN separator supplies or intends to supply renewable CNG/LNG for use as transportation fuel.

(g) *Renewable fuel producer using biogas as a biointermediate.* In addition to the information required under paragraph (b) of this section, a renewable fuel producer using biogas as a biointermediate must submit all the following:

(1) All applicable information in § 80.1450(b).

(2) Documentation demonstrating a direct connection between the biogas production facility and the renewable fuel production facility.

§ 80.140 Reporting.

(a) *General provisions*—(1) *Applicability.* Parties must submit reports to EPA according to the schedule and containing all applicable information specified in this section.

(2) *Forms and procedures for report submission.* All reports required under this section must be submitted using forms and procedures specified by EPA.

(3) *Additional reporting elements.* In addition to any applicable reporting requirement under this section, parties must submit any additional information EPA requires to administer the reporting requirements of this section.

(4) *English language reports.* All reported information submitted to EPA under this section must be submitted in English, or must include an English translation.

(5) *Signature of reports.* Reports required under this section must be signed and certified as meeting all the applicable requirements of this subpart by the RCO or their delegate identified in the company registration under 40 CFR 1090.805(a)(1)(iv).

(6) *Report submission deadlines.* Reports required under this section must be submitted by the following deadlines:

(i) Monthly reports must be submitted by the applicable monthly deadline in § 80.1451(f)(4).

(ii) Quarterly reports must be submitted by the applicable quarterly deadline in § 80.1451(f)(2).

(iii) Annual reports must be submitted by the applicable annual deadline in § 80.1451(f)(1).

(8) *Volume standardization.* (i) All volumes reported to EPA in scf under this section must be standardized to STP.

(ii) All volumes reported to EPA in Btu under this section must be converted according to § 80.155(f), if applicable.

(iii) All other volumes reported to EPA under this section must be standardized according to § 80.1426(f)(8).

(b) *Biogas producers.* A biogas producer must submit monthly reports to EPA containing all the following information for each batch of biogas:

(1) Batch number.

(2) Production date (end date of the calendar month).

(3) Verification status of the batch.

(4) The batch volume of biogas supplied to the downstream party, in Btu HHV and scf, as measured under § 80.155.

(5) The associated pathway information, including D code, designated use of the biogas (*e.g.,* biointermediate, renewable CNG/LNG, or RNG), and feedstock information.

(6) The EPA-issued company and facility IDs for the RNG producer, biogas closed distribution system RIN generator, or renewable fuel producer that received the batch of the biogas.

(c) *RNG producers.* (1) An RNG producer must submit quarterly reports to EPA containing all the following information:

(i) The total volume of RNG, in Btu LHV and scf, produced and injected into the natural gas commercial pipeline system as measured under § 80.155.

(ii) The total volume of non-renewable components, in Btu LHV, added to RNG prior to injection into the natural gas commercial pipeline system.

(2) A non-RIN generating foreign RNG producer must submit monthly reports to EPA containing all the following information for each batch of RNG:

(i) Batch number.

(ii) Production date (end date of the calendar month).

(iii) Verification status of the batch.

(iv) The associated pathway information, including D code, production process, and feedstock information.

(v) The EPA-issued company and facility IDs for the RNG importer that will generate RINs for the batch.

(d) *Biogas closed distribution system RIN generators.* A biogas closed distribution system RIN generator must submit monthly reports to EPA containing all the following information:

(1)(i) For fuels that are gaseous at STP, the type and volume of biogas-derived renewable fuel, in Btu LHV.

(ii) For all other fuels, the type and volume of biogas-derived renewable fuel, in gallons.

(2) Each of the following, as applicable, as measured under § 80.155:

(i) The volume of biogas, in Btu HHV, used to produce the treated biogas that is used to produce the biogas-derived renewable fuel.

(ii) The volume of biogas, in Btu HHV, used to produce the biogas-derived renewable fuel.

(iii) The volume of treated biogas, in Btu HHV, used to produce the biogas-derived renewable fuel.

(3) The name(s) and location(s) of where the biogas-derived renewable fuel is used or sold for use as transportation fuel.

(4)(i) For fuels that are gaseous at STP, the volume of biogas-derived renewable fuel, in Btu LHV, used at each location where the biogas-derived renewable fuel is used or sold for use as transportation fuel.

(ii) For all other fuels, the volume of biogas-derived renewable fuel, in gallons, used at each location where the biogas-derived renewable fuel is used or sold for use as transportation fuel.

(5) All applicable information in § 80.1451(b).

(e) *RNG RIN separators.* (1) An RNG RIN separator must submit quarterly reports to EPA containing all the following information:

(i) Name and location of each point where RNG was withdrawn from the natural gas commercial pipeline system.

(ii) Volume of RNG, in Btu LHV, withdrawn from the natural gas commercial pipeline system during the reporting period by withdrawal location.

(iii) Volume of renewable CNG/LNG, in Btu LHV, dispensed during the reporting period by withdrawal location.

(2) An RNG RIN separator must submit monthly reports to EPA containing all the following information for each batch of biogas:

(i) The location where renewable CNG/LNG was dispensed as transportation fuel.

(ii) The volume of renewable CNG/LNG, in Btu LHV, dispensed as transportation fuel at the location.

(f) *Retirement of RINs for RNG used as a feedstock or process heat.* A party that retires RINs for RNG used as a feedstock or as process heat or energy under § 80.1426(f)(12) or (13) must submit quarterly reports to EPA containing all the following information:

(1) The name(s) and location(s) of the natural gas commercial pipeline where the RNG was withdrawn.

(2) Volume of RNG, in Btu LHV, withdrawn from the natural gas commercial pipeline during the reporting period by location.

(3) The EPA-issued company and facility IDs for the facility that used the withdrawn RNG as a feedstock or as process heat.

(4) For each facility, the following information, as applicable:

(i) For fuels that are gaseous at STP, the volume of biogas-derived renewable fuel, in Btu LHV, produced using the withdrawn RNG.

(ii) For all other fuels, the volume of biogas-derived renewable fuel, in gallons, produced using the withdrawn RNG.

(5) The number of RINs for RNG retired during the reporting period by D code and verification status.

§ 80.145 Recordkeeping.

(a) *General requirements*—(1) *Records to be kept.* All parties subject to the requirements of this subpart must keep the following records:

(i) *Compliance report records.* Records related to compliance reports submitted to EPA under this part as follows:

(A) Copies of all reports submitted to EPA.

(B) Copies of any confirmation received from the submission of such reports to EPA.

(C) Copies of all underlying information and documentation used to prepare and submit the reports.

(D) Copies of all calculations required under this subpart.

(ii) *Registration records.* Records related to registration under this part and 40 CFR part 1090, subpart I, as follows:

(A) Copies of all registration information and documentation submitted to EPA.

(B) Copies of all underlying information and documentation used to prepare and submit the registration request.

(iii) *PTD records.* Copies of all PTDs required under this part.

(iv) *Subpart M records.* Any applicable record required under 40 CFR part 80, subpart M.

(v) *QAP records.* Information and documentation related to participation in any QAP program, including contracts between the entity and the QAP provider, records related to verification activities under the QAP, and copies of any QAP-related submissions.

(vi) *Sampling, testing, and measurement records.* Documents supporting the sampling, storage, testing, and measurement results relied upon under § 80.155, including all results, maintenance records, and calibration records.

(vii) *Other records.* Any other records relied upon by the party to demonstrate compliance with this subpart.

(viii) *Potentially invalid RINs.* Any records and copies of notifications related to potentially inaccurate or non-qualifying biogas volumes or potentially invalid RINs under § 80.185.

(ix) *RNG importers and foreign parties.* Any records related to RNG importers and foreign parties under §§ 80.160, 80.1466, and 80.1467, as applicable.

(2) *Length of time records must be kept.* The records required under this subpart must be kept for five years from the date they were created, except that records related to transactions involving RINs must be kept for five years from the date of the RIN transaction.

(3) *Make records available to EPA.* Any party required to keep records under this section must make records available to EPA upon request by EPA. For records that are electronically generated or maintained, the party must make available any equipment and software necessary to read the records or, upon approval by EPA, convert the electronic records to paper documents.

(4) *English language records.* Any record requested by EPA under this section must be submitted in English, or include an English translation.

(b) *Biogas producers.* In addition to the records required under paragraph (a) of this section, a biogas producer must keep all the following records:

(1) Copies of all contracts, PTDs, affidavits required under this part, and all other commercial documents with any RNG producer, biointermediate producer, or renewable fuel producer.

(2) Documents supporting the volume of biogas, in Btu HHV and scf, produced for each batch.

(3) Documents supporting the composition and cleanup of biogas produced for each batch (*e.g.,* meter readings of composition, records of adsorbent replacement, records showing equipment operation including maintenance and energy usage, and records of component streams separated from the biomethane-enriched stream).

(4) Information and documentation related to participation in any QAP program, including contracts between the biogas producer and the QAP provider, records related to verification activities under the QAP, and copies of any QAP-related submissions.

(5) Records related to measurement, including types of equipment used, metering process, maintenance and calibration records, documents supporting adjustments related to error correction, and measurement data.

(6) Documents supporting the use of each process heat source and supporting the amount of each source used in the production process for each batch.

(7) All the applicable recordkeeping requirements for digester feedstocks under § 80.1454.

(8) The following information and documents showing that the biogas came from renewable biomass:

(i) For all anaerobic digesters, documentation showing the mass of each feedstock type input into the digester for each batch of biogas.

(ii) For agricultural digesters, a quarterly affidavit signed by the RCO or

their delegate that only animal manure, crop residue, or separated yard waste that had an adjusted cellulosic content of at least 75% were used to produce biogas during the quarter.

(iii) For municipal wastewater treatment facility digesters and separated MSW digesters, a quarterly affidavit signed by the RCO or their delegate that only feedstocks that had an adjusted cellulosic content of at least 75% were used to produce biogas during the quarter.

(iv) For biogas produced from separated yard waste, separated food waste, or biogenic waste oils/fats/greases, documents required under § 80.1454(j)(1).

(v) For biogas produced from separated MSW, documents required under § 80.1454(j)(2).

(9) For biogas produced in a mixed digester, all the following:

(i) Documents for each delivery of feedstock to the biogas production facility, demonstrating all the following for each unique combination of feedstock supplier and type of feedstock:

(A) The name of the feedstock supplier.

(B) The type of feedstock.

(C) The mass of that feedstock delivered from that supplier.

(ii) Data, documents, and calculations related to digester operating conditions required under § 80.105(f)(2)(iii)(D).

(iii) Documents for each batch showing how measurement data for volatile solids, total solids, and mass were used to calculate batch volume under § 80.105(j)(2).

(iv) Documents showing the amounts of additives (*e.g.,* water), timing of additive addition, and location of additive addition for all additives added to the feedstock.

(v) For samples tested for volatile solids and total solids, documents showing the time and location that each sample was obtained and tested.

(c) *RNG producers.* In addition to the records required under paragraph (a) of this section, an RNG producer must keep all the following records:

(1) Records related to the generation and assignment of RINs, including all the following information:

(i) Batch volume.

(ii) Batch number.

(iii) Production date when RINs were assigned to RNG.

(iv) Injection point into the natural gas commercial pipeline system.

(v) Volume of biogas, in Btu HHV and scf, respectively, received at each RNG production facility.

(vi) Volume of RNG, in Btu LHV, Btu HHV, and scf, produced at each RNG production facility.

(vii) Pipeline injection statements describing the energy and volume of natural gas for each pipeline interconnect.

(2) Records related to each RIN transaction, separately for each transaction, including all the following information:

(i) A list of the RINs generated, owned, purchased, sold, separated, retired, or reinstated.

(ii) The parties involved in each transaction including the transferor, transferee, and any broker or agent.

(iii) The date of the transfer of the RINs.

(iv) Additional information related to details of the transaction and its terms.

(3) Documentation recording the transfer and sale of RNG, from the point of biogas production to the facility that sells or uses the fuel for transportation purposes.

(4) A copy of the RNG producer's Compliance Certification required under Title V of the Clean Air Act.

(5) Results of any laboratory analysis of chemical composition or physical properties.

(6) Documents supporting the composition of biogas and RNG and cleanup of biogas for each batch (*e.g.,* meter readings of composition, records of adsorbent replacement, records showing equipment operation including maintenance and energy usage, and records of component streams separated from the biomethane-enriched stream).

(7) Documents supporting the use of each process heat source and supporting the amount of each source used in the production process for each batch.

(8) Records related to measurement, including types of equipment used, metering process, maintenance and calibration records, documents supporting adjustments related to error correction, and measurement data.

(9) Information and documentation related to participation in any QAP program, including contracts between the RNG producer and the QAP provider, records related to verification activities under the QAP, and copies of any QAP-related submissions.

(10) For an RNG production facility that injects RNG at a pipeline interconnect that also has RNG injected from other sources, documents showing that RINs generated for the facility comply with the requirements specified in § 80.125(b)(7).

(11) Documentation of any waiver provided by the natural gas commercial pipeline system for any parameter of the RNG that does not meet the natural gas specifications submitted under § 80.135(d)(5).

(d) *Biogas closed distribution system RIN generators.* In addition to the records required under paragraph (a) of this section, a biogas closed distribution system RIN generator must keep all the following records:

(1) Documentation demonstrating that the renewable CNG/LNG was produced from renewable biomass and qualifies to generate RINs under an approved pathway.

(2) Copies of any written contract for the sale or use of renewable CNG/LNG as transportation fuel, and copies of any affidavit from a party that sold or used the renewable CNG/LNG as transportation fuel.

(e) *RNG RIN separators.* In addition to the records required under paragraph (a) of this section, an RNG RIN separator must keep all the following records:

(1) Documentation indicating the volume of RNG, in Btu LHV, withdrawn from each interconnect of the natural gas commercial pipeline system.

(2) Documentation demonstrating the volume of RNG, in Btu LHV, withdrawn from the natural gas commercial pipeline system that was used to produce renewable CNG/LNG.

(3) Documentation indicating the volume of renewable CNG/LNG, in Btu LHV, dispensed as transportation fuel from each dispensing location.

(4) Copies of all documentation required under § 80.125(d)(2)(ii), as applicable.

(5) Documentation showing how the number of RINs separated was determined using the information specified in paragraphs (e)(1) through (4) of this section and the applicable RIN separation reports.

(f) *Renewable fuel producers that use biogas as a biointermediate or RNG as a feedstock.* In addition to the records required under paragraph (a) of this section, a renewable fuel producer that uses biogas as a biointermediate or RNG as a feedstock must keep all the following records:

(1) Documentation supporting the volume of renewable fuel produced from biogas used as a biointermediate or RNG that was used as a feedstock.

(2) For biogas, all the following additional information:

(i) For each facility, documentation supporting the volume of biogas, in Btu HHV and scf, that was used as a biointermediate.

(ii) Copies of all applicable contracts over the past 5 years with each biointermediate producer.

(3) For RNG, all the following additional information:

(i) Documentation supporting the volume of RNG, in Btu LHV, withdrawn

from the natural gas commercial pipeline system.

(ii) Documentation supporting the retirement of RINs for RNG used as a feedstock (*e.g.,* contracts, purchase orders, invoices).

§ 80.150 Product transfer documents.

(a) *General requirements*—(1) *PTD contents.* On each occasion when any person transfers title of any biogas or imported RNG without assigned RINs, the transferor must provide the transferee PTDs that include all the following information:

(i) The name, EPA-issued company and facility IDs, and address of the transferor.

(ii) The name, EPA-issued company and facility IDs, and address of the transferee.

(iii) The volume (in Btu HHV for biogas or Btu LHV for RNG) of the product being transferred by D code and verification status.

(iv) The location of the product at the time of the transfer.

(v) The date of the transfer.

(vi) Period of production.

(2) *Other PTD requirements.* A party must also include any applicable PTD information required under § 80.1453 or 40 CFR part 1090, subpart L.

(b) *Additional PTD requirements for transfers of biogas.* In addition to the information required in paragraph (a) of this section, on each occasion when any person transfers title of biogas, the transferor must provide the transferee PTDs that include all the following information:

(1) An accurate and clear statement of the applicable designation of the biogas.

(2) If the biogas is designated as a biointermediate, any applicable requirement specified in § 80.1453(f).

(3) One of the following statements, as applicable:

(i) For biogas designated for use to produce renewable CNG/LNG, ''This volume of biogas is designated and intended for use to produce renewable CNG/LNG.''

(ii) For biogas designated for use to produce RNG, ''This volume of biogas is designated and intended for use to produce renewable natural gas.''

(iii) For biogas designated for use as a biointermediate, the language found at § 80.1453(f)(1)(vi).

(iv) For biogas designated for use as process heat or energy under § 80.1426(f)(12) or (13), ''This volume of biogas is designated and intended for use as process heat or energy.''

(c) *PTD requirements for custodial transfers of RNG.* On each occasion when custody of RNG is transferred prior to injection into a pipeline interconnect (*e.g.,* via truck), the transferor must provide the transferee PTDs that include all the following information:

(1) The applicable information listed in paragraph (a) of this section.

(2) The following statement, ''This volume of RNG is designated and intended for transportation use and may not be used for any other purpose.''

(d) *PTD requirements for imported RIN-less RNG.* On each occasion when title of RIN-less RNG is transferred and ultimately imported into the covered location, the transferor must provide the transferee PTDs that include all the following information:

(1) The applicable information listed in paragraph (a) of this section.

(2) The following statement, ''This volume of RNG is designated and intended for transportation use in the contiguous United States and may not be used for any other purpose.''

(3) The name, EPA-issued company and facility IDs, and address of the contracted RNG importer under § 80.160(e).

(4) The name, EPA-issued company and facility IDs, and address of the transferee.

§ 80.155 Sampling, testing, and measurement.

(a) *Biogas and RNG continuous measurement.* Any party required to measure the volume of biogas, RNG, or renewable CNG/LNG under this subpart must continuously measure using meters that comply with the requirements in paragraphs (a)(1) and (2) of this section, or have an accepted alternative measurement protocol as specified in paragraph (a)(3) of this section:

(1) In-line GC meters compliant with ASTM D7164 (incorporated by reference, see § 80.12), including sections 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, and 9.11 of ASTM D7164.

(2) Flow meters compliant with one of the following:

(i) API MPMS 14.3.1, API MPMS 14.3.2, API MPMS 14.3.3, and API MPMS 14.3.4 (incorporated by reference, see § 80.12).

(ii) API MPMS 14.12 (incorporated by reference, see § 80.12).

(iii) EN 17526 (incorporated by reference, see § 80.12) compatible with gas type H.

(3) EPA may accept an alternative measurement protocol if all the following conditions are met:

(i) The party demonstrates that they are unable to continuously measure using meters that comply with the requirements in paragraphs (a)(1) and (2) of this section, as applicable.

(ii) The party demonstrates that the alternative measurement protocol is at least as accurate and precise as the methods specified in paragraphs (a)(1) and (2) of this section, as applicable.

(b) *Biogas and RNG sampling and testing.* Any party required to sample and test biogas or RNG under this subpart must do so as follows:

(1) Collect representative samples of biogas or RNG using API MPMS 14.1 (incorporated by reference, see § 80.12).

(2) Perform all the following measurements on each representative sample:

(i) Methane, carbon dioxide, nitrogen, and oxygen using EPA Method 3C (see Appendix A–2 to 40 CFR part 60).

(ii) Hydrogen sulfide and total sulfur using ASTM D5504 (incorporated by reference, see § 80.12).

(iii) Siloxanes using ASTM D8230 (incorporated by reference, see § 80.12).

(iv) Moisture using ASTM D4888 (incorporated by reference, see § 80.12).

(v) Hydrocarbon analysis using EPA Method 18 (see Appendix A–6 to 40 CFR part 60).

(vi) Heating value and relative density using ASTM D3588 (incorporated by reference, see § 80.12).

(vii) Additional components specified in the natural gas specifications submitted under § 80.135(d)(5) or specified by EPA as a condition of registration under this part.

(viii) Carbon-14 analysis using ASTM D6866 (incorporated by reference, see § 80.12).

(c) *Digester feedstock.* Any party required to test for total solids and volatile solids of a digester feedstock under this subpart must do so as follows:

(1) Samples must be tested in accordance with Part G of SM 2540 (incorporated by reference, see § 80.12).

(2) Samples must be obtained, stored, and tested in accordance with Part A of SM 2540, including Sections 2, 3, and 5 (Sources of Error and Variability, Sample Handling and Preservation, and Quality Control).

(3) Parties must test each daily representative sample under paragraphs (c)(1) and (2) of this section unless the party has a composite sampling plan submitted to EPA under § 80.135(c)(10)(vi)(D). Parties with a composite sampling plan must either test each daily representative sample or test samples in accordance with Part A of SM 2540 and as specified in the facility's composite sampling plan.

(d) *Digester operations.* Any biogas producer required to measure or calculate digester operating conditions under this subpart must determine digester operating conditions for each

mixed digester that meet all the following requirements:

(1) Digester temperature readings must be recorded no less frequent than every 30 minutes and represent the average temperature in the tank.

(2) Digester hydraulic and solids mean residence times must be calculated no less frequent than once a day using measurements of inflows, outflows, and tank levels, as applicable.

(3) Other parameters must be measured and calculated as specified in the facility's registration under § 80.135(c)(10)(vi)(A)(*4*).

(e) *Third parties.* Samples required to be obtained under this subpart may be collected and analyzed by third parties.

(f) *Unit conversions.* A party converting between Btu HHV and Btu LHV for biogas, treated biogas, natural gas, or CNG/LNG must use the ratio of HHV and LHV of methane as specified in ASTM D3588 (incorporated by reference, see § 80.12).

(g) *Liquid measurement and standardization.* Any substance that is liquid at STP must be measured in gallons and standardized according to § 80.1426(f)(8).

§ 80.160 RNG importers, foreign biogas producers, and foreign RNG producers.

(a) *Applicability.* The provisions of this section apply to any RNG importer or any foreign party subject to requirements of this subpart outside the United States.

(b) *General requirements.* Any foreign party must meet all the following requirements:

(1) *Letter from RCO.* The foreign party must provide a letter signed by the RCO that commits the foreign party to the applicable provisions specified in paragraphs (b)(4) and (c) of this section as part of their registration under § 80.135.

(2) *Bond posting.* A foreign party that generates RINs must meet the bond requirements of § 80.1466(h).

(3) *Foreign RIN owners.* A foreign party that owns RINs must meet the requirements of § 80.1467, including any foreign party that separates or retires RINs under § 80.125.

(4) *Foreign party commitments.* Any foreign party must commit to the following provisions as a condition of being registered as a foreign party under this subpart:

(i) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and audits of all facilities subject to this subpart.

(A) Inspections and audits may be either announced in advance by EPA, or unannounced.

(B) Access will be provided to any location where:

(*1*) Biogas, RNG, biointermediate, or biogas-derived renewable fuel is produced.

(*2*) Documents related to the foreign party operations are kept.

(*3*) Any product subject to this subpart (*e.g.,* biogas, RNG, biointermediates, or biogas-derived renewable fuel) that is stored or transported outside the United States between the foreign party's facility and the point of importation into the United States, including storage tanks, vessels, and pipelines.

(C) EPA inspectors and auditors may be EPA employees or contractors to EPA.

(D) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(E) Inspections and audits may include review and copying of any documents related to the following:

(*1*) The volume or properties of any product subject to this subpart produced or delivered to a renewable fuel production facility.

(*2*) Transfers of title or custody to the any product subject to this subpart.

(*3*) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this subpart, including work papers.

(*4*) Records required under § 80.145.

(*5*) Any records related to claims made during registration.

(F) Inspections and audits by EPA may include interviewing employees.

(G) Any employee of the foreign party must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(H) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 business days.

(I) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(ii) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on the foreign party or any employee of the party for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(iii) The forum for any civil or criminal enforcement action related to the provisions of this subpart for violations of the Clean Air Act or regulations promulgated thereunder are governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(iv) United States substantive and procedural laws apply to any civil or criminal enforcement action against the foreign party or any employee of the foreign party related to the provisions of this subpart.

(v) Applying to be an approved foreign party under this subpart, or producing or exporting any product subject to this subpart under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign party, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign party under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(vi) The foreign party, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this subpart.

(vii) In any case where a product produced at a foreign facility is stored or transported by another company between the foreign facility and the point of importation to the United States, the foreign party must obtain from each such other company a commitment that meets the requirements specified in paragraphs (b)(4)(i) through (vi) of this section before the product is transported to the United States, and these commitments must be included in the foreign party's application to be a registered foreign party under this subpart.

(c) *Sovereign immunity.* By submitting an application to be a registered foreign party under this subpart, or by producing or exporting any product subject to this subpart to the United States under such registration, the foreign party, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the party, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign

party under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(d) *English language reports.* Any document submitted to EPA by a foreign party must be in English, or must include an English language translation.

(e) *Foreign RNG producer contractual relationship.* A non-RIN generating foreign RNG producer must establish a contractual relationship with an RNG importer, prior to the sale of RIN-less RNG.

(f) *Withdrawal or suspension of registration.* EPA may withdraw or suspend a foreign party's registration where any of the following occur:

(1) The foreign party fails to meet any requirement of this subpart.

(2) The foreign government fails to allow EPA inspections or audits as provided in paragraph (b)(4)(i) of this section.

(3) The foreign party asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(4) The foreign party fails to pay a civil or criminal penalty that is not satisfied using the bond required under paragraph (b)(2) of this section.

(g) *Additional requirements for applications, reports, and certificates.* Any application for registration as a foreign party, or any report, certification, or other submission required under this subpart by the foreign party, must be:

(1) Submitted using formats and procedures specified by EPA.

(2) Signed by the RCO of the foreign party's company.

(3) Contain the following declarations:

(i) *Certification.*

''I hereby certify:

That I have actual authority to sign on behalf of and to bind [NAME OF FOREIGN PARTY] with regard to all statements contained herein.

That I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subparts E and M, and that the information is material for determining compliance under these regulations.

That I have read and understand the information being Certified or submitted, and this information is true, complete, and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.''

(ii) *Affirmation.*

''I affirm that I have read and understand the provisions of 40 CFR part 80, subparts E and M, including 40 CFR 80.160, 80.1466, and 80.1467 apply to [NAME OF FOREIGN PARTY]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete, or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.''

(h) *Requirements for RNG importers.* An RNG importer must meet all the following requirements:

(1) For each imported batch of RNG, the RNG importer must have an independent third party that meets the requirements of § 80.1450(b)(2)(i) and (ii) do all the following:

(i) Determine the volume of RNG, in Btu LHV, injected into the natural gas commercial pipeline system as specified in § 80.155.

(ii) Determine the name and EPA-assigned company and facility identification numbers of the foreign non-RIN generating RNG producer that produced the RNG.

(2) The independent third party must submit reports to the foreign non-RIN generating RNG producer and the RNG importer within 30 days following the date the RNG was injected into a natural gas commercial pipeline system for import into the United States containing all the following:

(i) The statements specified in paragraph (g) of this section.

(ii) The name of the foreign non-RIN generating RNG producer, containing the information specified in paragraph (g) of this section, and including the identification of the natural gas commercial pipeline system terminal at which the product was offloaded.

(iii) PTDs showing the volume of RNG, in Btu LHV, transferred from the foreign non-RIN generating RNG producer to the RNG importer.

(3) The RNG importer and the independent third party must keep records of the audits and reports required under paragraphs (h)(1) and (2) of this section for five years from the date of creation.

§ 80.165 Attest engagements.

(a) *General provisions.* (1) The following parties must arrange for annual attestation engagement using agreed-upon procedures:

(i) Biogas producers.

(ii) RNG producers.

(iii) RNG importers.

(iv) Biogas closed distribution system RIN generators.

(v) RNG RIN separators.

(vi) Renewable fuel producers that use RNG as a feedstock.

(2) The auditor performing attestation engagements required under this subpart must meet the requirements in 40 CFR 1090.1800(b).

(3) The auditor must perform attestation engagements separately for each biogas production facility, RNG production facility, and renewable fuel production facility, as applicable.

(4) Except as otherwise specified in this section, attest auditors may use the representative sampling procedures specified in 40 CFR 1090.1805.

(5) Except as otherwise specified in this section, attest auditors must prepare and submit the annual attestation engagement following the procedures specified in 40 CFR 1090.1800(d).

(b) *General procedures for biogas producers.* An attest auditor must conduct annual attestation audits for biogas producers using the following procedures:

(1) *Registration and EPA reports.* The auditor must review registration and EPA reports as follows:

(i) Obtain copies of all the following:

(A) The biogas producer's registration information submitted under §§ 80.135 and 80.1450.

(B) All reports submitted under §§ 80.140 and 80.1451.

(ii) For each biogas production facility, confirm that the facility's registration is accurate based on the activities reported during the compliance period and confirm any related updates were completed prior to conducting regulated activities at the facility and report as a finding any exceptions.

(iii)(A) Report the date of the last engineering review conducted under §§ 80.135(b)(3) and 80.1450(b), as applicable.

(B) Report as a finding if the last engineering review is outside of the schedule specified in § 80.1450(d)(3)(ii).

(iv) Confirm that the biogas producer submitted all reports required under §§ 80.140 and 80.1451 for activities performed during the compliance period and report as a finding any exceptions.

(2) *Measurement method review.* The auditor must review measurement methods for each meter as follows:

(i) Obtain records related to measurement under § 80.145(a)(1)(vi).

(ii)(A) Identify and report the name of the method(s) used for measuring the volume of biogas, in Btu HHV and scf.

(B) Report as a finding any method that is not specified in § 80.155 or the biogas producer's registration.

(iii)(A) Identify whether maintenance and calibration records were kept for each meter and report the last date of calibration.

(B) Report as a finding if no records were obtained.

(3) *Listing of batches.* The auditor must review listings of batches as follows:

(i) Obtain the batch reports submitted under § 80.140.

(ii) Compare the reported volume for each batch to the measured volume and report as a finding any exceptions.

(4) *Testing of biogas transfers.* The auditor must review biogas transfers as follows:

(i) Obtain the associated PTD for each batch of biogas produced during the compliance period.

(ii) Using the batch number, confirm that the correct PTD is obtained for each batch and compare the volume, in Btu HHV and scf, on each batch report to the associated PTD and report as a finding any exceptions.

(iii) Confirm that the PTD associated with each batch contains all applicable language requirements under § 80.150 and report as a finding any exceptions.

(c) *General procedures for RNG producers and importers.* An attest auditor must conduct annual attestation audits for RNG producers and importers using the following procedures, as applicable:

(1) *Registration and EPA reports.* The auditor must review registration and EPA reports as follows:

(i) Obtain copies of all the following:

(A) The RNG producer or importer's registration information submitted under §§ 80.135 and 80.1450.

(B) All reports submitted under §§ 80.140 and 80.1451.

(ii) For each RNG production facility, confirm that the facility's registration is accurate based on the activities reported during the compliance period and confirm any related updates were completed prior to conducting regulated activities at the facility and report as a finding any exceptions.

(iii)(A) Report the date of the last engineering review conducted under §§ 80.135(b)(3) and 80.1450(b), as applicable.

(B) Report as a finding if the last engineering review is outside of the schedule specified in § 80.1450(d)(3)(ii).

(iv) Confirm that the RNG producer or importer submitted all reports required under §§ 80.140 and 80.1451 for activities performed during the compliance period and report as a finding any exceptions.

(2) *Feedstock received.* The auditor must perform an inventory of biogas received as follows:

(i) Obtain copies of all the following:

(A) Records documenting the source and volume of biogas, in Btu and scf, received by the RNG producer.

(B) Records showing the volume of biogas used to produce RNG, in Btu HHV and scf, and the volume of RNG produced, in Btu HHV and scf.

(C) Records showing whether non-renewable components were blended into RNG.

(ii) Report the number of parties the RNG producer received biogas from and the total volume received separately from each party.

(iii)(A) Report the total volume of biogas used to produce RNG, in Btu HHV and scf, and the total volume of RNG produced, in Btu HHV and scf.

(B) Report as a finding if the volume of RNG produced is greater than the volume of biogas used to produce RNG, in Btu HHV.

(iv) Report as a finding if any RINs were generated for the non-renewable components of the blended batch.

(3) *Measurement method review.* The auditor must review measurement methods for each meter as follows:

(i) Obtain records related to measurement under § 80.145(a)(1)(vi).

(ii)(A) Identify and report the name of the method(s) used for measuring the volume of RNG, in Btu and in scf.

(B) Report as a finding any method that is not specified in § 80.155 or the RNG producer's registration.

(iii) Identify whether maintenance and calibration records were kept and report as a finding if no records were obtained.

(4) *Listing of batches.* The auditor must review listings of batches as follows:

(i) Obtain the batch reports submitted under § 80.140.

(ii) Compare the reported volume for each batch to the measured volume and report as a finding any exceptions.

(iii) Report as a finding any batches with reported values that did not meet the natural gas specifications submitted under § 80.135(d)(5).

(5) *Testing of RNG transfers.* The auditor must review RNG transfers as follows:

(i) Obtain the associated PTD for each batch of RNG produced or imported during the compliance period.

(ii) Using the batch number, confirm that the correct PTD is obtained for each batch and compare the volume, in Btu and scf, on each batch report to the associated PTD and report as a finding any exceptions.

(iii) Confirm that the PTD associated with each batch contains all applicable language requirements under § 80.150 and report as a finding any exceptions.

(6) *RNG RIN generation.* The auditor must perform the following procedures for monthly RIN generation:

(i) Obtain the RIN generation reports submitted under § 80.1451.

(ii) Compare the number of RINs generated for each batch to the batch report and report as a finding any exceptions.

(iii)(A) Compare the number of RINs generated multiplied by 77,000 Btu to the amount of RNG injected into the natural gas commercial pipeline system.

(B) Report as a finding if the volume of RNG injected is less than the number of RINs generated multiplied by 77,000 Btu.

(d) *General procedures for biogas closed distribution system RIN generators.* An attest auditor must conduct annual attestation audits for biogas closed distribution system RIN generators using the following procedures:

(1) *Registration and EPA reports.* The auditor must review registration and EPA reports as follows:

(i) Obtain copies of all the following:

(A) The biogas closed distribution system RIN generator's registration information submitted under § 80.135.

(B) All reports submitted under § 80.140.

(ii) Confirm that the biogas closed distribution system RIN generator's registration is accurate based on the activities reported during the compliance period and that any required updates were completed prior to conducting regulated activities and report as a finding any exceptions.

(iii) Confirm that the biogas closed distribution system RIN generator submitted all reports required under §§ 80.140 and 80.1451 for activities performed during the compliance period and report as a finding any exceptions.

(2) *RIN generation.* The auditor must complete all applicable requirements specified in § 80.1464.

(e) *General procedures for RNG RIN separators.* An attest auditor must conduct annual attestation audits for RNG RIN separators using the following procedures:

(1) *Registration and EPA reports.* The auditor must review registration and EPA reports as follows:

(i) Obtain copies of all the following:

(A) The RNG RIN separator's registration information submitted under §§ 80.135 and 80.1450.

(B) All reports submitted under §§ 80.140 and 80.1451.

(ii) Confirm that the RNG RIN separator's registration is accurate based on the activities reported during the compliance period and that any required updates were completed prior to conducting regulated activities and report as a finding any exceptions.

(iii) Confirm that the RNG RIN separator submitted all reports required under §§ 80.140 and 80.1451 for activities performed during the

compliance period and report as a finding any exceptions.

(2) *RIN separation events.* The auditor must review records supporting RIN separation events as follows:

(i) Obtain copies of all the following:

(A) RIN separation reports submitted under §§ 80.140(e) and 80.1452.

(B) RNG withdrawal records required under § 80.145(e).

(ii)(A) Compare the volume of RNG, in Btu LHV, withdrawn from the natural gas commercial pipeline system to the reported number of separated RINs multiplied by 77,000 Btu used to produce the renewable CNG/LNG.

(B) Report as a finding if the volume of RNG, in Btu LHV, is less than the number of separated RINs multiplied by 77,000 Btu.

(iii)(A) Compare the volume of renewable CNG/LNG, in Btu LHV, to the reported number of separated RINs multiplied by 77,000 Btu.

(B) Report as a finding if the volume of renewable CNG/LNG, in Btu LHV, is less than the number of separated RINs multiplied by 77,000 Btu.

(3) *RIN owner.* The auditor must complete all the requirements specified in § 80.1464(c).

(f) *General procedures for renewable fuel producers that use RNG as a feedstock.* An attest auditor must conduct annual attestation audits for renewable fuel producers that use RNG as a feedstock using the following procedures:

(1) *Registration and EPA reports.* The auditor must review registration and EPA reports as follows:

(i) Obtain copies of all the following:

(A) The renewable fuel producer's registration information submitted under § 80.135.

(B) All reports submitted under § 80.140.

(ii) Confirm that the renewable fuel producer's registration is accurate based on the activities reported during the compliance period and that any required updates were completed prior to conducting regulated activities and report as a finding any exceptions.

(iii) Confirm that the renewable fuel producers submitted all reports required under §§ 80.140 and 80.1451 for activities performed during the compliance period and report as a finding any exceptions.

(2) *RIN retirements.* The attest auditor must review RIN retirements as follows:

(i) Obtain copies of all the following:

(A) RIN retirement reports submitted under §§ 80.140(f) and 80.1452.

(B) Records related to measurement under § 80.145(a)(1)(vi).

(ii) Compare the measured volume of RNG used as a feedstock to the reported number of RINs retired for RNG.

(iii) Report as a finding if the measured volume of RNG used as a feedstock does not match the number of RINs retired for RNG.

§ 80.170 Quality assurance plan.

(a) *General requirements.* This section specifies the requirements for QAPs related to the verification of RINs generated for RNG and biogas-derived renewable fuel.

(1) For the generation of Q–RINs for RNG or biogas-derived renewable fuel, the same independent third-party auditor must verify each party as follows:

(i) For RNG, all the RNG production facilities that inject into the same pipeline interconnect and all the biogas production facilities that provide feedstock to those RNG production facilities.

(ii) For renewable CNG/LNG produced from RNG, the biogas producer and the RNG producer.

(iii) For renewable CNG/LNG produced from biogas in a biogas closed distribution system, the biogas producer, the biogas closed distribution system RIN generator, and any party deemed necessary by EPA to ensure that the renewable CNG/LNG was used as transportation fuel.

(iv) For biogas-derived renewable fuel produced from biogas used as a biointermediate, the biogas producer, the producer of the biogas-derived renewable fuel, and any other party deemed necessary by EPA to ensure that the biogas-derived renewable fuel was produced under an approved pathway and used as transportation fuel.

(v) For biogas-derived renewable fuel produced from RNG used as a feedstock, the producer of the biogas-derived renewable fuel and any other party deemed necessary by EPA to ensure that the biogas-derived renewable fuel was produced under an approved pathway and used as transportation fuel.

(2) Independent third-party auditors that verify RINs generated under this subpart must meet the requirements in § 80.1471(a) through (c), (g), and (h).

(3)(i) QAPs approved by EPA to verify RINs generated under this subpart must meet the applicable requirements in § 80.1469.

(ii) EPA may revoke or void a QAP as specified in § 80.1469(e)(4) or (5).

(4) Independent third-party auditors must conduct quality assurance audits at biogas production facilities, RNG production facilities, renewable fuel production facilities, and any facility or location deemed necessary by EPA to ensure that the biogas-derived renewable fuel was produced under an approved pathway and used as transportation fuel, heating oil, or jet fuel as specified in § 80.1472.

(5) Independent third-party auditors must ensure that mass and energy balances performed under § 80.1469(c)(2) are consistent between facilities that are audited as part of the same chain.

(b) *Requirements for biogas production facilities.* In addition to the applicable elements verified under § 80.1469, the independent third-party auditor must do all the following for each biogas production facility:

(1) Verify that the biogas was measured as required under § 80.155.

(2) Verify that the PTDs for biogas transfers meet the applicable PTD requirements in §§ 80.150 and 80.1453.

(c) *Requirements for RNG production facilities.* In addition to the applicable elements verified under § 80.1469, the independent third-party auditor must do all the following for each RNG production facility:

(1) Verify that the RNG was sampled, tested, and measured as required under § 80.155.

(2) Verify that RINs were assigned, separated, and retired as required under § 80.125(c), (d), and (e), respectively.

(3) Verify that the RNG was injected into a natural gas commercial pipeline system.

(4) Verify that RINs were not generated on non-renewable components added to RNG prior to injection into a natural gas commercial pipeline system.

(d) *Requirements for renewable fuel production facilities using biogas as a biointermediate.* The independent third-party auditor must meet all the requirements specified in paragraph (b) of this section and § 80.1477 for each renewable fuel production facility using biogas as a biointermediate.

(e) *Responsibility for replacement of invalid verified RINs.* The generator of RINs for RNG or a biogas-derived renewable fuel, and the obligated party that owns the Q–RINs, are required to replace invalidly generated Q–RINs with valid RINs as specified in § 80.1431(b).

§ 80.175 Prohibited acts and liability provisions.

(a) *Prohibited acts.* (1) It is a prohibited act for any person to act in violation of this subpart or fail to meet a requirement that applies to that person under this subpart.

(2) No person may cause another person to commit an act in violation of this subpart.

(b) *Liability provisions*—(1) *General.* (i) Any person who commits any prohibited act or requirement in this subpart is liable for the violation.

(ii) Any person who causes another person to commit a prohibited act under this subpart is liable for that violation.

(iii) Any parent corporation is liable for any violation committed by any of its wholly-owned subsidiaries.

(iv) Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or facility owned by the joint owners, or any violation of this subpart that is committed by the joint venture operation or any of the joint owners of the facility.

(v) Any person listed in paragraphs (b)(2) through (4) of this section is liable for any violation of a prohibition specified in paragraph (a) of this section or failure to meet a requirement of any provision of this subpart regardless of whether the person violated or caused the violation unless the person establishes an affirmative defense under § 80.180.

(vi) The liability provisions of § 80.1461 also apply to any person subject to the provisions of this subpart.

(2) *Biogas liability.* When biogas is found in violation of a prohibition specified in paragraph (a) of this section or § 80.1460, the following persons are deemed in violation:

(i) The biogas producer that produced the biogas.

(ii) Any RNG producer that used the biogas to produce RNG.

(iii) Any biointermediate producer that used the biogas to produce a biointermediate.

(iv) Any person that used the biogas, RNG produced from the biogas, or biointermediate produced from the biogas to produce a biogas-derived renewable fuel.

(v) Any person that generated a RIN from a biogas-derived renewable fuel produced from the biogas, RNG produced from the biogas, or biointermediate produced from the biogas.

(vi) Any person that used the biogas or RNG produced from the biogas as process heat or energy under § 80.1426(f)(12) or (13).

(3) *RNG liability.* When RNG is found in violation of a prohibition specified in paragraph (a) of this section or § 80.1460, the following persons are deemed in violation:

(i) The biogas producer that produced the biogas used to produce the RNG.

(ii) The RNG producer that produced the RNG.

(iii) Any person that used the RNG as a feedstock.

(iv) Any person that used the RNG as process heat or energy under § 80.1426(f)(12) or (13).

(v) Any person that generated a RIN from a biogas-derived renewable fuel produced from the RNG or biointermediate produced from the RNG.

(4) *Third-party liability.* Any party allowed under this subpart to act on behalf of a regulated party and does so to demonstrate compliance with the requirements of this subpart must meet those requirements in the same way that the regulated party must meet those requirements. The regulated party and the third party are both liable for any violations arising from the third party's failure to meet the requirements of this subpart.

§ 80.180 Affirmative defense provisions.

(a) *Applicability.* A person may establish an affirmative defense to a violation that person is liable for under § 80.175(b) if that person satisfies all applicable elements of an affirmative defense in this section.

(1) No person that generates a RIN for biogas-derived renewable fuel may establish an affirmative defense under this section.

(2) A person that is a biogas producer may not establish an affirmative defense under this section for a violation that the biogas producer is liable for under § 80.175(b)(1) and (2).

(3) A person that is an RNG producer may not establish an affirmative defense under this section for a violation that the RNG producer is liable for under § 80.175(b)(1) and (3).

(b) *General elements.* A person may only establish an affirmative defense under this section if the person meets all the following requirements:

(1) The person, or any of the person's employees or agents, did not cause the violation.

(2) The person did not know or have reason to know that the biogas, treated biogas, RNG, biogas-derived renewable fuel, or RIN was in violation of a prohibition or requirement under this subpart.

(3) The person must have had no financial interest in the company that caused the violation.

(4) If the person self-identified the violation, the person notified EPA within five business days of discovering the violation.

(5) The person must submit a written report to the EPA including all pertinent supporting documentation, demonstrating that the applicable elements of this section were met within 30 days of the person discovering the invalidity.

(c) *Biogas producer elements.* In addition to the elements specified in paragraph (b) of this section, a biogas producer must also meet all the following requirements to establish an affirmative defense:

(1) The biogas producer conducted or arranged to be conducted a quality assurance program that includes, at a minimum, a periodic sampling, testing, and measurement program adequately designed to ensure their biogas meets the applicable requirements to produce biogas under this part.

(2) The biogas producer had all affected biogas verified by a third-party auditor under an approved QAP under §§ 80.170 and 80.1469.

(3) The PTDs for the biogas indicate that the biogas was in compliance with the applicable requirements while in the biogas producer's control.

(d) *RNG producer elements.* In addition to the elements specified in paragraph (b) of this section, an RNG producer must also meet all the following requirements to establish an affirmative defense:

(1) The RNG producer conducted or arranged to be conducted a quality assurance program that includes, at a minimum, a periodic sampling, testing, and measurement program adequately designed to ensure that the biogas used to produce their RNG meets the applicable requirements to produce biogas under this part and that their RNG meets the applicable requirements to produce RNG under this part.

(2) The RNG producer had all affected biogas and RNG verified by a third-party auditor under an approved QAP under §§ 80.170 and 80.1469.

(3) The PTDs for the biogas used to produce their RNG and for their RNG indicate that the biogas and RNG were in compliance with the applicable requirements while in the RNG producer's control.

§ 80.185 Potentially invalid RINs.

(a) *Identification and treatment of potentially invalid RINs (PIRs).* (1) Any RIN can be identified as a PIR by the biogas producer, the RIN generator, the independent third-party auditor that verified the RIN, or EPA.

(2) Any party listed in paragraph (a)(1) of this section must use the procedures specified in § 80.1474(b) for identification and treatment of PIRs and retire any PIRs under § 80.1434(a).

(b) *Potentially inaccurate or non-qualifying volumes of biogas-derived renewable fuel.* (1) Any party that becomes aware of a volume of biogas-derived renewable fuel that does not meet the applicable requirements for such fuel under this part must notify the next party in the production chain within 5 business days.

(i) Biointermediate producers must notify the renewable fuel producer receiving the biointermediate within 5 business days.

(ii) If the volume of biogas-derived renewable fuel was audited under § 80.170, the party must notify the independent third-party auditor within 5 business days.

(iii) Non-RIN generating foreign RNG producers must comply with the requirements of this section and notify the importer generating RINs and other parties in the production chain, as applicable.

(iv) Each notified party must notify EPA within 5 business days.

(2) Any party that is notified of a volume of biogas-derived renewable fuel that does not meet the applicable requirements for such fuel under this part must correct affected volumes of biogas-derived renewable fuel under paragraph (a)(2) of this section, as applicable.

(c) *Potential double counting.* (1)(i) When any party becomes aware of any of the following, they must notify EPA and the RIN generator, if known, within 5 business days of initial discovery:

(A) More than one RIN being generated for renewable fuel produced from the same volume of biogas, treated biogas, or RNG.

(B) More than one RIN being generated for the same volume of biogas-derived renewable fuel or RNG.

(C) A party taking credit for biogas, treated biogas, or RNG under a non-transportation program (*e.g.,* a stationary-source renewable electricity program) and also generating RINs for renewable fuel produced from that same volume of biogas, treated biogas, or RNG.

(D) A party taking credit for biogas-derived renewable fuel or RNG under a non-transportation program (*e.g.,* a stationary-source renewable electricity program) and also generating RINs for that same volume of biogas-derived renewable fuel or RNG.

(E) A party taking credit for biogas, treated biogas, or RNG used outside the covered location and also generating RINs for renewable fuel produced from that same volume of biogas, treated biogas, or RNG.

(F) A party taking credit for biogas-derived renewable fuel or RNG used outside the covered location and also generating RINs for that same volume of biogas-derived renewable fuel or RNG.

(ii) When any party becomes aware of another party separating or retiring a RIN from the same volume of RNG, they must notify EPA and the RIN generator, if known, within 5 business days of initial discovery.

(2) EPA will notify the RIN generator of the potential double counting if the party that identified the potential double counting does not know the party that generated the potentially affected RINs.

(3) Upon notification, the RIN generator must then calculate any impacts to the number of RINs generated for the volume of impacted RNG or renewable fuel. The RIN generator must then notify EPA and the independent third-party auditor, if any, of the impacted RINs within 5 business days of initial notification.

(4) For any number of RINs over-generated due to the double counting of volumes of biogas or RNG, the RIN generator must follow the applicable procedures for invalid RINs specified in § 80.1431.

(d) *Failure to take corrective action.* Any person who fails to meet a requirement under paragraph (b) or (c) of this section is liable for full performance of such requirement, and each day of non-compliance is deemed a separate violation pursuant to § 80.1460(f). The administrative process for replacement of invalid RINs does not, in any way, limit the ability of the United States to exercise any other authority to bring an enforcement action under section 211 of the Clean Air Act, the fuels regulations under this part, 40 CFR part 1090, or any other applicable law.

(e) *Replacing PIRs or invalid RINs.* The following specifications apply when retiring valid RINs to replace PIRs or invalid RINs:

(1) When a RIN is retired to replace a PIR or invalid RIN, the D code of the retired RIN must be eligible to be used towards meeting all the renewable volume obligations as the PIR or invalid RIN it is replacing, as specified in § 80.1427(a)(2).

(2) The number of RINs retired must be equal to the number of PIRs or invalid RINs being replaced.

(f) *Forms and procedures.* (1) All parties that retire RINs under this section must use forms and procedures specified by EPA.

(2) All parties that must notify EPA under this section must submit those notifications to EPA as specified in 40 CFR 1090.10.

Subpart M—Renewable Fuel Standard

■ 10. Revise § 80.1401 to read as follows:

§ 80.1401 Definitions.

The definitions of § 80.2 apply for the purposes of this subpart M.

§ 80.1402 [Amended]

■ 11. Amend § 80.1402 by, in paragraph (f), removing the text ''notwithstanding'' and adding in its place the text ''regardless of''.

■ 12. Amend § 80.1405 by revising paragraphs (a) and (c) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) The values of the renewable fuel standards are as follows:

TABLE 1 TO PARAGRAPH (a)—ANNUAL RENEWABLE FUEL STANDARDS

Year	Cellulosic biofuel standard (%)	Biomass-based diesel standard (%)	Advanced biofuel standard (%)	Renewable fuel standard (%)	Supplemental total renewable fuel standard (%)
2010	0.004	1.10	0.61	8.25	n/a
2011	n/a	0.69	0.78	8.01	n/a
2012	n/a	0.91	1.21	9.23	n/a
2013	0.0005	1.13	1.62	9.74	n/a
2014	0.019	1.41	1.51	9.19	n/a
2015	0.069	1.49	1.62	9.52	n/a
2016	0.128	1.59	2.01	10.10	n/a
2017	0.173	1.67	2.38	10.70	n/a
2018	0.159	1.74	2.37	10.67	n/a
2019	0.230	1.73	2.71	10.97	n/a
2020	0.32	2.30	2.93	10.82	n/a
2021	0.33	2.16	3.00	11.19	n/a

TABLE 1 TO PARAGRAPH (a)—ANNUAL RENEWABLE FUEL STANDARDS—Continued

Year	Cellulosic biofuel standard (%)	Biomass-based diesel standard (%)	Advanced biofuel standard (%)	Renewable fuel standard (%)	Supplemental total renewable fuel standard (%)
2022	0.35	2.33	3.16	11.59	0.14
2023	0.48	2.58	3.39	11.96	0.14
2024	0.63	2.82	3.79	12.50	n/a
2025	0.81	3.15	4.31	13.13	n/a

* * * * *

(c) EPA will calculate the annual renewable fuel percentage standards using the following equations:

$$Std_{CB,i} = 100 * \frac{RFV_{CB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{BBD,i} = 100 * \frac{RFV_{BBD,i} \times 1.6}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{AB,i} = 100 * \frac{RFV_{AB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{RF,i} = 100 * \frac{RFV_{RF,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$Std_{CB,i}$ = The cellulosic biofuel standard for year i, in percent.

$Std_{BBD,i}$ = The biomass-based diesel standard for year i, in percent.

$Std_{AB,i}$ = The advanced biofuel standard for year i, in percent.

$Std_{RF,i}$ = The renewable fuel standard for year i, in percent.

$RFV_{CB,i}$ = Annual volume of cellulosic biofuel required by 42 U.S.C. 7545(o)(2)(B) for year i, or volume as adjusted pursuant to 42 U.S.C. 7545(o)(7)(D), in gallons.

$RFV_{BBD,i}$ = Annual volume of biomass-based diesel required by 42 U.S.C. 7545 (o)(2)(B) for year i, in gallons.

$RFV_{AB,i}$ = Annual volume of advanced biofuel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

$RFV_{RF,i}$ = Annual volume of renewable fuel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

G_i = Amount of gasoline projected to be used in the covered location, in year i, in gallons.

D_i = Amount of diesel projected to be used in the covered location, in year i, in gallons.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the covered location, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the covered location, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

GE_i = The total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

DE_i = The total amount of diesel fuel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

* * * * *

■ 13. Amend § 80.1406 by:

■ a. Revising the section heading; and

■ b. Removing and reserving paragraph (a).

The revision reads as follows:

§ 80.1406 Obligated party responsibilities.

* * * * *

§ 80.1407 [Amended]

■ 14. Amend § 80.1407 by:

■ a. In paragraphs (a)(1) through (4), removing the text ''48 contiguous states or Hawaii'' wherever it appears and adding in its place the text ''covered location'';

■ b. In paragraphs (b) and (d), removing the text ''as defined in'' and adding in its place the text ''per'';

■ c. In paragraph (e), removing the text ''*MVNRLM diesel fuel* at § 80.2'' and adding in its place the text ''MVNRLM diesel fuel''; and

■ d. In paragraph (f)(5), removing the text ''48 United States and Hawaii'' and adding in its place the text ''covered location''.

■ 15. Amend § 80.1415 by:

■ a. In paragraph (b)(2), removing the text ''(mono-alkyl ester)'';

■ b. Revising paragraph (b)(5);

■ c. In paragraph (b)(6), removing the text ''kW-hr'' and adding in its place the text ''kWh'';

■ d. Revising paragraph (b)(7);

■ e. In paragraph (c)(1), removing the text ''EV'' wherever it appears and adding in its place the text ''EqV'';
■ f. In paragraph (c)(2)(ii), removing the text ''derived'' and adding in its place the text ''produced''; and
■ g. In paragraph (c)(5), removing the text ''the Administrator'' and adding in its place the text ''EPA''.

The revisions read as follows:

§ 80.1415 How are equivalence values assigned to renewable fuel?

* * * * *

(b) * * *

(5) 77,000 Btu LHV of renewable CNG/LNG or RNG shall represent one gallon of renewable fuel with an equivalence value of 1.0.

* * * * *

(7) For all other renewable fuels, a producer or importer must submit an application to EPA for an equivalence value following the provisions of paragraph (c) of this section. A producer or importer may also submit an application for an alternative equivalence value pursuant to paragraph (c) of this section if the renewable fuel is listed in this paragraph (b), but the producer or importer has reason to believe that a different equivalence value than that listed in this paragraph (b) is warranted.

* * * * *

§ 80.1416 [Amended]

■ 16. Amend § 80.1416 by:
■ a. In paragraphs (b)(1)(vii) and (b)(2)(vii), removing the text ''The Administrator'' and adding in its place the text ''EPA'';
■ b. In paragraph (c)(4), removing the text ''definitions in § 80.1401'' and adding in its place the text ''definition''; and
■ c. In paragraph (d), removing the text ''The Administrator'' and adding in its place the text ''EPA''.

■ 17. Amend § 80.1426 by:
■ a. Revising paragraph (a)(1) introductory text;
■ b. In paragraph (a)(1)(iv), removing the text ''renewable'';
■ c. Revising paragraphs (b)(1) and (c)(1) and (2);
■ d. Removing and reserving paragraph (c)(3);
■ e. Revising paragraph (c)(6);
■ f. In paragraph (c)(7), removing the text ''§ 80.1401'' and adding in its place the text ''§ 80.2'';
■ g. Adding a sentence to the end of paragraph (d)(1) introductory text;
■ h. Revising paragraphs (e)(1) and (f)(1)(i);
■ i. Moving table 1 to § 80.1426 and table 2 to § 80.1426 immediately following paragraph (f)(1) to the end of the section;
■ j. In paragraph (f)(2)(i), removing the text ''EV'' wherever it appears and adding in its place the text ''EqV'';
■ k. In paragraph (f)(2)(ii), removing the text ''Table 1 to this section, or a D code as approved by the Administrator, which'' and adding in its place the text ''the approved pathway that'';
■ l. In paragraph (f)(3)(i), removing the text ''Table 1 to this section, or a D code as approved by the Administrator, which'' and adding in its place the text ''the approved pathways that'';
■ m. In paragraph (f)(3)(ii), removing the text ''EV'' wherever it appears and adding in its place the text ''EqV'';
■ n. In paragraph (f)(3)(iii), removing the text ''EV_i'' wherever it appears and adding in its place the text ''EqV_i'';
■ o. In paragraph (f)(3)(iv), removing the text ''EV'' wherever it appears and adding in its place the text ''EqV'';
■ p. Revising paragraph (f)(3)(v);
■ q. Removing table 3 to § 80.1426 immediately following paragraph (f)(3)(v);
■ r. Revising paragraph (f)(3)(vi);
■ s. Removing table 4 to § 80.1426 immediately following paragraph (f)(3)(vi)(A);
■ t. In paragraphs (f)(4)(i)(A)(*1*) and (f)(4)(i)(B), removing the text ''EV'' wherever it appears and adding in its place the text ''EqV'';
■ u. In paragraph (f)(4)(iv), removing the text ''80.1468'' and adding in its place the text ''80.12'';
■ v. In paragraphs (f)(5)(iv)(A) and (B), and (f)(5)(v), removing the text ''EV'' wherever it appears and adding in its place the text ''EqV'';
■ w. In paragraph (f)(5)(v), removing the text ''biogas-derived fuels'' and adding in its place the text ''biogas-derived renewable fuel'';
■ x. In paragraph (f)(5)(vi), removing the text ''Table 1 to this section, or a D code as approved by the Administrator, which'' and adding in its place the text ''the approved pathway that'';
■ y. Revising paragraph (f)(6) introductory text;
■ z. In paragraph (f)(6)(i), removing the text ''EV'' wherever it appears and adding in its place the text ''EqV'';
■ aa. In paragraphs (f)(7)(v)(A) and (B), removing the text ''§ 80.1468'' wherever it appears and adding in its place the text ''§ 80.12'';
■ bb. In paragraph (f)(8)(ii) introductory text, removing the text ''(mono-alkyl esters)'';
■ cc. In paragraphs (f)(8)(ii)(B) and (f)(9)(ii), removing the text ''§ 80.1468'' wherever it appears and adding in its place the text ''§ 80.12'';
■ dd. In paragraph (f)(10)(i)(A), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ ee. Revising paragraph (f)(10)(ii);
■ ff. In paragraph (f)(11)(i)(A), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ gg. Revising paragraphs (f)(11)(ii), (f)(12), (f)(13) introductory text, and (f)(13)(iii) through (v);
■ hh. Removing paragraph (f)(13)(vi);
■ ii. Revising paragraphs (f)(15), (f)(17), and (g)(1)(i) introductory text;
■ jj. In paragraph (g)(1)(iii), removing the text ''48 contiguous states plus Hawaii'' wherever it appears and adding in its place the text ''covered location'';
■ kk. Revising paragraph (g)(2) introductory text; and
■ ll. In paragraphs (g)(3) introductory text, (g)(5)(i) introductory text, (g)(7) introductory text, (g)(7)(i) introductory text, and (g)(10) introductory text, removing the text ''48 contiguous states plus Hawaii'' wherever it appears and adding in its place the text ''covered location''.

The revisions and additions read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

(a) * * *

(1) Renewable fuel producers, importers of renewable fuel, and other parties allowed to generate RINs under this part may only generate RINs to represent renewable fuel if they meet the requirements of paragraphs (b) and (c) of this section and if all the following occur:

* * * * *

(b) * * *

(1) Except as provided in paragraph (c) of this section, a RIN may only be generated by a renewable fuel producer or importer for a batch of renewable fuel that satisfies the requirements of paragraph (a)(1) of this section if it is produced or imported for use as transportation fuel, heating oil, or jet fuel in the covered location.

* * * * *

(c) * * *

(1) No person may generate RINs for fuel that does not satisfy the requirements of paragraph (a)(1) of this section.

(2) A party must not generate RINs for renewable fuel that is not produced for use in the covered location.

* * * * *

(6) A party is prohibited from generating RINs for a volume of fuel that it produces if the fuel has been produced by a process that uses a renewable fuel as a feedstock, and the renewable fuel that is used as a

feedstock was produced by another party, except that RINs may be generated for such fuel if allowed by the EPA in response to a petition submitted pursuant to § 80.1416 and the petition approval specifies a mechanism to prevent double counting of RINs or where RINs are generated for RNG.

* * * * *

(d) * * *

(1) * * * Biogas producers and RNG producers must use the definitions of batch for biogas and RNG in §§ 80.105(j) and 80.110(j), respectively.

* * * * *

(e) * * *

(1) Except as provided in paragraph (g) of this section for delayed RINs, the producer or importer of renewable fuel must assign all RINs generated from a specific batch of renewable fuel to that batch of renewable fuel.

* * * * *

(f) * * *

(1) * * *

(i) D codes must be used in RINs generated by producers or importers of renewable fuel according to approved pathways or as specified in paragraph (f)(6) of this section.

* * * * *

(3) * * *

(v) If a producer produces batches that are comprised of a mixture of fuel types with different equivalence values and different applicable D codes, then separate values for V_{RIN} must be calculated for each category of renewable fuel according to the following formula. All batch-RINs thus generated must be assigned to unique batch identifiers for each portion of the batch with a different D code.

$V_{RIN,DX} = EqV_{DX} * V_{S,DX}$

Where:

$V_{RIN,DX}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that must be generated for the portion of the batch with a D code of X.

EqV_{DX} = Equivalence value for the portion of the batch with a D code of X, per § 80.1415.

$V_{S,DX}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of X, in gallons, per paragraph (f)(8) of this section.

(vi)(A) If a producer produces a single type of renewable fuel using two or more different feedstocks that are processed simultaneously, and each batch is comprised of a single type of fuel, then the number of gallon-RINs that must be generated for a batch of renewable fuel and assigned a particular D code must be calculated as follows:

$$V_{RIN,DX} = EqV * V_S * \frac{FE_{DX}}{FE_{total}}$$

Where:

$V_{RIN,DX}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that must be generated for a batch of renewable fuel with a D code of X.

EqV = Equivalence value for the renewable fuel per § 80.1415.

V_S = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, per paragraph (f)(8) of this section.

FE_{DX} = The total feedstock energy from all feedstocks whose pathways have been assigned a D code of X, in Btu HHV, per paragraphs (f)(3)(vi)(B) and (C) of this section.

FE_{total} = The total feedstock energy from all feedstocks, in Btu HHV, per paragraphs (f)(3)(vi)(B) and (C) of this section.

(B) Except for biogas produced from anaerobic digestion, the feedstock energy value of each feedstock must be calculated as follows:

$FE_{DX,i} = M_i * (1 - m_i) * CF_i$

Where:

$FE_{DX,i}$ = The amount of energy from feedstock i that forms energy in the renewable fuel and whose pathway has been assigned a D code of X, in Btu HHV.

M_i = Mass of feedstock i, in pounds, measured on a daily or per-batch basis.

m_i = Average moisture content of feedstock i, as a mass fraction.

CF_i = Converted fraction in annual average Btu HHV/lb, except as otherwise provided by § 80.1451(b)(1)(ii)(U), representing that portion of feedstock i that is converted to fuel by the producer.

(C) For biogas produced from anaerobic digestion, the volume of biogas must be measured under § 80.105(f) and the feedstock energy value of each feedstock must be calculated as specified in § 80.105(j) by substituting ''feedstock energy'' for ''batch volume of biogas'' in all cases.

* * * * *

(6) *Renewable fuel not covered by an approved pathway.* If no approved pathway applies to a producer's operations, the party may generate RINs if the fuel from its facility is produced from renewable biomass and qualifies for an exemption under § 80.1403 from the requirement that renewable fuel achieve at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.

* * * * *

(10) * * *

(ii) RIN generators may only generate RINs for renewable CNG/LNG produced from biogas that is distributed via a closed, private, non-commercial system if all the following requirements are met:

(A) The renewable CNG/LNG was produced from renewable biomass under an approved pathway.

(B) The RIN generator has entered into a written contract for the sale or use of a specific quantity of renewable CNG/LNG for use as transportation fuel, or has obtained affidavits from all parties selling or using the renewable CNG/LNG as transportation fuel.

(C) The renewable CNG/LNG was used as transportation fuel and for no other purpose.

(D) The biogas was introduced into the closed, private, non-commercial system no later and the renewable CNG/LNG produced from the biogas was used as transportation fuel no later than December 31, 2024.

(E) RINs may only be generated on biomethane content of the renewable CNG/LNG used as transportation fuel.

* * * * *

(11) * * *

(ii) RINs for renewable CNG/LNG produced from RNG that is introduced into a commercial distribution system may only be generated if all the following requirements are met:

(A) The renewable CNG/LNG was produced from renewable biomass and qualifies for a D code in an approved pathway.

(B) The RIN generator has entered into a written contract for the sale or use of a specific quantity of RNG, taken from a commercial distribution system (*e.g.,* physically connected pipeline, barge, truck, rail), for use as transportation fuel, or has obtained affidavits from all parties selling or using the RNG taken from a commercial distribution system as transportation fuel.

(C) The renewable CNG/LNG produced from the RNG was sold for use as transportation fuel and for no other purpose.

(D) The RNG was injected into and withdrawn from the same commercial distribution system.

(E) The RNG was withdrawn from the commercial distribution system in a manner and at a time consistent with the transport of the RNG between the injection and withdrawal points.

(F) The volume of RNG injected into the commercial distribution system and the volume of RNG withdrawn are measured by continuous metering.

(G) The volume of renewable CNG/LNG sold for use as transportation fuel corresponds to the volume of RNG that was injected into and withdrawn from the commercial distribution system.

(H) No other party relied upon the volume of biogas, RNG, or renewable CNG/LNG for the generation of RINs.

(I) The RNG was introduced into the commercial distribution system no later than December 31, 2024, and the renewable CNG/LNG was used as

transportation fuel no later than December 31, 2024.

(J) RINs may only be generated on biomethane content of the biogas, treated biogas, RNG, or renewable CNG/LNG.

(K)(*1*) On or after January 1, 2025, RINs may only be generated for RNG injected into a natural gas commercial pipeline system for use as transportation fuel as specified in subpart E of this part.

(*2*) RINs may be generated for RNG as specified in subpart E of this part prior to January 1, 2025, if all applicable requirements under this part are met.

* * * * *

(12) Process heat produced from combustion of biogas or RNG at a renewable fuel production facility is considered ''derived from biomass'' under an approved pathway if all the following requirements are met, as applicable:

(i) For biogas transported to the renewable fuel production facility via a biogas closed distribution system:

(A) The renewable fuel producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume of biogas injected into the biogas closed distribution system and the volume of biogas used as process heat were measured under § 80.155.

(ii) For RNG injected into a natural gas commercial pipeline system prior to July 1, 2024:

(A) The producer has entered into a written contract for the procurement of a specific volume of RNG with a specific heat content.

(B) The volume of RNG was sold to the renewable fuel production facility, and to no other facility.

(C) The volume of RNG was withdrawn from the natural gas commercial pipeline system in a manner and at a time consistent with the transport of RNG between the injection and withdrawal points.

(D) The volume of RNG injected into the natural gas commercial pipeline system and the volume of RNG withdrawn were measured under § 80.155.

(E) The natural gas commercial pipeline system into which the RNG was injected ultimately serves the renewable fuel production facility.

(iii) Process heat produced from combustion of biogas or RNG is not considered produced from renewable biomass if any other party relied upon the volume of biogas or RNG for the generation of RINs.

(iv) For RNG used as process heat on or after July 1, 2024, the renewable fuel producer must retire RINs for RNG as specified in § 80.125(e).

(13) In order for a renewable fuel production facility to satisfy the requirements of the advanced biofuel grain sorghum pathway, all the following requirements must be met:

* * * * *

(iii) For biogas transported to the renewable fuel production facility via a biogas closed distribution system and used as process energy, the requirements in paragraph (f)(12)(i) of this section must be met.

(iv)(A) For RNG injected into a commercial distribution system prior to July 1, 2024, and used as process energy, the requirements in paragraph (f)(12)(ii) of this section must be met.

(B) For RNG injected into a natural gas commercial pipeline system on or after July 1, 2024, and used as process energy, the renewable fuel producer must retire RINs for RNG as specified in § 80.125(e).

(v) The biogas or RNG used as process energy at the renewable fuel production facility is not considered ''produced from renewable biomass'' under an approved pathway if any other party relied upon the volume of biogas or RNG for the generation of RINs.

* * * * *

(15) *Application of formulas in paragraph (f)(3)(vi) of this section to certain producers generating D3 or D7 RINs.* If a producer seeking to generate D code 3 or 7 RINs produces a single type of renewable fuel using two or more feedstocks or biointermediates converted simultaneously, and at least one of the feedstocks or biointermediates does not have a minimum 75% average adjusted cellulosic content, one of the following additional requirements apply:

(i) If the producer is using a thermochemical process to convert cellulosic biomass into cellulosic biofuel, the producer is subject to additional registration requirements under § 80.1450(b)(1)(xiii)(A).

(ii) If the producer is using any process other than a thermochemical process, or is using a combination of processes, the producer is subject to additional registration requirements under § 80.1450(b)(1)(xiii)(B) or (C), and reporting requirements under § 80.1451(b)(1)(ii)(U), as applicable.

* * * * *

(17) *Qualifying use demonstration for certain renewable fuels.* For purposes of this section, any renewable fuel other than ethanol, biodiesel, renewable gasoline, or renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.12) is considered renewable fuel and the producer or importer may generate RINs for such fuel only if all the following apply:

(i) The fuel is produced from renewable biomass and qualifies to generate RINs under an approved pathway.

(ii) The fuel producer or importer maintains records demonstrating that the fuel was produced for use as a transportation fuel, heating oil or jet fuel by any of the following:

(A) Blending the renewable fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(B) Entering into a written contract for the sale of the renewable fuel, which specifies the purchasing party must blend the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(C) Entering into a written contract for the sale of the renewable fuel, which specifies that the fuel must be used in its neat form as a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(ii) The fuel was sold for use in or as a transportation fuel, heating oil, or jet fuel, and for no other purpose.

(g) * * *

(1) * * *

(i) The renewable fuel volumes can be described by a new approved pathway that was added after July 1, 2010.

* * * * *

(2) When a new approved pathway is added, EPA will specify in its approval action the effective date on which the new pathway becomes valid for the generation of RINs and whether the fuel in question meets the requirements of paragraph (g)(1)(ii) of this section.

* * * * *

§ 80.1427 [Amended]

■ 18. In § 80.1427 amend paragraph (a)(1) introductory text by removing the text ''under § 80.1406''.

■ 19. Amend § 80.1428 by revising paragraphs (a) and (b) to read as follows:

§ 80.1428 General requirements for RIN distribution.

(a) *RINs assigned to volumes of renewable fuel or RNG.* (1) Except as provided in §§ 80.1429 and 80.125(d), no person can separate a RIN that has

been assigned to a volume of renewable fuel or RNG pursuant to § 80.1426(e).

(2) An assigned RIN cannot be transferred to another person without simultaneously transferring a volume of renewable fuel or RNG to that same person.

(3) Assigned gallon-RINs with a K code of 1 can be transferred to another person based on the following:

(i) Except for RNG, no more than 2.5 assigned gallon-RINs with a K code of 1 can be transferred to another person with every gallon of renewable fuel transferred to that same person.

(ii) For RNG, the transferor of assigned RINs for RNG must transfer RINs under § 80.125(c).

(4)(i) Except for RNG, on each of the dates listed in paragraph (a)(4)(ii) of this section in any calendar year, the following equation must be satisfied for assigned RINs and volumes of renewable fuel owned by a person:

$RIN_d \leq V_d * 2.5$

Where:

RIN_d = Total number of assigned gallon-RINs with a K code of 1 that are owned on date d.

V_d = Standardized total volume of renewable fuel owned on date d, in gallons, per § 80.1426(f)(8).

(ii) The applicable dates are March 31, June 30, September 30, and December 31.

(5) Any transfer of ownership of assigned RINs must be documented on product transfer documents generated pursuant to § 80.1453.

(i) The RIN must be recorded on the product transfer document used to transfer ownership of the volume of renewable fuel or RNG to another person; or

(ii) The RIN must be recorded on a separate product transfer document transferred to the same person on the same day as the product transfer document used to transfer ownership of the volume of renewable fuel or RNG.

(b) *RINs separated from volumes of renewable fuel or RNG.*

(1) Unless otherwise specified, any person that has registered pursuant to § 80.1450 can own a separated RIN.

(2) Separated RINs can be transferred any number of times.

* * * * *

■ 20. Amend § 80.1429 by:
■ a. Revising the section heading;
■ b. In paragraphs (a)(1), (a)(2) and (b) introductory text, removing the text ''renewable fuel'' wherever it appears and adding in its place the text ''renewable fuel or RNG'';
■ c. Revising paragraph (b)(1);
■ d. Redesignating paragraph (b)(5) as paragraph (b)(5)(i);
■ e. Adding paragraph (b)(5)(ii);
■ f. In paragraph (b)(6) introductory text, removing the text ''(mono-alkyl ester)'' wherever it appears;
■ g. Revising paragraph (b)(10); and
■ h. In paragraphs (c), (d), and (e), removing the text ''renewable fuel'' and adding in its place the text ''renewable fuel or RNG''.

The revisions and addition read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel or RNG.

* * * * *

(b) * * *

(1) Except as provided in paragraphs (b)(7) and (9) of this section and § 80.125(d)(3), an obligated party must separate any RINs that have been assigned to a volume of renewable fuel if that party owns that volume.

* * * * *

(5) * * *

(ii)(A) Any biogas closed distribution system RIN generator that generates RINs for a batch of renewable CNG/LNG under § 80.130(b) may only separate RINs that have been assigned to that batch after the party demonstrates that the renewable CNG/LNG was used as transportation fuel.

(B) Only an RNG RIN separator may only separate the RINs that have been assigned to a volume of RNG after meeting all applicable requirements in § 80.125(d)(2).

* * * * *

(10) Any party that produces a volume of renewable fuel or RNG may separate any RINs that have been generated to represent that volume of renewable fuel or RNG if that party retires the separated RINs to replace invalid RINs according to § 80.1474.

* * * * *

§ 80.1430 [Amended]

■ 21. Amend § 80.1430 by, in paragraph (e)(2), removing the text ''§ 80.1468'' and adding in its place the text ''§ 80.12''.

■ 22. Amend § 80.1431 by:
■ a. Revising paragraph (a)(1)(vi);
■ b. Adding paragraphs (a)(1)(viii), (a)(1)(x), and (a)(4);
■ c. Revising paragraphs (b) introductory text and (c) introductory text; and
■ d. In paragraph (c)(7)(ii)(P), removing the text ''the Administrator'' and adding in its place the text ''that EPA''.

The revisions and additions read as follows:

§ 80.1431 Treatment of invalid RINs.

(a) * * *

(1) * * *

(vi) Does not represent renewable fuel or RNG.

* * * * *

(viii) Was generated for fuel that was not used in the covered location.

* * * * *

(x) Was inappropriately separated under § 80.125(d).

* * * * *

(4) If any RIN generated for a batch of renewable fuel that had RINs apportioned through § 80.1426(f)(3) is invalid, then all RINs generated for that batch of renewable fuel are deemed invalid, unless EPA in its sole discretion determines that some portion of those RINs are valid.

(b) Except as provided in paragraph (c) of this section and § 80.1473, the following provisions apply in the case of RINs that are invalid:

* * * * *

(c) Improperly generated RINs may be used for compliance provided that all the following conditions and requirements are satisfied and the RIN generator demonstrates that the conditions and requirements are satisfied through the reporting and recordkeeping requirements set forth below, that:

* * * * *

■ 23. Amend § 80.1434 by:
■ a. Revising paragraphs (a)(1) and (5); and
■ b. Redesignating paragraph (a)(11) as paragraph (a)(13) and adding new paragraphs (a)(11) and (12).

The revisions and additions read as follows:

§ 80.1434 RIN retirement.

(a) * * *

(1) *Demonstrate annual compliance.* Except as specified in paragraph (b) of this section or § 80.1456, an obligated party required to meet the RVO under § 80.1407 must retire a sufficient number of RINs to demonstrate compliance with an applicable RVO.

* * * * *

(5) *Spillage, leakage, or disposal of renewable fuels.* Except as provided in § 80.1432(c), in the event that a reported spillage, leakage, or disposal of any volume of renewable fuel, the owner of the renewable fuel must notify any holder or holders of the attached RINs and retire a number of gallon-RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by its equivalence value in accordance with § 80.1432(b).

* * * * *

(11) *Used to produce other renewable fuel.* Any party that uses renewable fuel

or RNG to produce other renewable fuel must retire any assigned RINs for the volume of the renewable fuel or RNG.

(12) *Expired RINs for RNG.* Any party owning RINs assigned to RNG as specified in § 80.125(e) must retire the assigned RIN.

* * * * *

§ 80.1435 [Amended]

■ 24. Amend § 80.1435 by:
■ a. In paragraphs (b)(1)(i) and (ii) and (b)(2)(i) through (iv), removing the text ''RIN-gallons'' wherever it appears and adding in its place the text ''gallon-RINs''; and
■ b. In paragraph (b)(2)(iii), removing the text ''48 contiguous states or Hawaii'' wherever it appears and adding in its place the text ''covered location''.
■ 25. Amend § 80.1441 by:
■ a. Revising paragraph (a)(1);
■ b. Removing and reserving paragraph (a)(3);
■ c. Removing paragraph (b)(3);
■ d. In paragraph (e)(1) and (2) introductory text, removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ e. In paragraph (e)(2)(ii), removing the text ''The Administrator'' and adding in its place the text ''EPA''.
■ f. In paragraph (e)(2)(iii), removing the text ''§ 80.1401'' wherever it appears and adding in its place the text ''§ 80.2''; and
■ g. In paragraph (g), removing the text ''defined under'' and adding in its place the text ''specified in''.

The revision reads as follows:

§ 80.1441 Small refinery exemption.

(a)(1) Transportation fuel produced at a refinery by a refiner is exempt from January 1, 2010, through December 31, 2010, from the renewable fuel standards of § 80.1405, and the owner or operator of the refinery is exempt from the requirements that apply to obligated parties under this subpart M for fuel produced at the refinery if the refinery meets the definition of ''small refinery'' in § 80.2 for calendar year 2006.

* * * * *

■ 26. Amend § 80.1442 by:
■ a. Removing and reserving paragraph (a)(2);
■ b. Removing paragraphs (b)(4) and (5); and
■ c. Revising paragraph (c)(1).

The revision reads as follows

§ 80.1442 What are the provisions for small refiners under the RFS program?

* * * * *

(c) * * *

(1) Transportation fuel produced by a small refiner pursuant to paragraph (b)(1) of this section is exempt from January 1, 2010, through December 31, 2010, from the renewable fuel standards of § 80.1405 and the requirements that apply to obligated parties under this subpart if the refiner meets all the criteria of paragraph (a)(1) of this section.

* * * * *

§ 80.1443 [Amended]

■ 27. Amend § 80.1443 by:
■ a. In paragraphs (a), (b), and (e) introductory text, removing the text ''the Administrator'' and adding in its place the text ''EPA''; and
■ b. In paragraph (e)(2), removing the text ''as defined in § 80.1406''.

§ 80.1449 [Amended]

■ 28. Amend § 80.1449 by, in paragraph (e), removing the text ''the Administrator'' and adding in its place the text ''EPA''.
■ 29. Amend § 80.1450 by:
■ a. Revising the first sentence of paragraph (a);
■ b. Revising paragraphs (b)(1) introductory text and (b)(1)(ii);
■ c. In paragraph (b)(1)(v) introductory text, removing the text ''as defined in § 80.1401'';
■ d. Revising paragraph (b)(1)(v)(E);
■ e. Adding paragraph (b)(1)(v)(F);
■ f. In paragraph (b)(1)(vi), removing the text ''defined' and adding in its place the text ''specified'';
■ g. Adding paragraph (b)(1)(viii)(E);
■ h. In paragraphs (b)(1)(xi) introductory text, (b)(1)(xi)(A), and (B), removing the text ''§ 80.1401'' and adding in its place the text ''§ 80.2'';
■ i. In paragraph (b)(1)(xii) introductory text, removing the text ''§ 80.1468'' and adding in its place the text ''§ 80.12'';
■ j. Revising paragraph (b)(1)(xiii)(B) introductory text;
■ k. Adding paragraph (b)(1)(xiii)(C);
■ l. Revising paragraph (b)(1)(xv)(B);
■ m. Revising the first sentence of paragraph (b)(2) introductory text;
■ n. In paragraph (b)(2)(iii), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ o. Adding paragraph (b)(2)(vii);
■ p. Revising paragraphs (d)(3) and (g)(10)(ii); and
■ q. In paragraphs (g)(11)(i), (ii), (iii), and (i)(1), removing the text ''The Administrator'' and adding in its place the text ''EPA''.

The revisions and additions read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

(a) * * * Any obligated party or any exporter of renewable fuel must provide EPA with the information specified for registration under 40 CFR 1090.805, if such information has not already been provided under the provisions of this part. * * *

(b) * * *

(1) A description of the types of renewable fuels, RNG, ethanol, or biointermediates that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel, RNG, ethanol, or biointermediate the renewable fuel producer or foreign ethanol producer must also provide all the following:

* * * * *

(ii) A description of the facility's renewable fuel, RNG, ethanol, or biointermediate production processes, including:

* * * * *

(v) * * *

(E)(*1*) For parties registered to generate RINs for renewable CNG/LNG prior to July 1, 2024, the registration requirements under paragraph (b)(1)(v)(D) under this section apply until December 31, 2024.

(*2*) For biogas producers, RNG producers, and biogas closed distribution system RIN generators not registered prior to July 1, 2024, the registration requirements under § 80.135 apply.

(F) Any other records as requested by EPA.

* * * * *

(viii) * * *

(E) The independent third-party engineer must visit all material recovery facilities as part of the engineering review site visit under § 80.1450(b)(2) and (d)(3), as applicable.

* * * * *

(xiii) * * *

(B) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs, a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% adjusted cellulosic content, and who uses a process other than a thermochemical process, excluding anerobic digestion, or a combination of processes to convert feedstock into renewable fuel or biointermediate, must provide all the following:

* * * * *

(C) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce biogas using two or more feedstocks converted simultaneously in an anaerobic digester, where at least one of the feedstocks does not have a minimum 75% adjusted cellulosic content, must supply the information specified in § 80.135(c)(10).

* * * * *

(xv) * * *

(B) A written justification which explains why each feedstock a producer lists according to paragraph (b)(1)(xv)(A) of this section meets the definition of crop residue.

* * * * *

(2) An independent third-party engineering review and written report and verification of the information provided pursuant to paragraph (b)(1) of this section and § 80.135, as applicable.

* * *

* * * * *

(vii) Reports required under this paragraph (b)(2) must be electronically submitted directly to EPA by an independent third-party engineer using forms and procedures established by EPA.

* * * * *

(d) * * *

(3) All renewable fuel producers, foreign ethanol producers, and biointermediate producers must update registration information and submit an updated independent third-party engineering review as follows:

(i) For all renewable fuel producers and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31, 2013, and by January 31 of no less frequent than every third calendar year thereafter.

(ii) For all renewable fuel producers, foreign ethanol producers, and biointermediate producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31 of no less frequent than every third calendar year after the date of the first independent third-party engineering review site visit conducted under paragraph (b)(2) of this section. For example, if a renewable fuel producer arranged for a third-party engineer to conduct the first site visit on December 15, 2023, the three-year independent third-party engineer review must be submitted by January 31, 2027.

(iii) For all renewable fuel producers, the updated independent third-party engineering review must include all the following:

(A) The engineering review and written report and verification required by paragraph (b)(2) of this section.

(B) A detailed review of the renewable fuel producer's calculations and assumptions used to determine V_{RIN} of a representative sample of batches of each type of renewable fuel produced since the last registration. This representative sampling must adhere to all the following, as applicable:

(*1*) The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

(*2*) For updated independent third-party engineering reviews submitted after January 31, 2024, the representative sample must be selected from batches of renewable fuel produced through at least the second quarter of the calendar year prior to the applicable January 31 deadline.

(iv) For biointermediate producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review must include a detailed review of the biointermediate producer's calculations used to determine the renewable biomass and cellulosic renewable biomass proportions, as required to be reported to EPA under § 80.1451(j), of a representative sample of batches of each type of biointermediate produced since the last registration. The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

(v) For updated independent third-party engineering reviews submitted after January 31, 2024, independent third-party engineers must conduct site visits required under this paragraph (d) no sooner than July 1 of the calendar year prior to the applicable January 31 deadline.

(vi) For updated independent third-party engineering reviews submitted after January 31, 2024, the site visits required under this paragraph (d) must occur when the renewable fuel production facility is producing renewable fuel or when the biointermediate production facility is producing biointermediates.

(vii) If a renewable fuel producer, foreign ethanol producer, or biointermediate producer updates their registration information and independent third-party engineering review prior to the next applicable January 31 deadline, and the registration information and independent third-party engineering review meet all applicable requirements under paragraphs (b)(2) and (d)(3)(iii) of this section, the next required registration information and independent third-party engineering review update is due by January 31 of every third calendar year after the date of the updated independent third-party engineering review site visit.

* * * * *

(g) * * *

(10) * * *

(ii) The independent third-party auditor submits an affidavit affirming that they have only verified RINs and biointermediates using a QAP approved under § 80.1469 and notified all appropriate parties of all potentially invalid RINs as described in § 80.1471(d).

* * * * *

■ 30. Effective February 1, 2024, amend § 80.1450 by revising paragraph (b)(2)(ii) and adding paragraphs (b)(2)(viii) through (x) to read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) * * *

(2) * * *

(ii) The independent third-party engineer and its contractors and subcontractors must meet the independence requirements specified in § 80.1471(b)(1), (2), (4), (5), and (7) through (12).

* * * * *

(viii) The independent third-party engineer must conduct engineering reviews as follows:

(A)(*1*) To verify the accuracy of the information provided in paragraph (b)(1)(ii) of this section, the independent third-party engineer must conduct independent calculations of the throughput rate-limiting step in the production process, take digital photographs of all process units depicted in the process flow diagram during the site visit, and certify that all process unit connections are in place and functioning based on the site visit.

(*2*) Digital photographs of a process unit are not required if the third-party engineer submits documentation demonstrating why they were unable to access certain locations due to access issues or safety concerns. EPA may not accept a registration if EPA is unable to determine whether the facility is capable of producing the requested renewable fuel, biointermediate, biogas, or RNG, as applicable, due to the lack

of sufficient digital photographs of process units for the facility.

(B) To verify the accuracy of the information in paragraph (b)(1)(iii) of this section, the independent third-party engineer must obtain independent documentation from parties in contracts with the producer for any co-product sales or disposals. The independent third-party engineer may use representative sampling as specified in 40 CFR 1090.1805 to verify co-product sales or disposals.

(C) To verify the accuracy of the information provided in paragraph (b)(1)(iv) of this section, the independent third-party engineer must obtain independent documentation from all process heat fuel suppliers of the process heat fuel supplied to the facility. The independent third-party engineer may use representative sampling as specified in 40 CFR 1090.1805 to verify fuel suppliers.

(D) To verify the accuracy of the information provided in paragraph (b)(1)(v) of this section, the independent third-party engineer must conduct independent calculations of the Converted Fraction that will be used to generate RINs.

(ix) The independent third-party engineer must provide to EPA documentation demonstrating that a site visit, as specified in paragraph (b)(2) of this section, occurred. Such documentation must include digital photographs with date and geographic coordinates taken during the site visit and a description of what is depicted in the photographs.

(x) The independent third-party engineer must sign, date, and submit to EPA with the written report the following conflict of interest statement:

''I certify that the engineering review and written report required and submitted under 40 CFR 80.1450(b)(2) was conducted and prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the engineering review was conducted and the written report is based. I further certify that the engineering review was conducted and this written report was prepared pursuant to the requirements of 40 CFR part 80 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and inquiry of personnel involved, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.''

* * * * *

■ 31. Amend § 80.1451 by:
■ a. In paragraph (a) introductory text, removing the text ''described in § 80.1406'' and ''described in § 80.1430'';
■ b. Revising paragraph (a)(1)(iii);
■ c. In paragraph (a)(1)(vi), removing the text ''defined'' and adding in its place the text ''specified'';
■ d. Revising paragraphs (a)(1)(viii) and (ix);
■ e. In paragraph (a)(1)(xiii), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ f. Revising paragraphs (a)(1)(xvi), (xvii), and (xviii);
■ g. In paragraph (b)(1)(ii)(O), removing the text ''as defined in § 80.1401'';
■ h. In paragraph (b)(1)(ii)(T), removing the text ''§ 80.1468'' and adding in its place the text ''§ 80.12'';
■ i. Revising paragraph (b)(1)(ii)(U) introductory text;
■ j. In paragraph (b)(1)(ii)(W), removing the text ''the Administrator'' and adding in its place the text ''that EPA'';
■ k. In paragraph (c)(1)(iii)(K), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ l. In paragraphs (c)(2)(i)(J) and (L), removing the text ''as defined in'' and adding in its place the text ''under'';
■ m. In paragraph (c)(2)(i)(R), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ n. In paragraphs (c)(2)(ii)(D)(*8*) and (*10*), removing the text ''as defined in'' and adding in its place the text ''under'';
■ o. In paragraph (c)(2)(ii)(I), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ p. In paragraph (e) introductory text, removing the text ''as defined in § 80.1401 who'' and adding in its place the text ''that'';
■ q. Adding paragraph (f)(4);
■ r. Revising paragraphs (g) introductory text, (g)(1), (g)(2) introductory text, and (g)(2)(vii) through (xi);
■ s. Adding paragraph (g)(2)(xii);
■ t. In paragraph (h)(2), removing the text ''the Administrator'' and adding in its place the text ''EPA'';
■ u. In paragraph (j)(1)(xvi), removing the text ''the Administrator'' and adding in its place the text ''that EPA''; and
■ v. In paragraph (k), removing the text ''the Administrator'' and adding in its place the text ''EPA''.

The revisions and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(iii) Whether the refiner is complying on a corporate (aggregate) or facility-by-facility basis.

* * * * *

(viii) The total current-year RINs by category of renewable fuel (*i.e.,* cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic diesel), retired for compliance.

(ix) The total prior-year RINs by renewable fuel category retired for compliance.

* * * * *

(xvi) The total current-year RINs by category of renewable fuel (*i.e.,* cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic diesel), retired for compliance that are invalid as specified in § 80.1431(a).

(xvii) The total prior-year RINs by renewable fuel category retired for compliance that are invalid as specified in § 80.1431(a).

(xviii) A list of all RINs that were retired for compliance in the reporting period and are invalid as specified in § 80.1431(a).

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(U) Producers generating D code 3 or 7 RINs for cellulosic biofuel other than RNG or biogas-derived renewable fuel, and that was produced from two or more feedstocks converted simultaneously, at least one of which has less than 75% average adjusted cellulosic content, and using a combination of processes or a process other than a thermochemical process or a combination of processes, must report all the following:

* * * * *

(f) * * *

(4) *Monthly reporting schedule.* Any party required to submit information or reports on a monthly basis must submit such information or reports by the end of the subsequent calendar month.

(g) *Independent third-party auditors.* Any independent third-party auditor must submit quarterly reports as follows:

(1) The following information for each verified batch, as applicable:

(i) The audited party's name.

(ii) The audited party's EPA company registration number.

(iii) The audited party's EPA facility registration number.

(iv)(A) The renewable fuel importer's EPA facility registration number and foreign renewable fuel producer's company registration number.

(B) The RNG importer's EPA facility registration number and foreign RNG

producer's company registration number.

(v) The applicable reporting period.

(vi) The quantity of RINs generated for each verified batch according to §§ 80.125, 80.130, and 80.1426.

(vii) The production date of each verified batch.

(viii) The D-code of each verified batch.

(ix) The volume of ethanol denaturant and applicable equivalence value of each verified batch.

(x) The volume of each verified batch produced.

(xi) The volume and type of each feedstock and biointermediate used to produce the verified batch.

(xii) Whether the feedstocks and biointermediates used to produce each verified batch met the definition of renewable biomass.

(xiii) Whether appropriate RIN generation and verified batch volume calculations under this part were followed for each verified batch.

(xiv) The quantity and type of co-products produced.

(xv) Invoice document identification numbers associated with each verified batch.

(xvi) Laboratory sample identification numbers for each verified batch associated with the generation of any certificates of analysis used to verify fuel type and quality.

(xvii) Any additional information that EPA may require.

(2) The following aggregate verification information, as applicable:

* * * * *

(vii) A list of all audited facilities, including the EPA's company and facility registration numbers, along with the date the independent third-party auditor conducted the on-site visit and audit.

(viii) Mass and energy balances calculated for each audited facility.

(ix) A list of all RINs that were identified as Potentially Invalid RINs (PIRs) pursuant to §§ 80.185 and 80.1474, along with a narrative description of why the RINs were not verified or were identified as PIRs.

(x) A list of all biointermediates that were identified as potentially improperly produced biointermediates under § 80.1477(d).

(xi) A list of all biogas that was identified as potentially inaccurate or non-qualifying under § 80.185(b).

(xii) Any additional information that EPA may require.

* * * * *

§ 80.1452 [Amended]

■ 32. Amend § 80.1452 by:

■ a. In paragraph (b)(14), removing the text ''as defined in § 80.1401'';

■ b. In paragraph (b)(18), removing the text ''the Administrator'' and adding in its place the text ''that EPA''; and

■ c. In paragraphs (c)(14) and (d), removing the text ''the Administrator'' and adding in its place the text ''EPA''.

■ 33. Amend § 80.1453 by:

■ a. Revising paragraphs (a) introductory text, (a)(12) introductory text, and (a)(12)(v);

■ b. Adding paragraph (a)(12)(viii);

■ c. In paragraphs (d) and (f)(1)(vi), removing the text ''§ 80.1401'' and adding in its place the text ''§ 80.2''; and

■ d. Adding paragraph (f)(1)(vii).

The revisions and additions read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

(a) On each occasion when any party transfers ownership of neat or blended renewable fuels or RNG, except when such fuel is dispensed into motor vehicles or nonroad vehicles, engines, or equipment, or separated RINs subject to this subpart, the transferor must provide to the transferee documents that include all the following information, as applicable:

* * * * *

(12) For the transfer of renewable fuel or RNG for which RINs were generated, an accurate and clear statement on the product transfer document of the fuel type from the approved pathway, and designation of the fuel use(s) intended by the transferor, as follows:

* * * * *

(v) Naphtha. ''This volume of neat or blended naphtha is designated and intended for use as transportation fuel or jet fuel in the 48 U.S. contiguous states and Hawaii. This naphtha may only be used as a gasoline blendstock, E85 blendstock, or jet fuel. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430.''.

* * * * *

(viii) RNG. ''This volume of RNG is designated and intended for transportation use in the 48 U.S. contiguous states and Hawaii or as a feedstock to produce a renewable fuel and may not be used for any other purpose. Any person exporting this fuel is subject to the requirements of 40 CFR 80.1430. Assigned RINs to this volume of RNG must not be separated unless the RNG is used as transportation fuel in the 48 U.S. contiguous states and Hawaii.''

* * * * *

(f) * * *

(1) * * *

(vii) For biogas designated for use as a biointermediate, any applicable PTD requirements under § 80.150.

* * * * *

■ 34. Amend § 80.1454 by:

■ a. In paragraph (a) introductory text, removing the text ''(as described at § 80.1406)'' and ''(as described at § 80.1430)'';

■ b. In paragraph (b) introductory text, removing the text ''as defined in § 80.1401'';

■ c. Revising paragraphs (b)(3)(ix) and (xii);

■ d. In paragraph (b)(8), removing the text ''§ 80.1401'' and adding in its place the text ''§ 80.2'';

■ e. In paragraph (c)(1) introductory text, removing the text ''(as defined in § 80.1401)'';

■ f. In paragraph (c)(1)(iii), removing the text ''as defined in § 80.1401'';

■ g. In paragraph (c)(2) introductory text, removing the text ''(as defined in § 80.1401)'';

■ h. Adding paragraphs (c)(2)(vii) and (c)(3);

■ i. Removing paragraph (d) introductory text;

■ j. Redesignating paragraphs (d)(1) through (4) as paragraphs (d)(2) through (5), respectively, and adding a new paragraph (d)(1);

■ k. In newly redesignated paragraph (d)(2)(ii), removing the text ''(d)(1)(i)'' and adding in its place the text ''(d)(2)(i)'';

■ l. In newly redesignated paragraph (d)(4)(ii)(B), removing the text ''(d)(3)(ii)(A)'' and adding in its place the text ''(d)(4)(ii)(A)'';

■ m. Revising newly redesignated paragraph (d)(5);

■ n. Adding paragraph (d)(6);

■ o. In paragraphs (h)(3)(iv) and (v), removing the text ''as defined in § 80.1401'';

■ p. Removing paragraphs (h)(6)(vi) and (vii);

■ q. Revising paragraph (j) introductory text;

■ r. In paragraphs (j)(1)(iii), (j)(2)(iv), and (k)(1)(vii), removing the text ''the Administrator'' and adding in its place the text ''EPA'';

■ s. Revising paragraphs (k)(2) and (l) introductory text;

■ t. In paragraphs (l)(4) and (m)(11), removing the text ''the Administrator'' and adding in its place the text ''EPA'';

■ u. In paragraph (t), removing the text ''the Administrator or the Administrator's authorized representative'' and adding in its place the text ''EPA''; and

■ v. In paragraph (v), removing the text ''the Administrator'' and adding in its place the text ''EPA''.

The revisions and additions read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(b) * * *

(3) * * *

(ix) All facility-determined values used in the calculations under § 80.1426(f)(4) and the data used to obtain those values.

* * * * *

(xii) For RINs generated for ethanol produced from corn starch at a facility using an approved pathway that requires the use of one or more of the advanced technologies listed in Table 2 to § 80.1426, documentation to demonstrate that employment of the required advanced technology or technologies was conducted in accordance with the specifications in the approved pathway and Table 2 to § 80.1426, including any requirement for application to 90% of the production on a calendar year basis.

* * * * *

(c) * * *

(2) * * *

(vii) For renewable fuel or biointermediate produced from a type of renewable biomass not specified in paragraphs (c)(1)(i) through (vi) of this section, documents from their feedstock suppliers and feedstock aggregators, as applicable, certifying that the feedstock qualifies as renewable biomass, describing the feedstock.

(3) Producers of renewable fuel or biointermediate produced from separated yard and food waste, biogenic oils/fats/greases, or separated MSW must comply with either the recordkeeping requirements in paragraph (j) of this section or the alternative recordkeeping requirements in § 80.1479.

(d) *Additional requirements for domestic producers of renewable fuel.* (1) Except as provided in paragraphs (g) and (h) of this section, any domestic producer of renewable fuel that generates RINs for such fuel must keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used are renewable biomass if RINs are generated.

* * * * *

(5) Domestic producers of renewable fuel or biointermediates produced from a type of renewable biomass not specified in paragraphs (d)(2) through (4) of this section must have documents from their feedstock suppliers and feedstock aggregators, as applicable, certifying that the feedstock qualifies as renewable biomass, describing the feedstock.

(6) Producers of renewable fuel or biointermediate produced from separated yard and food waste, biogenic oils/fats/greases, or separated MSW must comply with either the recordkeeping requirements in paragraph (j) of this section or the alternative recordkeeping requirements in § 80.1479.

* * * * *

(j) *Additional requirements for producers that use separated yard waste, separate food waste, separated MSW, or biogenic waste oils/fats/greases.* Except for parties complying with the alternative recordkeeping requirements in § 80.1479, a renewable fuel or biointermediate producer that produces fuel or biointermediate from separated yard waste, separated food waste, separated MSW, or biogenic waste oils/fats/greases must keep all the following additional records:

* * * * *

(k) * * *

(2) *Biogas and electricity in pathways involving grain sorghum as feedstock.* A renewable fuel producer that produces fuel pursuant to a pathway that uses grain sorghum as a feedstock must keep all the following additional records, as appropriate:

(i) Contracts and documents memorializing the purchase and sale of biogas and the transfer of biogas from the point of generation to the ethanol production facility.

(ii) If the advanced biofuel pathway is used, documents demonstrating the total kilowatt-hours (kWh) of electricity used from the grid, and the total kWh of grid electricity used on a per gallon of ethanol basis, pursuant to § 80.1426(f)(13).

(iii) Affidavits from the biogas producer used at the facility, and all parties that held title to the biogas, confirming that title and environmental attributes of the biogas relied upon under § 80.1426(f)(13) were used for producing ethanol at the renewable fuel production facility and for no other purpose. The renewable fuel producer must obtain these affidavits for each quarter.

(iv) The biogas producer's Compliance Certification required under Title V of the Clean Air Act.

(v) Such other records as may be requested by EPA.

(l) *Additional requirements for producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel, biogas-derived renewable fuel, or renewable electricity.* A renewable fuel producer that generates RINs for any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the Grade No. 1–D or No. 2–D specification in ASTM D975 (incorporated by reference, see § 80.12), biogas-derived renewable fuel or renewable electricity must keep all the following additional records:

* * * * *

§ 80.1455 [Removed and Reserved]

■ 35. Remove and reserve § 80.1455.

§ 80.1457 [Amended]

■ 36. Amend § 80.1457 by, in paragraph (b)(8), removing the text ''the Administrator'' and adding in its place the text ''that EPA''.

37. Add § 80.1458 to read as follows:

§ 80.1458 Storage of renewable fuel, RNG, or biointermediate prior to registration.

(a) *Applicability.* (1) A renewable fuel producer may store renewable fuel for the generation of RINs prior to EPA acceptance of their registration under § 80.1450(b) if all the requirements of this section are met.

(2) An RNG producer may store RNG prior to EPA acceptance of their registration under § 80.135 if all the requirements of this section are met.

(3) A biointermediate producer may store biointermediate (including biogas used to produce a biogas-derived renewable fuel) prior to EPA acceptance of their registration under § 80.1450(b) if all the requirements of this section are met.

(b) *Storage requirements.* In order for a renewable fuel, RNG, or biointermediate producer to store renewable fuel, RNG, or biointermediate under this section, the producer must do the following:

(1) Produce the stored renewable fuel, RNG, or biointermediate after an independent third-party engineer has conducted an engineering review for the renewable fuel, RNG, or biointermediate production facility under § 80.1450(b)(2).

(2) Produce the stored renewable fuel, RNG, or biointermediate in accordance with all applicable requirements under this part.

(3) Make no change to the facility after the independent third-party engineer completed the engineering review.

(4) Store the renewable fuel, RNG, or biointermediate at the facility that produced the renewable fuel, RNG, or biointermediate.

(5) Maintain custody and title to the stored renewable fuel, RNG, or biointermediate until EPA accepts the

producer's registration under § 80.1450(b).

(c) *RIN generation.* (1) A RIN generator may only generate RINs for stored renewable fuel, stored RNG, or renewable fuel produced from stored biointermediate if the RIN generator generates the RINs under §§ 80.125, 80.1426, and 80.1452, as applicable, after EPA accepts their registration under § 80.1450(b) and meets all other applicable requirements under this part for RIN generation.

(2) The RIN year of any RINs generated for stored renewable fuel, stored RNG, or renewable fuel produced from stored biointermediate is the year that the renewable fuel or RNG was produced.

(d) *Limitations.* RNG injected into a natural gas commercial pipeline system prior to EPA acceptance of a renewable fuel producer's registration under § 80.135 does not meet the requirements of this section and may not be stored.

■ 38. Amend § 80.1460 by:
■ a. In paragraph (a), removing the text ''Except as provided in § 80.1455, no'' and adding in its place the text ''No'';
■ b. In paragraphs (c)(2) and (3), removing the text ''(as defined in § 80.1401)'';
■ c. In paragraph (d), removing the text ''§ 80.1428(a)(5)'' and adding in its place the text ''§ 80.1428(a)(4)''
■ d. In paragraph (g), removing the text ''§ 80.1401'' and adding in its place the text ''§ 80.2''; and
■ e. Adding paragraph (l).

The addition reads as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(l) *Independent third-party engineer violations.* No person shall do any of the following:

(1) Fail to identify any incorrect information submitted by any party as specified in § 80.1450(b)(2).

(2) Fail to meet any requirement related to engineering reviews as specified in § 80.1450(b)(2).

(3) Fail to disclose to EPA any financial, professional, business, or other interests with parties for whom the independent third-party engineer provides services under § 80.1450.

(4) Fail to meet any requirement related to the independent third-party engineering review requirements in § 80.1450(b)(2) or (d)(1).

■ 39. Amend § 80.1461 by adding paragraph (f) to read as follows:

§ 80.1461 Who is liable for violations under the RFS program?

* * * * *

(f) *Third-party liability.* Any party allowed under this subpart to conduct sampling and testing on behalf of a regulated party and does so to demonstrate compliance with the requirements of this subpart must meet those requirements in the same way that the regulated party must meet those requirements. The regulated party and the third party are both liable for any violations arising from the third party's failure to meet the requirements of this subpart.

§ 80.1464 [Amended]

■ 40. Amend § 80.1464 by:
■ a. In the introductory text, removing the reference ''§§ 80.1465 and 80.1466'' and adding in its place the reference ''§ 80.1466'';
■ b. In paragraph (a) introductory text, removing the text ''(as described at § 80.1406(a))'' and ''(as described at § 80.1430)'';
■ c. In paragraph (b)(1)(iii), removing the text ''a pathway in Table 1 to § 80.1426'' and adding in its place the text ''an approved pathway'';
■ d. In paragraph (b)(1)(v)(B), removing the text ''in § 80.1401''; and
■ e. In paragraphs (i)(1) and (2), removing the text ''RIN and biointermediate''.

■ 41. Effective April 1, 2024, amend § 80.1466 by:
■ a. In paragraph (d)(2)(ii), removing the text ''The Administrator'' and adding in its place the text ''EPA'';
■ b. In paragraph (f)(1)(viii), removing the text ''working'' and adding in its place the text ''business'';
■ c. Revising paragraphs (h)(1) and (2);
■ d. In paragraph (k)(4)(i), removing the text ''The Administrator'' and adding in its place the text ''EPA'';
■ e. In paragraph (o)(1), removing the text ''the Administrator'' wherever it appears and adding in its place the text ''EPA''; and
■ f. In paragraph (o)(2)(ii), removing the text ''40 CFR 80.1465'' and adding in its place the text ''40 CFR 80.1466''.

The revisions read as follows:

§ 80.1466 What are the additional requirements under this subpart for foreign renewable fuel producers and importers of renewable fuels?

* * * * *

(h) * * *

(1) The RIN-generating foreign producer must post a bond of the amount calculated using the following equation.

Bond = G * $0.22

Where:

Bond = Amount of the bond in U.S. dollars.
G = The greater of: (1) The largest volume of renewable fuel produced by the RIN-generating foreign producer and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years; or (2) The largest volume of renewable fuel that the RIN-generating foreign producers expects to export to the United States during any calendar year identified in the Production Outlook Report required by § 80.1449. If the volume of renewable fuel exported to the United States increases above the largest volume identified in the Production Outlook Report during any calendar year, the RIN-generating foreign producer must increase the bond to cover the shortfall within 90 days.

(2) Bonds must be obtained in the proper amount from a third-party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign producer, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

* * * * *

■ 42. Effective April 1, 2024, amend § 80.1467 by:
■ a. In paragraph (c)(1)(viii), removing the text ''working'' and adding in its place the text ''business'';
■ b. Revising paragraphs (e)(1) and (2); and
■ c. In paragraph (j)(1), removing the text ''the Administrator'' wherever it appears and adding in its place the text ''EPA''.

The revisions read as follows:

§ 80.1467 What are the additional requirements under this subpart for a foreign RIN owner?

* * * * *

(e) * * *

(1) The foreign entity must post a bond of the amount calculated using the following equation:

Bond = G * $ 0.22

Where:

Bond = Amount of the bond in U.S. dollars.
G = The total of the number of gallon-RINs the foreign entity expects to obtain, sell, transfer, or hold during the first calendar year that the foreign entity is a RIN owner, plus the number of gallon-RINs the foreign entity expects to obtain, sell, transfer, or hold during the next four calendar years. After the first calendar year, the bond amount must be based on the actual number of gallon-RINs obtained, sold, or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred during the four calendar years immediately preceding the current calendar year. For any year for which there were fewer than four preceding years in which the foreign entity obtained, sold, or transferred RINs, the bond must be based on the total of the number of gallon-RINs sold or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred

during any immediately preceding calendar years in which the foreign entity owned RINs, plus the number of gallon-RINs the foreign entity expects to obtain, sell or transfer during subsequent calendar years, the total number of years not to exceed four calendar years in addition to the current calendar year.

(2) Bonds must be obtained in the proper amount from a third-party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign RIN owner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

* * * * *

§ 80.1468 [Removed and Reserved]

■ 43. Remove and reserve § 80.1468.

■ 44. Amend § 80.1469 by:

■ a. In paragraph (a)(1)(i)(A), removing the text ''as defined in § 80.1401'';

■ b. In paragraphs (a)(1)(i)(F) and (a)(2)(i)(B), removing the text ''as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416'' and adding in its place the text ''from the approved pathway'';

■ c. In paragraph (a)(3)(i)(F), removing the text ''EV'' and adding in its place the text ''EqV'';

■ d. In paragraph (b)(1)(i), removing the text ''as defined in § 80.1401'';

■ e. In paragraphs (b)(1)(vi) and (b)(2)(ii), removing the text ''as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416'' and adding in its place the text ''from the approved pathway'';

■ f. In paragraph (b)(3)(v), removing the text ''EV'' and adding in its place the text ''EqV'';

■ g. In paragraph (c)(1)(i), removing the text ''as defined in § 80.1401'';

■ h. In paragraph (c)(3)(v), removing the text ''EV'' and adding in its place the text ''EqV'';

■ i. Revising paragraph (c)(4) paragraph heading;

■ j. In paragraph (c)(4)(i), removing the text ''§ 80.1429(b)(4)'' and adding in its place the text ''§ 80.1429(b)'';

■ k. Adding paragraph (c)(6);

■ l. Revising paragraph (d); and

■ m. In paragraph (e)(1), removing the text ''the Administrator'' and adding in its place the text ''EPA''.

The revisions and addition read as follows:

§ 80.1469 Requirements for Quality Assurance Plans.

* * * * *

(c) * * *

(4) *Other RIN-related components.*

* * *

* * * * *

(6) *Documentation.* Independent third-party auditors must review all relevant registration information under § 80.1450, reporting information under § 80.1451, and recordkeeping information under § 80.1454, as well as any other relevant information and documentation required under this part, to verify elements in a QAP approved by EPA under this section.

(d) In addition to a general QAP encompassing elements common to all pathways, for each QAP there must be at least one pathway-specific plan for an approved pathway, which must contain elements specific to particular feedstocks, production processes, and fuel types, as applicable.

* * * * *

■ 45. Amend § 80.1471 by:

■ a. Revising paragraphs (b) introductory text and (b)(1);

■ b. In paragraph (b)(2), removing the text ''as defined in § 80.1406'';

■ c. Revising paragraphs (b)(4) through (6); and

■ d. Adding paragraphs (b)(8) through (12).

The revisions and additions read as follows:

§ 80.1471 Requirements for QAP auditors.

* * * * *

(b) To be considered an independent third-party auditor under paragraph (a) of this section, all the following conditions must be met:

(1) The independent third-party auditor and its contractors and subcontractors must not be owned or operated by the audited party or any subsidiary or employee of the audited party.

* * * * *

(4) The independent third-party auditor and its contractors and subcontractors must be free from any interest or the appearance of any interest in the audited party's business.

(5) The audited party must be free from any interest or the appearance of any interest in the third-party auditor's business and the businesses of third-party auditor's contractors and subcontractors.

(6) The independent third-party auditor and its contractors and subcontractors must not have performed an attest engagement under § 80.1464(b) for the audited party for the same compliance period as a QAP audit conducted pursuant to § 80.1472.

* * * * *

(8) The independent third-party auditor and its contractors and subcontractors must act impartially when performing all activities under this section.

(9) The independent third-party auditor and its contractors and subcontractors must be free from any interest in the audited party's business and receive no financial benefit from the outcome of auditing service, apart from payment for the auditing services.

(10) The independent third-party auditor and its contractors and subcontractors must not have been involved in the design or construction of the audited facility.

(11) The independent third-party auditor and its contractors and subcontractors must ensure that all personnel involved in the third-party audit (including the verification activities) under this section are not negotiating for future employment with the owner or operator of the audited party. At a minimum, prior to conducting the audit, the independent third-party auditor must obtain an attestation (or similar document) from each person involved in the audit stating that they are not negotiating for future employment with the owner or operator of the audited party.

(12) The independent third-party auditor and its contractors and subcontractors must have written policies and procedures to ensure that the independent third-party auditor and all personnel under the independent third-party auditor's direction or supervision comply with the competency, independence, and impartiality requirements of this section.

* * * * *

§ 80.1473 [Amended]

■ 46. Amend § 80.1473 by, in paragraphs (c)(1), (d)(1), and (e)(1), removing the text ''defined'' and adding in its place the text ''specified''.

§ 80.1474 [Amended]

■ 47. Amend § 80.1474 by, in paragraph (g), removing the text ''the Administrator'' and adding in its place the text ''EPA''.

§ 80.1478 [Amended]

■ 48. Amend § 80.1478 by, in paragraph (g)(1), removing the text ''the Administrator'' wherever it appears and adding in its place the text ''EPA''.

■ 49. Add § 80.1479 to read as follows:

§ 80.1479 Alternative recordkeeping requirements for separated yard waste, separated food waste, separated MSW, and biogenic waste oils/fats/greases.

(a) *Alternative recordkeeping.* In lieu of complying with the recordkeeping requirements in § 80.1454(j), a renewable fuel producer or biointermediate producer that produces renewable fuel or biointermediate from separated yard waste, separated food

waste, separated MSW, or biogenic waste oils/fats/greases and uses a feedstock aggregator to supply these feedstocks may comply with the alternative recordkeeping requirements of this section.

(b) *Registration of the feedstock aggregator.* The feedstock aggregator must register under 40 CFR 1090.805.

(c) *QAP participation.* (1) The renewable fuel or biointermediate producer must have their RINs or biointermediate, as applicable, verified by an independent third-party auditor under an approved QAP that includes a description of how the independent third-party auditor will audit each feedstock aggregator.

(2) The independent third-party auditor must conduct a site visit of each feedstock aggregator's establishment as specified in § 80.1471(f). Instead of verifying RINs with a site visit of the feedstock aggregator's establishment every 200 days as specified in § 80.1471(f)(1)(ii), the independent third-party auditor may verify RINs with a site visit every 380 days.

(d) *PTDs.* PTDs must accompany transfers of separated yard waste, separated food waste, separated MSW, and biogenic waste oils/fats/greases from the point where the feedstock leaves the feedstock aggregator's establishment to the point the feedstock is delivered to the renewable fuel production facility, as specified in § 80.1453(f)(1)(i) through (v).

(e) *Recordkeeping.* The feedstock aggregator must keep all applicable records for the collection of separated yard waste, separated food waste, separated MSW, and biogenic waste oils/fats/greases as specified in § 80.1454(j).

(f) *Liability.* The feedstock aggregator and renewable fuel producer are liable for violations as specified in § 80.1461(e).

PART 1090—REGULATION OF FUELS, FUEL ADDITIVES, AND REGULATED BLENDSTOCKS

■ 50. The authority citation for part 1090 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

Subpart A—General Provisions

■ 51. Amend § 1090.55 by revising paragraph (c) to read as follows:

§ 1090.55 Requirements for independent parties.

* * * * *

(c) *Suspension and disbarment.* Any person suspended or disbarred under 2 CFR part 1532 or 48 CFR part 9, subpart 9.4, is not qualified to perform review functions under this part.

■ 52. Amend § 1090.80 by:

■ a. In the definition for ''PADD'', revising entry ''II'' in the table; and

■ b. In the definition of ''Ultra low-sulfur diesel (ULSD)'', removing the text ''Ultra low-sulfur diesel (ULSD)'' and adding in its place the text ''Ultra-low-sulfur diesel (ULSD)''.

The revision reads as follows:

§ 1090.80 Definitions.

* * * * *

PADD * * *

PADD	Regional description	State or territory
*	*	*
II	Midwest	Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Wisconsin
*	*	*

* * * * *

Subpart I—Registration

■ 53. Amend § 1090.805 by revising paragraph (a)(1)(iv) to read as follows:

§ 1090.805 Contents of registration.

(a) * * *

(1) * * *

(iv) Name(s), title(s), telephone number(s), and email address(es) of an RCO and their delegate, if applicable.

* * * * *

Subpart S—Attestation Engagements

§ 1090.1830 [Amended]

■ 54. Amend § 1090.1830 by, in paragraph (a)(3), adding the text ''all'' after the text ''submitted''.

[FR Doc. 2023–13462 Filed 7–11–23; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 54

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

45 CFR Parts 144, 146, and 148

Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[REG–120730–21]

RIN 1545–BQ28

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AC12

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 146, and 148

[CMS–9904–P]

RIN 0938–AU67

Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rules.

SUMMARY: This document sets forth proposed rules that would amend the definition of short-term, limited-duration insurance, which is excluded from the definition of individual health insurance coverage under the Public Health Service Act. This document also sets forth proposed amendments to the requirements for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit in the group and individual health insurance markets. This document further sets forth proposed amendments to clarify the tax treatment of certain benefit payments in fixed amounts received under employer-provided accident and health plans. Finally, this document solicits comments regarding coverage only for a specified disease or illness that qualifies as excepted benefits, and comments regarding level-funded plan arrangements.

DATES: To be assured consideration, comments must be received at one of the addresses provided below by September 11, 2023.

ADDRESSES: In commenting, please refer to file code CMS–9904–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9904–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9904–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Elizabeth Schumacher or Rebecca Miller, Employee Benefits Security Administration, Department of Labor at (202) 693–8335; Jason Sandoval, Internal Revenue Service, Department of the Treasury at (202) 317–5500; Cam Clemmons, Centers for Medicare & Medicaid Services, Department of Health and Human Services at (206) 615–2338; Geraldine Doetzer, Centers for Medicare & Medicaid Services, Department of Health and Human Services at (667) 290–8855.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view comments. We will not post on *Regulations.gov* comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. We continue to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

These proposed rules set forth proposed revisions to the definition of ''short-term, limited-duration insurance'' (STLDI) for purposes of its exclusion from the definition of ''individual health insurance coverage'' in 26 CFR part 54, 29 CFR part 2590, and 45 CFR part 144. The definition of STLDI is also relevant for purposes of the disclosure and reporting requirements in section 2746 of the Public Health Service Act (the PHS Act), which require health insurance issuers offering individual health insurance coverage or STLDI to disclose to enrollees in such coverage, and to report annually to the Department of Health and Human Services (HHS), any direct or indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage.

These proposed rules also set forth proposed amendments to the requirements for hospital indemnity and other fixed indemnity insurance to be treated as an excepted benefit in the group and individual health insurance markets (fixed indemnity excepted benefits coverage).[1] Further, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) propose to clarify the tax treatment under 26 CFR part 1 of fixed amounts received by a taxpayer through certain employment-based accident or health insurance that are paid without regard to the amount of medical expenses incurred.

Lastly, comments are solicited regarding coverage only for a specified disease or illness that qualifies as excepted benefits (specified disease excepted benefits coverage),[2] and regarding level-funded plan arrangements to better understand the key features and characteristics of these arrangements and whether additional guidance or rulemaking is needed to clarify plan sponsors' obligations with respect to coverage provided through these arrangements.

[1] For simplicity and readability, this preamble refers to hospital indemnity or other fixed indemnity insurance that meets all requirements to be considered an excepted benefit under the Federal framework as ''fixed indemnity excepted benefits coverage'' in order to distinguish it from hospital indemnity or other fixed indemnity insurance that does not meet all such requirements.

[2] For simplicity and readability, this preamble refers to specified disease or illness insurance coverage that meets all requirements to be considered an excepted benefit under the Federal framework as ''specified disease excepted benefits coverage'' in order to distinguish it from specified disease or illness insurance that does not meet all such requirements.

The Treasury Department, the Department of Labor, and HHS (collectively, the Departments) propose these revisions to define and more clearly distinguish STLDI and fixed indemnity excepted benefits coverage from comprehensive coverage. Comprehensive coverage is subject to the Federal consumer protections and requirements established under chapter 100 of the Internal Revenue Code (Code), part 7 of the Employee Retirement Income Security Act of 1974 (ERISA), and title XXVII of the PHS Act,[3] such as the prohibition on exclusions for preexisting conditions, the prohibition on health status discrimination, the requirement to cover certain preventive services without cost sharing, and many others. The Departments propose these revisions to promote equitable access to high-quality, affordable, comprehensive coverage by increasing consumers' understanding of their health coverage options and reducing misinformation about STLDI and fixed indemnity excepted benefits coverage, consistent with Executive Orders 14009 and 14070 as described in section I.B of this preamble. Similarly, clarifying the tax treatment of benefit payments in fixed amounts under hospital indemnity or other fixed indemnity coverage purchased on a pre-tax basis when those benefits are paid without regard to the medical expenses incurred is also an important means by which to distinguish that coverage from comprehensive coverage and should serve to promote the purchase of comprehensive coverage in the group market.

A. General Statutory Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, August 21, 1996) added chapter 100 to the Code, part 7 to ERISA, and title XXVII to the PHS Act, which set forth portability and nondiscrimination rules with respect to health coverage. These provisions of the Code, ERISA, and the PHS Act were later augmented by other laws, including the Mental Health Parity Act of 1996 (Pub. L. 104–204, September 26, 1996), the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (Pub. L. 110–343, October 3, 2008), the Newborns' and Mothers' Health Protection Act (Pub. L. 104–204, September 26, 1996), the Women's Health and Cancer Rights Act (Pub. L. 105–277, October 21, 1998), the Genetic Information Nondiscrimination Act of 2008 (Pub. L. 110–233, May 21, 2008), the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3, February 4, 2009), Michelle's Law (Pub. L. 110–381, October 9, 2008), the Patient Protection and Affordable Care Act (Pub. L. 111–148, March 23, 2010) (as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, March 30, 2010) (collectively known as the Affordable Care Act (ACA)), and Division BB of the Consolidated Appropriations Act, 2021 (CAA, 2021) (Pub. L. 116–260, December 27, 2020), which includes the No Surprises Act.

The ACA reorganized, amended, and added to the provisions of Part A of title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. The ACA added section 9815 of the Code and section 715 of ERISA to incorporate the provisions of Part A of title XXVII of the PHS Act, as amended or added by the ACA, into the Code and ERISA, making them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The provisions of the PHS Act incorporated into the Code and ERISA, as amended or added by the ACA, are sections 2701 through 2728. In addition to marketwide provisions applicable to group health plans and health insurance issuers in the group and individual markets, the ACA established Health Benefit Exchanges (Exchanges) aimed at promoting access to high-quality, affordable, comprehensive coverage. Section 1401(a) of the ACA added section 36B to the Code, providing a premium tax credit (PTC) for certain individuals with annual household income that is at least 100 percent but not more than 400 percent of the Federal poverty level (FPL) who enroll in, or who have one or more family members enrolled in, an individual market qualified health plan (QHP) through an Exchange, who are not otherwise eligible for minimum essential coverage (MEC). Section 1402 of the ACA provides for, among other things, reductions in cost sharing for essential health benefits for qualified low- and moderate-income enrollees in silver-level QHPs purchased through the individual market Exchanges. This section also provides for reductions in cost sharing for American Indians enrolled in QHPs purchased through the individual market Exchanges at any metal level.

Section 5000A of the Code, added by section 1501(b) of the ACA, provides that individuals must maintain MEC, or make a payment known as the individual shared responsibility payment with their Federal tax return for the year in which they did not maintain MEC, if they are not otherwise exempt.[4] On December 22, 2017, the Tax Cuts and Jobs Act (Pub. L. 115–97) was enacted, which included a provision under which the individual shared responsibility payment under section 5000A of the Code was reduced to $0, effective for months beginning after December 31, 2018.

The American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2) was enacted on March 11, 2021. Among other policies intended to address the health care and economic needs of the country during the coronavirus disease–2019 (COVID–19) pandemic, the ARP increased the PTC amount for individuals with annual household income at or below 400 percent of the FPL and extended PTC eligibility for the first time to individuals with annual household incomes above 400 percent of the FPL. Although the expanded PTC subsidies under the ARP were applicable only for 2021 and 2022, the Inflation Reduction Act of 2022 (IRA) (Pub. L. 117–169, August 16, 2022) extended the subsidies for an additional 3 years, through December 31, 2025.

The No Surprises Act was enacted on December 27, 2020, as title I of Division BB of the CAA, 2021. The No Surprises Act added new provisions in Subchapter B of chapter 100 of the Code, Part 7 of ERISA, and Part D of title XXVII of the PHS Act, applicable to group health plans and health insurance issuers offering group or individual health insurance coverage. These provisions provide protections against surprise medical bills for certain out-of-network services and generally require plans and issuers and providers and

[3] While STLDI is generally not subject to the Federal consumer protections and requirements for comprehensive coverage that apply to individual health insurance coverage, the agent and broker compensation disclosure and reporting requirements in section 2746 of the PHS Act apply to health insurance issuers offering individual health insurance coverage or STLDI.

[4] Section 5000A of the Code and Treasury regulations at 26 CFR 1.5000A–3 provide exemptions from the requirement to maintain MEC for the following individuals: (1) members of recognized religious sects; (2) members of health care sharing ministries; (3) exempt noncitizens; (4) incarcerated individuals; (5) individuals with no affordable coverage; (6) individuals with household income below the income tax filing threshold; (7) members of federally recognized Indian tribes; (8) individuals who qualify for a hardship exemption certification; and (9) individuals with a short coverage gap of a continuous period of less than 3 months in which the individual is not covered under MEC. The eligibility standards for exemptions can be found at 45 CFR 155.605.

facilities to make certain disclosures regarding balance billing protections to the public and to individual participants, beneficiaries, and enrollees. In addition to the new provisions applicable to group health plans and issuers of group or individual health insurance coverage, the No Surprises Act added a new Part E to title XXVII of the PHS Act, establishing corresponding requirements applicable to health care providers, facilities, and providers of air ambulance services. The CAA, 2021 also amended title XXVII of the PHS Act to, among other things, add section 2746, which requires health insurance issuers offering individual health insurance coverage or STLDI to disclose the direct or indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage to the enrollees in such coverage as well as to report it annually to HHS.

The Secretaries of HHS, Labor, and the Treasury have authority to promulgate regulations as may be necessary or appropriate to carry out the parallel Federal consumer protections and requirements for comprehensive coverage established under the Code, ERISA, and the PHS Act (hereinafter referred to as the ''Federal consumer protections and requirements for comprehensive coverage'').[5] [6]

B. Recent Executive Orders

On January 28, 2021, President Biden issued Executive Order 14009, ''Strengthening Medicaid and the Affordable Care Act,'' which directed the Departments to review policies to ensure their consistency with the Administration's goal of protecting and strengthening the ACA and making high-quality health care accessible and affordable for every American.[7] Executive Order 14009 also directed Federal agencies to examine policies or practices that may undermine protections for people with preexisting conditions and that may reduce the affordability of coverage or financial assistance for coverage. Executive Order 14009 also revoked the previous Administration's Executive Order 13813, ''Promoting Healthcare Choice and Competition Across the United States,'' which directed agencies to expand the availability of STLDI.[8] On April 5, 2022, President Biden issued Executive Order 14070, ''Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage,'' which directed the heads of Federal agencies with responsibilities related to Americans' access to health coverage to examine polices or practices that make it easier for all consumers to enroll in and retain coverage, understand their coverage options, and select appropriate coverage; that strengthen benefits and improve access to health care providers; that improve the comprehensiveness of coverage and protect consumers from low-quality coverage; and that help reduce the burden of medical debt on households.[9]

In addition, on January 21, 2021, President Biden issued Executive Order 13995, ''Ensuring an Equitable Pandemic Response and Recovery,'' which directed the Secretaries of Labor and HHS, and the heads of all other agencies with authorities or responsibilities relating to the COVID–19 pandemic response and recovery, to consider any barriers that have restricted access to preventive measures, treatment, and other health services for populations at high risk for COVID–19 infection, and modify policies to advance equity.[10]

Consistent with these executive orders, the Departments have reviewed the regulatory provisions related to STLDI and fixed indemnity excepted benefits coverage, and propose amendments to those provisions in these proposed rules. The Departments also solicit comments on specified disease excepted benefit coverage (for example, cancer-only policies) in section III.B.2 of this preamble and on level-funded plan arrangements in section III.C of this preamble.

C. Short-Term, Limited-Duration Insurance (STLDI)

STLDI is a type of health insurance coverage sold by health insurance issuers that is primarily designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another, such as transitioning between employment-based coverages. Section 2791(b)(5) of the PHS Act provides ''[t]he term 'individual health insurance coverage' means health insurance coverage offered to individuals in the individual market, but does not include short-term, limited-duration insurance.'' [11] The PHS Act does not, however, define the phrase ''short-term, limited-duration insurance.'' Sections 733(b)(4) of ERISA and 2791(b)(4) of the PHS Act provide that group health insurance coverage means ''in connection with a group health plan, health insurance coverage offered in connection with such plan.'' Sections 733(a)(1) of ERISA and 2791(a)(1) of the PHS Act provide that a group health plan is generally any plan, fund, or program established or maintained by an employer (or employee organization or both) for the purpose of providing medical care to employees or their dependents (as defined under the terms of the plan) directly, or through insurance, reimbursement, or otherwise. There is no corresponding provision excluding STLDI from the definition of group health insurance coverage. Thus, any health insurance that is sold in the group market and purports to be STLDI must comply with applicable Federal group market consumer protections and requirements for comprehensive coverage, unless the coverage satisfies the requirements of one or more types of group market excepted benefits.

Because STLDI is not individual health insurance coverage, it is generally exempt from the applicable Federal individual market consumer protections and requirements for comprehensive coverage. STLDI is not subject to many PHS Act provisions that apply to individual health insurance coverage under the ACA including, for example, the prohibition of preexisting condition exclusions or other discrimination based on health status (section 2704 of the PHS Act), the prohibition on discrimination against individual participants and beneficiaries based on health status (section 2705 of the PHS Act), nondiscrimination in health care (section 2706 of the PHS Act), and the prohibition on lifetime and annual dollar limits on essential health benefits (section 2711 of the PHS Act). In addition, STLDI is not subject to the Federal consumer protections and

[5] Sections 2701 through 2728 of the PHS Act, incorporated into section 715 of ERISA and section 9815 of the Code; section 104 of HIPAA; sections 408(b)(2), 505, 734, and 716–717 of ERISA; sections 2746, 2761, 2792, 2799A–1–2, and 2799B1–B2 of the PHS Act; section 1321(a)(1) and (c) of ACA; sections 7805, 9816–9817, and 9822 of the Code; and sections 2746, 2799A–1–2, and 2799B1–B2 of the PHS Act.

[6] *See also* 64 FR 70164 (December 15, 1999).

[7] Executive Order 14009 of January 28, 2021, 86 FR 7793.

[8] Executive Order 13813 of October 12, 2017, 82 FR 48385.

[9] Executive Order 14070 of April 5, 2022, 87 FR 20689.

[10] Executive Order 13995 of January 21, 2021, 86 FR 7193.

[11] The definition of individual health insurance coverage (and its exclusion of STLDI) has some limited relevance with respect to certain provisions that apply to group health plans and group health insurance issuers over which the Departments of Labor and the Treasury also have jurisdiction. For example, an individual who loses coverage due to moving out of a health maintenance organization (HMO) service area in the individual market precipitates a special enrollment right into a group health plan. *See* 26 CFR 54.9801–6(a)(3)(i)(B), 29 CFR 2590.701–6(a)(3)(i)(B), and 45 CFR 146.117(a)(3)(i)(B).

requirements added to the PHS Act by other laws that apply to individual health insurance coverage, including MHPAEA (Pub. L. 110–343, October 3, 2008) (section 2726 of the PHS Act), and the No Surprises Act, as added by the CAA, 2021. Thus, individuals who enroll in STLDI are not guaranteed these key consumer protections under Federal law.[12] This feature of STLDI is especially problematic when it is not readily apparent to consumers deciding whether to purchase STLDI or comprehensive individual health insurance coverage.

In 1997, the Departments issued interim final rules implementing the portability and renewability requirements of HIPAA (1997 HIPAA interim final rules).[13] Those interim final rules included definitions of individual health insurance coverage, as well as STLDI. That definition of STLDI, which was finalized in rules issued in 2004 and applied through 2016, defined ''short-term, limited-duration insurance'' as ''health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract.'' [14]

To address the issue of STLDI being sold as a type of primary coverage, as well as concerns regarding possible adverse selection impacts on the individual market risk pools that were created under the ACA,[15] the Departments published proposed rules on June 10, 2016 in the **Federal Register** titled ''Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance'' (2016 proposed rules). Those rules proposed to revise the Federal definition of STLDI by shortening the permitted duration of such coverage, and adopting a consumer notice provision.[16] On October 31, 2016, the Departments finalized the 2016 proposed rules related to STLDI without change in final rules published in the **Federal Register** titled ''Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance'' (2016 final rules).[17] The 2016 final rules amended the definition of STLDI to specify that the maximum coverage period must be less than 3 months, taking into account any extensions that may be elected by the policyholder with or without the issuer's consent.[18] In addition, the 2016 final rules stated that the following notice must be prominently displayed in the contract and in any application materials provided in connection with enrollment in STLDI, in at least 14 point type:

THIS IS NOT QUALIFYING HEALTH COVERAGE (''MINIMUM ESSENTIAL COVERAGE'') THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES.[19]

On June 12, 2017, HHS published a request for information (RFI) in the **Federal Register** titled ''Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients,'' [20] which solicited comments about potential changes to existing regulations and guidance that could promote consumer choice, enhance affordability of coverage for individual consumers, and affirm the traditional regulatory authority of the States in regulating the business of health insurance, among other goals.[21] In response to this RFI, HHS received comments that recommended maintaining the definition of STLDI adopted in the 2016 final rules, and comments that recommended expanding the definition to allow for a longer period of coverage. Commenters in support of maintaining the definition adopted in the 2016 final rules expressed concern that changing the definition could leave enrollees in STLDI at risk for significant out-of-pocket costs, and cautioned that expanding the definition of STLDI could facilitate its sale to individuals as their primary form of health coverage, even though such insurance lacks key consumer protections under Federal law that apply to individual health insurance coverage. Commenters in favor of maintaining the definition in the 2016 final rules also suggested that amending the 2016 final rules to include coverage lasting 3 months or more could have the effect of pulling healthier people out of the individual market risk pools, thereby increasing overall premium costs for enrollees in individual health insurance coverage and destabilizing the individual market.

In contrast, several other commenters stated that changes to the 2016 final rules may provide an opportunity to achieve the goals outlined in the RFI (for example, to promote consumer choice, enhance affordability, and affirm the traditional authority of the States in regulating the business of insurance). These commenters stated that shortening the permitted length of STLDI policies in the 2016 final rules had deprived individuals of affordable coverage options. One commenter explained that due to the increased costs of comprehensive coverage, many financially stressed individuals could be faced with a choice between purchasing STLDI and going without any coverage at all. One commenter highlighted the need for STLDI for individuals who are between jobs for a relatively long period and for whom enrolling in Consolidated Omnibus Budget Reconciliation Act (COBRA) [22] continuation coverage is financially infeasible. Another commenter noted that States have the primary responsibility to regulate STLDI and encouraged the Departments to defer to the States' authority with respect to such coverage.

On February 21, 2018, the Departments published proposed rules in the **Federal Register** titled ''Short-Term, Limited-Duration Insurance'' (2018 proposed rules) in which the Departments proposed changing the definition of STLDI to provide that such insurance may have a maximum coverage period of less than 12 months after the original effective date of the contract, taking into account any extensions that may be elected by the policyholder without the issuer's consent.[23] Among other things, the Departments solicited comments on whether the maximum length of STLDI should be less than 12 months or some other duration and under what conditions issuers should be able to allow such coverage to continue for 12 months or longer. In addition, the Departments proposed to revise the content of the consumer notice that must appear in the contract and any application materials provided in

[12] Some state laws apply some consumer protections and requirements that parallel those in the ACA to STLDI.

[13] 62 FR 16894 (April 8, 1997).

[14] 62 FR 16894 at 16928, 16942, 16958 (April 8, 1997); *see also* 69 FR 78720 (December 30, 2004).

[15] *See* Public Law 111–148, section 1312(c)(1) and 45 CFR 156.80.

[16] 81 FR 38019 (June 10, 2016).

[17] 81 FR 75316 (October 31, 2016).

[18] *Id.* at 75317–75318.

[19] *Id.*

[20] 82 FR 26885 (June 12, 2017).

[21] *See also* Executive Order 13813 of October 12, 2017 82 FR 48385. (Directing the Secretaries of the Treasury, Labor and HHS ''. . . to consider proposing regulations or revising guidance, consistent with law, to expand the availability of [STLDI]. To the extent permitted by law and supported by sound policy, the Secretaries should consider allowing such insurance to cover longer periods and be renewed by the consumer.'')

[22] Public Law 99–272, April 7, 1986.

[23] 83 FR 7437 (February 21, 2018).

connection with enrollment in STLDI. The 2018 proposed rules included two variations of the consumer notice—one for policies that had a coverage start date before January 1, 2019, and the other for policies that had a coverage start date on or after January 1, 2019, which excluded language referencing the individual shared responsibility payment (which was reduced to $0 for months beginning after December 2018).[24]

Some commenters on the 2018 proposed rules acknowledged that STLDI fills an important role by providing temporary coverage, but that such insurance should not take the place of comprehensive coverage. These commenters expressed concern that allowing STLDI to be marketed as a viable alternative to comprehensive coverage would subject uninformed consumers to potentially severe financial risks. Commenters who opposed the proposed changes to the definition also expressed concern that such plans would siphon off healthier individuals from the market for individual health insurance coverage, thereby raising premiums for individual health insurance coverage.

Many of these commenters also expressed concerns about the lack of protections for consumers who purchase STLDI, stating that such policies are not a viable option for people with serious or chronic medical conditions due to potential coverage exclusions and benefit limitations in STLDI policies. These commenters further observed that STLDI policies can discriminate against individuals with serious illnesses or preexisting conditions, including individuals with mental health and substance use disorders, older consumers, women, transgender patients, persons with gender identity-related health concerns, and victims of rape and domestic violence. Many of these commenters also expressed concern about aggressive and deceptive marketing practices utilized by marketers of STLDI.

Other commenters highlighted the important role that STLDI could play in providing temporary coverage to individuals who would otherwise be uninsured. These commenters, who supported the proposed changes to the definition, also noted that such changes would allow purchasers of STLDI to obtain the coverage they want at a more affordable price for a longer period.

With respect to the maximum length of the initial contract term for STLDI, most commenters opposed extending the maximum duration beyond 3 months. Others suggested periods such as less than 6 or 8 months. However, most commenters who supported extending the maximum initial contract term beyond 3 months suggested it should be 364 days. A few commenters suggested more than 1 year. Other commenters stated the maximum length of coverage should be left to the States. Commenters who supported the 2018 proposed rules generally favored permitting renewals of STLDI policies, while those who opposed the 2018 proposed rules generally opposed permitting such renewals.

After reviewing comments and feedback received from interested parties, on August 3, 2018, the Departments published final rules in the **Federal Register** titled ''Short-Term, Limited-Duration Insurance'' (2018 final rules) [25] with some modifications from the 2018 proposed rules. Specifically, in the 2018 final rules, the Departments amended the definition of STLDI to provide that STLDI is coverage with an initial term specified in the contract that is less than 12 months after the original effective date of the contract, and taking into account renewals or extensions, has a duration of no longer than 36 months in total.[26] The 2018 final rules also finalized the provision that issuers of STLDI must display one of two versions of a notice prominently in the contract and in any application materials provided in connection with enrollment in such coverage, in at least 14-point type. Under the 2018 final rules, the notice must read as follows (with the final two sentences omitted for policies sold on or after January 1, 2019):

> This coverage is not required to comply with certain Federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage. Also, this coverage is not ''minimum essential coverage.'' If you don't have minimum essential coverage for any month in 2018, you may have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.

D. Independent, Noncoordinated Excepted Benefits: Hospital Indemnity or Other Fixed Indemnity Insurance and Specified Disease or Illness Coverage

Section 9831 of the Code, section 732 of ERISA, and sections 2722(b)-(c) and 2763 of the PHS Act provide that the respective Federal consumer protections and requirements for comprehensive coverage do not apply to any individual coverage or any group health plan (or group health insurance coverage offered in connection with a group health plan) in relation to its provision of certain types of benefits, known as ''excepted benefits.'' These excepted benefits are described in section 9832(c) of the Code, section 733(c) of ERISA, and section 2791(c) of the PHS Act.

HIPAA defined certain types of coverage as ''excepted benefits'' that were exempt from its portability requirements.[27] The same definitions are applied to describe benefits that are not required to comply with some of the ACA requirements.[28] There are four statutory categories of excepted benefits: independent, noncoordinated excepted benefits, which are the subject of these proposed rules; benefits that are excepted in all circumstances; [29] limited excepted benefits; [30] and supplemental excepted benefits.[31] The category ''independent, noncoordinated excepted benefits'' includes coverage for only a

[24] Public Law 115–97, December 22, 2017.

[25] 83 FR 38212 (August 3, 2018).

[26] *Id.*

[27] *See* sections 9831(b)–(c) and 9832(c) of the Code, sections 732(b)–(c) and 733(c) of ERISA, and sections 2722(b)–(c), 2763 and 2791(c) of the PHS Act.

[28] Section 1551 of the ACA. *See also* section 1563(a) and (b)(12) of the ACA. Excepted benefits are also not subject to the consumer protections and other Federal requirements that apply to comprehensive coverage, including MHPAEA, the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, the Genetic Information Nondiscrimination Act of 2008, the Children's Health Insurance Program Reauthorization Act of 2009, Michelle's Law, and Division BB of the CAA, 2021.

[29] Under section 9832(c)(1) of the Code, section 733(c)(1) of ERISA, and section 2791(c)(1) of the PHS Act, this category includes, for example, accident and disability income insurance, automobile medical payment insurance, liability insurance and workers compensation, as well as ''[o]ther similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.''

[30] Under section 9832(c)(2) of the Code, section 733(c)(2) of ERISA, and section 2791(c)(2) of the PHS Act, this category includes limited scope vision or dental benefits, benefits for long-term care, nursing home care, home health care, or community-based care, or other, similar limited benefits specified by the Departments through regulation.

[31] Under section 9832(c)(4) of the Code, section 733(c)(4) of ERISA, and section 2791(c)(4) of the PHS Act, this category includes Medicare supplemental health insurance (also known as Medigap), TRICARE supplemental programs, or ''similar supplemental coverage provided to coverage under a group health plan.''

specified disease or illness (such as cancer-only policies) and hospital indemnity or other fixed indemnity insurance. These benefits are excepted under section 9831(c)(2) of the Code, section 732(c)(2) of ERISA, and section 2722(c)(2) of the PHS Act only if all of the following conditions are met: (1) the benefits are provided under a separate policy, certificate, or contract of insurance; (2) there is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor; and (3) the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such event under any group health plan maintained by the same plan sponsor or, with respect to individual coverage, under any health insurance coverage maintained by the same health insurance issuer.[32] In addition, under the existing regulations, hospital indemnity and other fixed indemnity insurance in the group market must pay a fixed dollar amount per day (or other period) of hospitalization or illness, regardless of the amounts of expenses incurred, to be considered an excepted benefit.[33] In the individual market, under the existing regulations, hospital indemnity and other fixed indemnity insurance must pay benefits in a fixed dollar amount per period of hospitalization or illness and/or per-service (for example, $100/day or $50/visit), regardless of the amount of expense incurred, to be considered an excepted benefit.[34]

The proposals in these rules related to independent, noncoordinated excepted benefits coverage are focused on the conditions that must be met for hospital indemnity and other fixed indemnity insurance in the group or individual markets to be considered excepted benefits under the Federal regulations. Additionally, in section III.B.2 of this preamble, the Departments solicit comments regarding specified disease excepted benefits coverage in the group and individual markets to inform potential future guidance or rulemaking related to such coverage, but are not proposing changes to the Federal regulations governing such coverage in this rulemaking.

[32] *See also* section 2763(b) of the PHS Act (providing that ''[the] requirements of this part [related to the HIPAA individual market reforms] shall not apply to any health insurance coverage in relation to its provision of excepted benefits described in paragraph (2), (3), or (4) of section 2791(c) if the benefits are provided under a separate policy, certificate or contract of insurance.'').

[33] 26 CFR 54.9831–1(c)(4), 29 CFR 2590.732(c)(4), and 45 CFR 146.145(b)(4).

[34] 45 CFR 148.220(b)(4).

1. Fixed Indemnity Excepted Benefits Coverage

Like other forms of excepted benefits, fixed indemnity excepted benefits coverage does not provide comprehensive coverage. Rather, its primary purpose is to provide income replacement benefits.[35] Benefits under this type of coverage are paid in a flat (''fixed'') cash amount following the occurrence of a health-related event, such as a period of hospitalization or illness, subject to the terms of the contract. In addition, benefits are typically provided at a pre-determined level regardless of any actual health care costs incurred by a covered individual with respect to the qualifying event. Although a benefit payment may equal all or a portion of the cost of care related to an event, it is not necessarily designed to do so, and the benefit payment is made without regard to the amount of medical expense incurred.[36]

Traditionally, benefits under fixed indemnity excepted benefits coverage are paid directly to a policyholder, rather than to a health care provider or facility, and the policyholder has discretion over how to use such benefits—including using the benefits to cover non-medical expenses that may or may not be related to the event that precipitated the payment of benefits.[37] Because fixed indemnity excepted benefits coverage is capped at a maximum benefit payment, design features aimed at reducing risk to the plan or issuer that are common in comprehensive coverage (such as medical management techniques, use of a preferred network of providers, or cost-sharing requirements) are unnecessary and are generally absent in this coverage.[38]

[35] *See, e.g.,* 62 FR 16903 (April 8, 1997) and 79 FR 15818 (July 8, 2014).

[36] Jost, Timothy (2017). ''ACA Round-Up: Market Stabilization, Fixed Indemnity Plans, Cost Sharing Reductions, and Penalty Updates,'' *Health Affairs,* available at: *https://www.healthaffairs.org/do/10.1377/forefront.20170208.058674/full.* (''Fixed indemnity coverage is excepted benefit coverage that pays a fixed amount per-service or per-time period of service without regard to the cost of the service or the type of items or services provided.'').

[37] AHIP (2019). ''Supplemental Health Insurance: Hospital or Other Fixed Indemnity, Accident-Only, Critical Illness,'' available at: *https://www.ahip.org/documents/Supplemental-Health-Insurance-Fast-Facts.pdf.*

[38] Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Coverage is a Problematic Form of ''Junk'' Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance.* (''Consumers are often seeking a product that transfers catastrophic financial risk to the health plan, but fixed indemnity products—almost by definition—do not do this. They set a

a. Group Market Regulations and Guidance

The Departments' 1997 interim final rules implementing the portability and renewability requirements of HIPAA codified at 26 CFR 54.9831–1(c)(4), 29 CFR 2590.732(c)(4), and 45 CFR 146.145(b)(4) established requirements for hospital indemnity and other fixed indemnity insurance to qualify as an excepted benefit in the group market. These requirements, which were effective until February 27, 2005, provided that coverage for hospital indemnity or other fixed dollar indemnity insurance is excepted only if it meets each of the following conditions: (1) the benefits are provided under a separate policy, certificate or contract of insurance; (2) there is no coordination between the provision of the benefits and an exclusion of benefits under any group health plan maintained by the same plan sponsor; and (3) the benefits are paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same plan sponsor.[39]

The Departments' group market regulations for fixed indemnity excepted benefits coverage were first amended in the 2004 HIPAA group market final rules. Those amendments added language to further clarify that to be hospital indemnity or other fixed indemnity insurance that is an excepted benefit, the insurance must pay a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day) regardless of the amount of expenses incurred.[40] An illustrative example was also codified as part of these amendments clarifying that a policy providing benefits only for hospital stays at a fixed percentage of hospital expenses up to a maximum amount per day does not qualify as an excepted benefit.[41] As explained in the 2004 HIPAA group market final rules, the result is the same even if, in practice, the policy pays the maximum for every day of hospitalization.[42]

The Departments later released Frequently Asked Questions (FAQ) on January 24, 2013, to offer additional guidance on the types of hospital indemnity or other fixed indemnity

payment amount associated with a specific service or kind of service [that] is received, and consumers are responsible for any difference between this set payment amount and the actual cost of care.'').

[39] 62 FR 16894 at 16903, 16939 through 16940, 16954, and 16971 (April 8, 1997).

[40] 69 FR 78720 at 78735, 78762, 78780, and 78798–78799 (December 30, 2004).

[41] *Id. See also* 26 CFR 54.9831–1(c)(4)(iii), 29 CFR 2590.732(c)(4)(iii), and 45 CFR 146.145(b)(4)(iii).

[42] *Id.*

insurance that meet the criteria for fixed indemnity excepted benefits coverage.[43] The Departments issued the FAQ in response to reports that policies were being advertised as fixed indemnity coverage but were paying a fixed amount on a per-service basis (for example, per doctor visit or surgical procedure) rather than a fixed amount per period (for example, per day or per week). The FAQ affirmed that, under the 2004 HIPAA group market final rules, to qualify as fixed indemnity excepted benefits coverage, the policy must pay benefits on a per-period basis as opposed to on a per-service basis.[44] It also affirmed that group health insurance coverage that provides benefits in varying amounts based on the type of procedure or item, such as the type of surgery actually performed or prescription drug provided, does not qualify as fixed indemnity excepted benefits coverage because it does not meet the condition that benefits be provided on a per-period basis, regardless of the amount of expenses incurred.[45]

The Departments proposed amendments to the group market regulations for fixed indemnity excepted benefits coverage in the 2016 proposed rules.[46] As explained in those proposed rules, the Departments were concerned that some individuals may mistake these policies for comprehensive coverage that would be considered MEC.[47] To avoid this confusion, the Departments proposed to adopt a notice requirement to inform enrollees and potential enrollees that the coverage is a supplement to, rather than a substitute for, comprehensive coverage, and also proposed to codify two illustrative examples to further clarify the condition that benefits be provided on a per-period basis.[48] The Departments also requested comments on whether the conditions for hospital indemnity or other fixed indemnity insurance to be considered excepted benefits should be more substantively aligned between the group and individual markets.[49] After consideration of comments, the Departments did not finalize the proposed changes to the group market regulation but noted their intention to address hospital indemnity and other fixed indemnity insurance in future rulemaking.[50]

b. Individual Market Regulations and Guidance

HHS also issued an interim final rule in 1997 establishing the regulatory framework for the HIPAA individual market Federal requirements and addressing the requirements for hospital indemnity and other fixed indemnity insurance to qualify as an excepted benefit in the individual market.[51] The initial HIPAA individual market fixed indemnity excepted benefits coverage regulation, which was effective until July 27, 2014, provided an exemption from the Federal individual market consumer protections and requirements for comprehensive coverage if the hospital indemnity or other fixed indemnity insurance provided benefits under a separate policy, certificate, or contract of insurance and met the noncoordination-of-benefits requirements outlined in the HHS group market excepted benefits regulations.[52]

Following issuance of the Departments' January 24, 2013 FAQ,[53] State insurance regulators and industry groups representing health insurance issuers expressed concerns that prohibiting hospital indemnity and other fixed indemnity insurance from payment on a per-service basis in order to qualify as an excepted benefit could limit consumer access to an important supplemental coverage option.[54] Based on this feedback, HHS announced in an FAQ released in January 2014 that it intended to propose amendments to the individual market fixed indemnity excepted benefits coverage regulation to allow hospital indemnity or other fixed indemnity insurance sold in the individual market to be considered an excepted benefit if four conditions were met.[55] First, such coverage would be sold only to individuals who have other health coverage that is MEC, within the meaning of section 5000A(f) of the Code. Second, no coordination between the provision of benefits and an exclusion of benefits under any other health coverage would be permitted. Third, benefits would be paid in a fixed dollar amount regardless of the amount of expenses incurred and without regard to whether benefits are provided with respect to an event or service under any other health insurance coverage. Finally, a notice would have to be prominently displayed to inform policyholders that the coverage is not MEC and would not satisfy the individual shared responsibility requirements of section 5000A of the Code. HHS explained that if these proposed revisions were implemented, hospital indemnity or other fixed indemnity insurance in the individual market would no longer have to pay benefits solely on a per-period basis to qualify as an excepted benefit.

In the proposed rule titled ''Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond'' (2014 proposed rule), HHS proposed to amend the criteria in 45 CFR 148.220 for fixed indemnity insurance to be treated as an excepted benefit in the individual market.[56] Consistent with the framework outlined in the January 2014 FAQ, the amendments proposed to eliminate the requirement that individual market fixed indemnity excepted benefits coverage must pay benefits only on a per-period basis (as opposed to a per-service basis) and instead proposed to require, among other things, that it be sold only as secondary to other health coverage that is MEC to qualify as an excepted benefit.[57]

On July 28, 2014, in the rule titled ''Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond'' (2014 final rule), HHS finalized the proposed amendments to 45 CFR 148.220(b)(4) with some modifications. Pursuant to the finalized amendments, hospital indemnity or other fixed indemnity insurance in the individual market may

[43] Frequently Asked Questions about Affordable Care Act Implementation (Part XI) (Jan. 24, 2013), Q7, available at: *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-xi.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs11.*

[44] *Id.*

[45] *Id.*

[46] 81 FR 38019 at 38031–38032, 38038, 38042–38043, and 38045–38046 (June 10, 2016).

[47] *Id.* at 38031–38032.

[48] *Id.* at 38031–38032, 38038, 38042–38043, and 38045–38046.

[49] As described in section I.D.1.b of this preamble, HHS amended the individual market fixed indemnity excepted benefits coverage regulation to provide additional flexibility, subject to several additional requirements that do not apply in the group market. 79 FR 30239 (May 27, 2014).

[50] 81 FR 75316 at 75317 (October 31, 2016).

[51] 62 FR 16985 at 16992 and 17004 (April 8, 1997).

[52] *Id.;* 45 CFR 146.145(b)(4)(ii)(B) and (C).

[53] Frequently Asked Questions about Affordable Care Act Implementation (Part XI) (Jan. 24, 2013), available at: *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-xi.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs11.*

[54] While the FAQ only addressed fixed indemnity insurance sold in the group market, the same statutory framework and legal analysis also applies to hospital indemnity and fixed indemnity insurance sold in the individual market.

[55] Frequently Asked Questions about Affordable Care Act Implementation (Part XXVIII) and Mental Health Parity Implementation (Jan. 9, 2014), Q11, available at: *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-xviii.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs18.*

[56] 79 FR 15807 at 15818–15820, 15869 (March 21, 2014).

[57] *Id.*

qualify as fixed indemnity excepted benefits coverage if it is paid on either a per-period or per-service basis subject to several additional requirements that do not apply to fixed indemnity excepted benefits coverage in the group market.[58] Under 45 CFR 148.220(b)(4)(i), to qualify as excepted benefits coverage, benefits under an individual market hospital indemnity or other fixed indemnity insurance policy may only be provided to individuals who attest in their application that they have other health coverage that is MEC within the meaning of section 5000A(f) of the Code, or that they are treated as having MEC due to their status as a bona fide resident of any possession of the United States pursuant to section 5000A(f)(4)(B) of the Code.[59] Further, to qualify as an excepted benefit, 45 CFR 148.220(b)(4)(iv) requires specific notice language be prominently displayed in the application materials for individual market hospital indemnity or other fixed indemnity insurance. Finally, consistent with the group market fixed indemnity excepted benefits coverage regulations, 45 CFR 148.220(b)(4)(ii) implements the statutory noncoordination standard and requires that there is no coordination between the provision of benefits under the individual market fixed indemnity excepted benefits insurance policy and an exclusion of benefits under any other health coverage.

HHS made these changes in the 2014 final rule for two reasons. First, as stated previously, interested parties, including State insurance regulators and industry groups representing health insurance issuers, communicated to HHS that fixed indemnity plans that paid benefits on a per-service basis were widely available as a complement to comprehensive coverage in the group and individual markets. The National Association of Insurance Commissioners (NAIC) also expressed that State insurance regulators believed fixed indemnity plans that paid benefits on a per-service basis provided consumers an important supplemental coverage option by helping consumers that purchase MEC pay for out-of-pocket costs.[60] Second, beginning in 2014, most consumers were required to have MEC in order to avoid being subject to an individual shared responsibility payment under section 5000A of the Code. HHS adopted the MEC attestation requirement to prevent fixed indemnity excepted benefits coverage in the individual market from being offered as a substitute for comprehensive coverage while also accommodating the concerns of interested parties who supported allowing fixed indemnity excepted benefits coverage in the individual market to pay benefits on a per-service basis, rather than only on a per-period basis.[61] However, in its 2016 decision in *Central United Life Insurance Company* v. *Burwell,* the U.S. Court of Appeals for the District of Columbia invalidated the requirement at 45 CFR 148.220(b)(4)(i) that an individual must attest to having MEC prior to purchasing fixed indemnity excepted benefits coverage in the individual market.[62] The Court did not engage in a severability analysis to determine whether HHS would have intended to leave the remaining provisions of the regulation in place, and left intact the language permitting fixed indemnity excepted benefits coverage in the individual market to be provided on a per-service basis.

2. Specified Disease Excepted Benefits Coverage

Like hospital indemnity or other fixed indemnity insurance, coverage only for a specified disease or illness that meets the requirements under section 9831(c)(2) of the Code, section 732(c)(2) of ERISA, and section 2722(c)(2) of the PHS Act qualifies as a form of independent, noncoordinated excepted benefits coverage.[63] Specified disease excepted benefits coverage is also not an alternative to comprehensive coverage, but rather provides a cash benefit related to the diagnosis or the receipt of items or services related to the treatment of one or more medical conditions specified in the insurance policy, certificate, or contract of insurance. The Departments are aware of various forms of coverage being marketed to consumers as specified disease or illness coverage under a number of labels, including ''specified disease,'' ''critical illness,'' and ''dread disease'' coverage (or insurance).[64] Some forms of specified disease excepted benefits coverage pay benefits based on diagnosis or treatment for a single condition (such as diabetes), while others pay benefits related to diagnosis or treatment for a disease category (such as cancer).

The Departments codified requirements for coverage only for a specified disease or illness to qualify as an excepted benefit in the group market in the 1997 HIPAA interim final rules.[65] To qualify as excepted benefits in the group market, specified disease or illness coverage (for example, cancer-only policies) must provide benefits under a separate policy, certificate, or contract of insurance; there must be no coordination between the provision of the benefits and an exclusion of benefits under any group health plan maintained by the same plan sponsor; and benefits must be paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same plan sponsor.[66] [67] HHS codified similar requirements for specified disease or illness coverage to qualify as an excepted benefit in the individual market in the 1997 interim final rule that established the regulatory framework for the HIPAA individual market.[68] Unlike fixed indemnity excepted benefits coverage, the Departments have not issued subsequent rulemaking or guidance regarding specified disease excepted benefits coverage.

In the preamble to the 2016 proposed rules, the Departments solicited comments on whether a policy covering multiple specified diseases or illnesses may be considered to be excepted benefits, but did not propose changes to the rules governing specified disease excepted benefits coverage. The Departments sought comments on

[58] 79 FR 30239 (May 27, 2014).

[59] As discussed later in this section and in section III.B.1.a of this preamble, the U.S. Court of Appeals for the District of Columbia vacated the requirement at 45 CFR 148.220(b)(4)(i) that an individual attest to having MEC prior to purchasing a fixed indemnity policy in order for the policy to qualify as an excepted benefit. *Central United Life Insurance* v. *Burwell,* 827 F.3d 70 (D.C. Cir. 2016).

[60] National Association of Insurance Commissioners (2013). ''Letter to Secretaries of Labor, Treasury, and Health and Human Services,'' available at: *https://naic.soutronglobal.net/Portal/Public/en-GB/RecordView/Index/23541.* (''State regulators believe hospital and other fixed indemnity coverage with variable fixed amounts based on service type could provide important options for consumers as supplemental coverage. Consumers who purchase comprehensive coverage that meets the definition of 'minimum essential coverage' may still wish to buy fixed indemnity coverage to help meet out-of-pocket medical and other costs.'').

[61] 79 FR 30239 at 30255 (May 27, 2014).

[62] 827 F.3d 70 (D.C. Cir. July 1, 2016).

[63] *See also* section 2763(b) of the PHS Act.

[64] *See Healthinsurance.org* (2023). ''Glossary: What is a Critical Illness Plan?,'' available at: *https://www.healthinsurance.org/glossary/critical-illness-plan. See also* American Council of Life Insurers (2021). ''Model 171 Benefits Overview: Presented to the NAIC Accident and Sickness Minimum Standards (B) Subgroup,'' available at: *https://content.naic.org/sites/default/files/call_materials/Supplemental%20Benefits%20Overview.pdf.*

[65] 62 FR 16894 at 16903 (April 8, 1997).

[66] *See* 26 CFR 54.9831–1(c)(4)(i) and (ii), 29 CFR 2590.732(c)(4)(i) and (ii), and 45 CFR 146.145(b)(4)(i) and (ii).

[67] The Departments' group market regulations for specified disease excepted benefits coverage were later affirmed, without change, in the 2004 HIPAA group market final rules. *See* 69 FR 78720 at 78762, 78780, and 78798–78799 (December 30, 2004). *See also* 45 CFR 148.220(b)(3).

[68] 62 FR 16985 at 16992, 17004 (April 8, 1997). *See also* section 2763(b) of the PHS Act.

whether such policies should be considered excepted benefits and, if so, whether protections were needed to ensure they were not mistaken for comprehensive coverage, expressing concern that individuals who purchase a specified disease policy covering multiple diseases or illnesses may incorrectly believe they are purchasing comprehensive coverage when, in fact, these polices are not subject to Federal consumer protections and requirements for comprehensive coverage.[69] The Departments declined to address specified disease excepted benefits coverage in the 2016 final rules, but noted that they might address such coverage in future regulations or guidance.[70]

E. Tax Treatment and Substantiation Requirements for Amounts Received From Fixed Indemnity Insurance and Certain Other Arrangements

Hospital indemnity or other fixed indemnity insurance and coverage only for a specified disease or illness are treated as ''accident or health insurance'' under sections 104, 105, and 106 of the Code whether or not they are excepted benefits. Premiums paid by an employer (including by salary reduction pursuant to section 125 of the Code) for accident or health insurance are excluded from an employee's gross income under section 106 of the Code.

Amounts received from accident or health insurance are excluded from a taxpayer's gross income under section 104(a)(3) of the Code if the premiums are paid for on an after-tax basis. The exclusion from gross income for these amounts under section 104(a)(3) of the Code does not apply to amounts attributable to contributions by an employer that were not includible in the gross income of the employee or amounts paid directly by the employer. This means that the exclusion under section 104(a)(3) of the Code does not apply where the premiums or contributions paid for the accident or health insurance are paid on a pre-tax basis. The taxation of amounts received by an employee from accident or health insurance where the premiums or contributions are paid on a pre-tax basis is determined under section 105 of the Code.

Section 105(a) of the Code provides that amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income, except as otherwise provided in section 105. Section 105(b) of the Code excludes from gross income amounts paid by the employer to reimburse an employee's expenses for medical care (as defined in section 213(d) of the Code). Under 26 CFR 1.105–2, the exclusion from gross income in section 105(b) of the Code ''applies only to amounts which are paid specifically to reimburse the taxpayer for expenses incurred by him for the prescribed medical care. Thus, section 105(b) does not apply to amounts which the taxpayer would be entitled to receive irrespective of whether or not he incurs expenses for medical care'' and ''section 105(b) is not applicable to the extent that such amounts exceed the amount of the actual expenses for such medical care.'' Further, under longstanding regulations and guidance issued by the Treasury Department and the IRS, amounts for medical expenses within the meaning of section 213(d) of the Code must be substantiated if reimbursed by employment-based accident or health insurance that would not be excluded from a taxpayer's gross income but for the application of section 105(b) of the Code.[71]

F. Level-Funded Plan Arrangements

The Departments understand that an increasing number of group health plan sponsors are utilizing a type of self-funded arrangement in which the plan sponsor makes set monthly payments to a service provider to cover estimated claims costs, administrative costs, and premiums for stop-loss insurance for claims that surpass a maximum dollar amount beyond which the plan sponsor is no longer responsible for paying claims (attachment point). This funding mechanism or plan type, known as level-funding, is increasingly utilized by small employers in particular. Stop-loss insurance is used by employers or group health plans as part of these plan arrangements to limit their financial responsibility, and the arrangements typically involve both employer and employee contributions. When the total dollar amount of the claims paid during the year is lower than the total amount of contributions attributed to claims costs, the plan or plan sponsor generally will receive a refund or carry the surplus over to the next plan year. When annual claims exceed projected claims, the subsequent year's monthly payments may, and oftentimes do, increase to adjust to the plan's claims experience.

II. Promoting Access to High-Quality, Affordable, and Comprehensive Coverage

The Departments recognize that STLDI can provide temporary health insurance coverage for individuals who are experiencing brief periods without health coverage (for example, due to application of an employer waiting period), and that fixed indemnity excepted benefits coverage can provide consumers with income replacement that can be used to cover out-of-pocket expenses not covered by comprehensive coverage or to defray non-medical expenses (for example, mortgage or rent) in the event of an unexpected or serious health event. Both STLDI and fixed indemnity excepted benefits coverage generally provide limited benefits at lower premiums than comprehensive coverage,[72] and enrollment is typically available at any time (sometimes subject to medical underwriting) rather than being restricted to open and special enrollment periods. However, given significant changes in the legal landscape and market conditions since the Departments last addressed STLDI and fixed indemnity excepted benefits coverage, and the low value that STLDI and fixed indemnity excepted benefits coverage provide to consumers when used as a substitute for comprehensive coverage, the Departments have determined that it is now necessary and appropriate to propose to amend the existing Federal regulations governing both types of coverage to more clearly distinguish them from comprehensive coverage and increase consumer awareness of coverage options that include the full range of Federal consumer protections.

A. Access to Affordable Coverage

In the preamble to the 2018 final rules, the Departments explained the decision to amend the definition of STLDI to expand access to such policies by citing STLDI as an important means to provide more affordable coverage options and more choices for consumers.[73] The Departments cited a 21 percent increase in individual health

[69] 81 FR 38019, 38032 (June 10, 2016).

[70] 81 FR 75316, 75317, footnote 12 (October 31, 2016).

[71] *See, e.g.,* 84 FR 28888, 28917 (June 20, 2019) (describing substantiation requirements for employer-sponsored health reimbursement arrangements); *see also* Q44–55 of IRS Notice 2017–67, 2017–47 IRB 517; Prop. Treas. Reg. § 1.125–6 (72 FR 43938, 43960–43965 (August 6, 2007)); IRS Notice 2002–45, 2002–2 CB 93.

[72] Although it is typically true that the unsubsidized premium price for comprehensive coverage is greater than STLDI or fixed indemnity excepted benefits coverage, consistent with the greater level of benefits provided under comprehensive coverage, *see* the additional discussion in this section of this preamble regarding the availability of financial subsidies to reduce the premium and out-of-pocket costs for comprehensive coverage purchased on an Exchange for eligible individuals.

[73] 83 FR 38212 at 38217 (October 2, 2018).

insurance coverage premiums between 2016 and 2017, and a 20 percent decrease in average monthly enrollment for individuals who did not receive PTC, along with a 10 percent overall decrease in monthly enrollment during the same period.[74] Additionally, the Departments noted that in 2018 about 26 percent of enrollees (living in 52 percent of counties) had access to just one issuer on the Exchange.[75]

However, since the publication of the 2018 final rules, comprehensive coverage for individuals has generally become more accessible and affordable. For example, a study examining issuer participation trends from 2014 to 2021 in every county in the United States found that the number of consumers with multiple issuer options for individual health insurance coverage on the Exchanges has grown consistently since 2018. In 2021, 78 percent of enrollees (living in 46 percent of counties) had a choice of three or more health insurance issuers, up from 67 percent of enrollees in 2020 and 58 percent of enrollees in 2019. Only 3 percent of enrollees (residing in 10 percent of counties) resided in single-issuer counties—down from 26 percent of enrollees (residing in 52 percent of counties).[76] The Centers for Medicare & Medicaid Services (CMS) reported that a record 16.4 million people enrolled in Exchange coverage during the 2023 Open Enrollment Period, including 3.7 million consumers (23 percent of total enrollments) who were new to Exchanges in 2023, and 12.7 million returning customers. Over 1.8 million more consumers signed up for coverage during the 2023 Open Enrollment Period compared to the same period in 2022 (a 13 percent increase), and nearly 4.4 million more consumers signed up compared to the 2021 Open Enrollment Period (a 36 percent increase).[77] As noted in section I.A of this preamble, enrollment gains during 2023 were influenced by the expansion of PTC subsidies, as first expanded under the ARP and then extended through 2025 under the IRA.[78] In an analysis prior to the passage of the IRA, the Congressional Budget Office stated that if the ARP subsidies were made permanent, they would attract 4.8 million new people to the Exchanges each year, and that 2.2 million fewer individuals would be without health insurance, on average, over the period from 2023–2032.[79]

Additionally, on October 13, 2022, the IRS and the Treasury Department issued final regulations under section 36B of the Code to provide that affordability of employer-sponsored MEC for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee (2022 affordability rule).[80] It was estimated that this rule change, aimed at addressing the issue often called the ''family glitch,'' will increase the number of individuals with PTC-subsidized Exchange coverage by approximately 1 million per year for the next 10 years.[81] These anticipated enrollment trends and the availability of the enhanced subsidies allay the accessibility and affordability concerns expressed by the Departments in the preamble to the 2018 final rules regarding the availability of affordable options for comprehensive coverage, and offer further support for the proposals in these proposed rules aimed at helping consumers differentiate between comprehensive coverage and other forms of more limited health coverage.

Although access to affordable comprehensive coverage has improved in recent years, the Departments recognize that affordability concerns continue to persist among consumers, including among consumers who are enrolled in comprehensive coverage. A 2022 national survey conducted by the Commonwealth Fund found that 29 percent of people with employer coverage and 44 percent of those with coverage purchased in the individual market were underinsured, meaning that their coverage did not provide them with affordable access to health care.[82] The Departments believe that it is important to ensure consumers have access to a wide range of tools that can support access to affordable health care. However, neither STLDI nor fixed indemnity excepted benefits coverage represents a complete solution to larger issues of affordable access to health care and health coverage. Consumers who enroll in these plans as a substitute for comprehensive coverage or under the misapprehension that STLDI and fixed indemnity excepted benefits are a lower-cost equivalent to comprehensive coverage are at risk of being exposed to significant financial liability in the event of a costly or unexpected health event, often without knowledge of the risk associated with such coverage.

B. Risks to Consumers

As noted in the introduction to section II of this preamble, the limitations on benefits and coverage under STLDI or fixed indemnity excepted benefits coverage may allow some issuers to offer such coverage at lower monthly premiums than comprehensive coverage. The Departments are concerned about additional costs to consumers who enroll in STLDI or fixed indemnity excepted benefits coverage and incur medical expenses that are not covered by such coverage. The typical limits on coverage provided by STLDI and fixed indemnity excepted benefits coverage can lead to more and higher uncovered medical bills than consumers enrolled in comprehensive coverage would incur, exposing consumers to greater financial risk.[83] Healthy consumers who

[74] *Id.* at 38214, citing CMS (2018). ''Trends in Subsidized and Unsubsidized Individual Health Insurance Market Enrollment,'' available at: *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2018-07-02-Trends-Report-2.pdf.*

[75] *Id.,* citing KFF (2017). ''Insurer Participation on ACA Marketplaces, 2014–2018,'' now available at: *https://www.kff.org/private-insurance/issue-brief/insurer-participation-on-the-aca-marketplaces-2014-2021/.*

[76] McDermott, Daniel and Cynthia Cox (2020). ''Insurer Participation on the ACA Marketplaces, 2014–2021,'' KFF, available at: *https://www.kff.org/private-insurance/issue-brief/insurer-participation-on-the-aca-marketplaces-2014-2021.*

[77] CMS (2023). ''Health Insurance Marketplaces, 2023 Open Enrollment Report,'' available at: *https://www.cms.gov/files/document/health-insurance-exchanges-2023-open-enrollment-report-final.pdf.*

[78] Although unsubsidized premiums for 2023 increased on average between 2.2 percent and 4.7 percent compared to the previous year, after four years of declines, PTC under the IRA largely shielded consumers from these slight increases. *See* Ortaliza, Jared, Justin Lo, Krutika Amin, and Cynthia Cox (2022). ''How ACA Marketplace Premiums Are Changing By County in 2023,'' KFF, available at: *https://www.kff.org/private-insurance/issue-brief/how-aca-marketplace-premiums-are-changing-by-county-in-2023.*

[79] Congressional Budget Office (2022). ''Letter from Phillip L. Swagel to Rep. Mike Crapo, ''Re: Health Insurance Policies,'' available at: *https://www.cbo.gov/system/files?file=2022-07/58313-Crapo_letter.pdf.*

[80] 87 FR 61979 (October 13, 2022).

[81] *Id.* at 61999.

[82] Collins, Sara, Lauren Haynes, and Relebohile Masitha (2022). ''The State of U.S. Health Insurance in 2022: Findings from the Commonwealth Fund Biennial Health Insurance Survey,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/publications/issue-briefs/2022/sep/state-us-health-insurance-2022-biennial-survey.* Specifically, this study defined a person as ''underinsured'' if they were insured all year but one of the following applied: (1) Out-of-pocket costs over the prior 12 months, excluding premiums, were equal to 10 percent or more of household income; (2) Out-of-pocket costs over the prior 12 months, excluding premiums, were equal to 5 percent or more of household income for individuals living under 200 percent of the FPL ($27,180 for an individual or $55,500 for a family of four in 2022); or (3) The deductible constituted 5 percent or more of household income.

[83] Palanker, Dania, JoAnn Volk, and Kevin Lucia (2018). ''Short-Term Health Plan Gaps and Limits Leave People at Risk,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2018/short-term-health-plan-gaps-and-limits-leave-people-risk.* (Describing STLDI marketing

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enroll in STLDI or fixed indemnity excepted benefits coverage as an alternative to comprehensive coverage may not realize their STLDI or fixed indemnity excepted benefits coverage excludes or limits coverage for preexisting conditions (including conditions the consumer did not know about when they enrolled), or conditions contracted after enrollment, such as COVID–19.

Additionally, a consumer enrolled in STLDI may discover that a newly-diagnosed medical condition is categorized as a preexisting condition, and related medical expenses will not be covered by, or will be only partially covered by, their STLDI policy.[84] For example, a consumer in Illinois who was diagnosed with Stage IV cancer a month *after* enrolling in STLDI was denied coverage for treatment by the STLDI issuer, both for treatments that led to his successful remission and for a potentially life-saving bone marrow transplant. In his case, the STLDI issuer of his policy determined that his cancer was a preexisting condition because he had disclosed experiencing back pain of undiagnosed cause to the broker who sold him his STLDI policy—leaving him with $800,000 of medical debt and without meaningful health coverage as he continued to fight his illness.[85]

The financial risk for consumers that encounter newly diagnosed conditions or a significant medical event while enrolled in STLDI increases with the length of their policy. In fact, researchers found that because the maximum annual limitation on an individual's cost sharing for essential health benefits under section 1302(c)(1) of the ACA does not apply to STLDI, the maximum out-of-pocket health care spending limit for STLDI was on average nearly three times that of comprehensive coverage in 2020.[86] A 2020 report found that over 60 percent of the STLDI policies surveyed had a maximum out-of-pocket limit greater than the $7,900 limit that was permitted for self-only comprehensive coverage in 2019, and 15 percent had limits in excess of $15,000; as is typical for STLDI, these limits apply only to the coverage period, which in some cases was only 6 months, compared to the annual limits required under the ACA.[87] Consumers enrolled in STLDI who ultimately require medical care are more likely to incur higher out-of-pocket costs than if they had enrolled in comprehensive coverage.[88]

As noted in section I.D.1 of this preamble, consumers who enroll in fixed indemnity excepted benefits coverage as an alternative to comprehensive coverage bear similar risk and exposure to significant out-of-pocket expenses due to their health care costs exceeding the fixed cash benefit to which they may be entitled, if benefits are even provided for their illness or injury. While issuers of fixed indemnity excepted benefits coverage may emphasize the potential for cash benefits that sound generous outside of the context of the true costs of a significant medical event—such as a product suggesting that a consumer could receive a flat payment in excess of $10,000 following a five-day hospitalization—fixed indemnity excepted benefits coverage is not designed to, and typically does not, provide benefits relative to the full cost of such events. As noted by one expert, hospitalization costs can exceed $10,000 per day, even without accounting for provider services.[89] A consumer who relied on fixed indemnity excepted benefits coverage and who required hospitalization would be left with tens of thousands of dollars in unpaid medical bills, and without comprehensive coverage designed to cover any long-term follow-up care costs.

Consumers enrolled in STLDI and fixed indemnity excepted benefits coverage may experience financial hardship when their medical bills are unaffordable.[90] Notably, the protections against balance billing and out-of-network cost sharing for certain out-of-network services established under the No Surprises Act, which are intended to shield consumers from surprise bills that can drive medical debt,[91] do not apply to STLDI or fixed indemnity excepted benefits coverage.[92] Because STLDI is typically subject to medical underwriting and not guaranteed renewable, consumers enrolled in STLDI as an alternative to comprehensive coverage may also be unable to renew STLDI at the end of the coverage period, increasing the risk of periods during which they are uninsured. Such consumers may not be able to purchase comprehensive coverage in the individual market until an open enrollment or special enrollment period occurs. Therefore, STLDI serves better as a bridge between different sources of comprehensive coverage than as an alternative to comprehensive coverage. Similarly, as noted in section I.D.1 of this preamble, fixed indemnity excepted benefit coverage serves best as an income replacement policy [93] that supplements

materials that list coverage limits that would fall far short of typical costs to a consumer, including $1,000 a day for hospital room and board coverage, $1,250 a day for the intensive care unit, $50 a day for doctor visits while in the hospital, $100 a day for inpatient substance abuse treatment, and $250 for ambulance transport).

[84] *See* Lueck, Sarah (2018). ''Key Flaws of Short-Term Health Plans Pose Risks to Consumers,'' Center on Budget and Policy Priorities, available at: *https://www.cbpp.org/research/health/key-flaws-of-short-term-health-plans-pose-risks-to-consumers. See also* Hall, Mark and Michael McCue (2022). ''Short-Term Health Insurance and the ACA Market,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2022/short-term-health-insurance-and-aca-market. See also* Partnership to Protect Coverage (2021). ''Under-Covered: How 'Insurance-Like' Products are Leaving Patients Exposed,'' available at: *https://www.nami.org/NAMI/media/NAMI-Media/Public%20Policy/Undercovered_Report_03252021.pdf.*

[85] Partnership to Protect Coverage (2021). ''Under-Covered: How 'Insurance-Like' Products are Leaving Patients Exposed,'' available at: *https://www.nami.org/NAMI/media/NAMI-Media/Public%20Policy/Undercovered_Report_03252021.pdf.*

[86] Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-term Limited-duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[87] *Id. See also,* Palanker, Dania, Kevin Lucia, and Emily Curran (2017). ''New Executive Order: Expanding Access to Short-Term Health Plans Is Bad for Consumers and the Individual Market,'' Commonwealth Fund, available at *https://www.commonwealthfund.org/blog/2017/new-executive-order-expanding-access-short-term-health-plans-bad-consumers-and-individual.* (''When considering the deductible, the best-selling plans have out-of-pocket maximums ranging from $7,000 to $20,000 for just three months of coverage. In comparison, the ACA limits out-of-pocket maximums to $7,150 for the entire [2017 calendar] year.'').

[88] *Id.*

[89] Appleby, Julie (2017). ''Brokers Tout Mix-And-Match Coverage To Avoid High-Cost ACA Plans,'' KFF, available at: *https://kffhealthnews.org/news/brokers-tout-mix-and-match-coverage-to-avoid-high-cost-aca-plans.*

[90] Unaffordable medical debt increasingly impacts members of disadvantaged and marginalized communities. *See* Lopes, Lunna, Audrey Kearney, Alex Montero, Liz Hamel, and Mollyann Brodie (2022). ''Health Care Debt In The U.S.: The Broad Consequences Of Medical And Dental Bills,'' KFF, available at: *https://www.kff.org/health-costs/report/kff-health-care-debt-survey. See also* Himmelstein, David, Samuel Dickman, Danny McCormick, David Bor, Adam Gaffney, and Steffie Woolhandler (2022). ''Prevalence and Risk Factors for Medical Debt and Subsequent Changes in Social Determinants of Health in the US,'' *JAMA Network Open,* Volume 5 Issue 9:e2231898, available at: *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2796358.*

[91] Families USA (2019). ''Surprise Medical Bills, Results from a National Survey,'' available at *https://familiesusa.org/wp-content/uploads/2019/11/Surprise-Billing-National-Poll-Report-FINAL.pdf.*

[92] *See* 26 CFR 54.9816–2T, 29 CFR 2590.716(b), and 45 CFR 149.20(b).

[93] As an income replacement policy, the policyholder typically has broad discretion in how to use the fixed cash benefits provided, including but not limited to reimbursement for medical expenses not covered by comprehensive coverage

comprehensive coverage rather than as an alternative to comprehensive coverage.

In the preamble to the 2018 final rules, the Departments stated that individuals who purchased STLDI rather than being uninsured would potentially experience improved health outcomes and have greater protection from catastrophic health care expenses.[94] However, recent experience with the COVID–19 public health emergency (PHE) [95] has prompted the Departments to reassess the degree of protection generally afforded by coverage that is not subject to the Federal consumer protections and requirements for comprehensive coverage, such as STLDI and fixed indemnity excepted benefits coverage, and to reassess the value of a framework that instead encourages uninsured individuals to purchase comprehensive coverage. Enrollees in STLDI and fixed indemnity excepted benefits coverage with COVID–19 typically face significant limitations on coverage for COVID–19 related treatments, and high out-of-pocket expenses.[96] For example, neither STLDI nor fixed indemnity excepted benefits coverage was subject to requirements under section 6001 of the Families First Coronavirus Response Act (Pub. L. 116–127, March 18, 2020), as amended by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, March 27, 2020), to cover COVID–19 diagnostic testing, without cost sharing, furnished during the COVID–19 PHE; [97] or the requirement under section 3203 of the CARES Act to cover qualifying coronavirus preventive services, including COVID–19 vaccines, without cost sharing. Instead, both of these important coverage expansions enacted by Congress as part of the nation's response to the COVID–19 PHE only applied to comprehensive coverage. Any coverage of COVID–19 vaccines, diagnostic testing, or treatment by STLDI or fixed indemnity excepted benefits coverage was subject to the discretion of individual plans and issuers of these policies and applicable State law. Notably, the Health Resources and Services Administration's COVID–19 Coverage Assistance Fund, which reimbursed eligible health care providers for providing COVID–19 vaccines to underinsured individuals,[98] included enrollees in STLDI and excepted benefits coverage within the definition of underinsured.[99] The CARES Act also amended the definition of ''uninsured individual'' in Social Security Act section 1902(ss) to include individuals enrolled only in STLDI. Even individuals enrolled in STLDI or fixed indemnity excepted benefits coverage who are generally healthy are at risk of needing health care, and thus at risk of incurring unaffordable medical bills at any time. The COVID–19 PHE has underscored the unpredictability of when the need for medical care will arise, and the importance of encouraging individuals to enroll in comprehensive coverage.

The Departments have also become aware of potentially deceptive or aggressive marketing of STLDI and fixed indemnity excepted benefits coverage to consumers who may be unaware of the limits of these plans or the availability of Federal subsidies that could reduce the costs of premiums and out-of-pocket health care expenditures for comprehensive coverage purchased through an Exchange.[100] The Departments note that these concerns are not limited to individual market consumers considering STLDI or fixed indemnity excepted benefits coverage. Reports that employers are increasingly offering fixed indemnity coverage alongside a plan that offers only a very limited set of primary or preventive care benefits (or in some cases, as the only form of health coverage) have also raised similar concerns about

(for example, deductibles, coinsurance, copays) or to defray non-medical costs (for example, mortgage or, rent).

[94] 83 FR 38212, 38229 (October 2, 2018).

[95] On January 31, 2020, HHS Secretary Alex M. Azar II declared that as of January 27, 2020, a nationwide public health emergency (PHE) exists as a result of the 2019 novel coronavirus (COVID–19). *See* HHS Office of the Assistant Secretary for Preparedness and Response, Determination of the HHS Secretary that a Public Health Emergency Exists, available at: *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx*. This declaration was last renewed by HHS Secretary Xavier Becerra on October 13, 2022, following previous renewals on April 21, 2020, July 23, 2020, October 2, 2020, January 7, 2021, April 15, 2021, July 20, 2021, and October 18, 2021, January 14, 2022, April 12, 2022, and July 15, 2022. *See* HHS Office of the Assistant Secretary for Preparedness and Response, Renewal of Determination That A Public Health Emergency Exists, available at: *https://aspr.hhs.gov/legal/PHE/Pages/covid19-13Oct2022.aspx*. On January 30, 2023 and February 9, 2023, the Biden-Harris Administration announced that it intended to end the PHE at the end of the day on May 11, 2023. *See* Executive Office of the President, Office of Management and Budget, Statement of Administration Policy: H.R. 382 and H.J. Res. 7 (Jan. 30, 2023), available at: *https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf;* Letter to U.S. Governors from HHS Secretary Xavier Becerra on renewing COVID–19 Public Health Emergency (PHE) (Feb. 9, 2023), available at: *https://www.hhs.gov/about/news/2023/02/09/letter-us-governors-hhs-secretary-xavier-becerra-renewing-covid-19-public-health-emergency.html.* The PHE did in fact end at the end of the day on May 11, 2023.

[96] *See, e.g.,* Curran, Emily, Kevin Lucia, JoAnn Volk, and Dania Palanker (2020). ''In the Age of COVID–19, Short-Term Plans Fall Short for Consumers,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2020/age-covid-19-short-term-plans-fall-short-consumers.* This study found that STLDI policies provide less financial protection than comprehensive coverage if an enrollee needs treatment for COVID–19. The study found that, among the 12 brochures reviewed for STLDI policies being sold in Georgia, Louisiana, and Ohio, 11 excluded nearly all coverage for prescription drugs, with some providing limited coverage of inpatient drugs. The study further found that STLDI imposed high cost sharing, with deductibles ranging from $10,000 to $12,500 (which did not count toward the enrollees' maximum out-of-pocket costs) and that enrollees may be required to meet separate deductibles for emergency room treatment, forcing some enrollees to face out-of-pocket costs of more than $30,000 over a 6-month period. Additionally, the study found that STLDI did not cover services related to preexisting conditions.

[97] FAQs about Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 42, Q1 (April 11, 2020), available at: *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-42.pdf* and *https://www.cms.gov/files/document/FFCRA-Part-42-FAQs.pdf;* Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency, 85 FR 71142, 71173 (Nov. 6, 2020); FAQs about Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation (Jan. 10, 2022), available at: *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-51.pdf* (FAQs Part 51); and FAQs about Families First Coronavirus Response Act, Coronavirus Aid, Relief, and Economic Security Act and Health Insurance Portability and Accountability Act Implementation (FAQs Part 58), available at: *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-58* and *https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/faqs-part-58.pdf.* Note that the COVID–19 PHE ended on May 11, 2023.

[98] Underinsured individuals are defined for this purpose as having a health plan that either does not include COVID–19 vaccine administration as a covered benefit or covers COVID–19 vaccine administration but with cost sharing. *See* Health Resources and Services Administration, ''FAQs for The HRSA COVID–19 Coverage Assistance Fund,'' available at: *https://www.hrsa.gov/provider-relief/about/covid-19-coverage-assistance/faq.*

[99] Health Resources and Services Administration, ''FAQs for The HRSA COVID–19 Coverage Assistance Fund,'' available at: *https://www.hrsa.gov/provider-relief/about/covid-19-coverage-assistance/faq.*

[100] Palanker, Dania and Kevin Lucia (2021). ''Limited Plans with Minimal Coverage Are Being Sold as Primary Coverage, Leaving Consumers at Risk,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2021/limited-plans-minimal-coverage-are-being-sold-primary-coverage-leaving-consumers-risk.* (Noting that fixed indemnity insurance may be ''bundled'' with other non-comprehensive insurance products in such a way that ''the plans look like comprehensive coverage'' while still offering limited benefits). *See also* Palanker, Dania, JoAnn Volk, and Maanasa Kona (2019). ''Seeing Fraud and Misleading Marketing, States Warn Consumers About Alternative Health Insurance Products,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2019/seeing-fraud-and-misleading-marketing-states-warn-consumers-about-alternative-health.*

consumers who obtain this health coverage through their employers.[101] Consumers who are unaware of the coverage limitations of these arrangements, or who are employed by employers who are similarly unaware, can be faced with overwhelming medical costs if they require items and services that are not covered by their group health plan, because the fixed indemnity excepted benefits coverage provides only fixed cash benefits that may be far lower than the costs of medical services, rather than coverage intended to cover the costs of the medical services themselves. For example, a Texas consumer who was enrolled in two forms of health insurance through his employer received a $67,000 hospital bill after he experienced a heart attack. Although he believed his two policies would provide comprehensive coverage, he learned that his coverage was provided through a group health plan that covered only preventive services and prescription drugs and a fixed indemnity excepted benefits coverage policy that provided a cash benefit of less than $200 per day of hospitalization.[102] Additionally, employers may incur penalties if they erroneously treat fixed indemnity policies as excepted benefits when the policies do not meet the requirements for excepted benefits (for example, when they are not offered as independent, noncoordinated benefits) and fail to comply with applicable group market Federal consumer protections and requirements for comprehensive coverage, such as the requirement to provide participants, beneficiaries, and enrollees with a summary of benefits and coverage that meets applicable content requirements or the prohibition on lifetime and annual dollar limits on essential health benefits.[103] In light of research revealing significant disparities in health insurance literacy among certain underserved racial and ethnic groups and people with incomes below the FPL,[104] the Departments are also concerned that underserved populations may be particularly vulnerable to misleading or aggressive sales and marketing tactics that obscure the differences between comprehensive coverage and STLDI or fixed indemnity excepted benefits coverage, exposing these populations to higher levels of health and financial risks. As noted in Executive Order 13995, the COVID–19 pandemic has ''exposed and exacerbated severe and pervasive health and social inequities in America,'' highlighting the urgency with which such inequities must be addressed. These concerns continue amid the Medicaid unwinding period that began on April 1, 2023 during which State Medicaid programs have 12 months to initiate, and 14 months to complete, a renewal for all individuals enrolled in Medicaid, the Children's Health Insurance Program (CHIP), and, if applicable, the Basic Health Program (BHP).[105] HHS has estimated that 15 million beneficiaries will lose Medicaid, CHIP, or BHP coverage as a result of Medicaid unwinding.[106] The Departments are concerned that the large population of individuals at risk of losing Medicaid and those other forms of coverage, due to a loss of eligibility or as a result of administrative churn, may be susceptible to these marketing and sales tactics, and might therefore mistakenly enroll in STLDI or fixed indemnity excepted benefits coverage in lieu of comprehensive coverage.

C. Impact on Risk Pools

At the time the 2018 final rules were issued, the Departments acknowledged that expanding access to STLDI could have potential negative effects on the risk pools for individual health insurance coverage and on individuals who find themselves insufficiently protected by the typically limited benefits of an STLDI policy. The Departments were of the view that the affordability and access challenges facing consumers at that time necessitated action to increase access to STLDI to provide an alternative option for individuals who were unable or disinclined to purchase comprehensive coverage.

As discussed earlier in this section II, access to affordable comprehensive coverage has significantly improved since the 2018 final rules were published. However, research based on individual market data for plan year 2020 has substantiated concerns about the negative impact that the shift of healthier individuals from comprehensive coverage to STLDI has on individuals remaining in the individual market risk pools.[107] Because healthier individuals are more likely to enroll in STLDI than individuals with known medical needs, the extended contract terms and renewal periods of STLDI under the current Federal regulations result in healthier consumers leaving (or opting out of) the individual market risk pools for extended periods of time. This has resulted in increased premiums for individuals seeking to purchase individual health insurance coverage.[108]

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[101] Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Coverage is a Problematic Form of ''Junk'' Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance.*

[102] Avila, Jaie (2019). ''Show Me Your Bill Helps Wipe Out $70K in Charges After Heart Attack,'' News 4 San Antonio, available at *https://news4sanantonio.com/news/trouble-shooters/show-me-your-bill-helps-wipe-out-70k-in-charges-after-heart-attack.*

[103] *See* 26 CFR 54.9815–2715(e); 29 CFR 2590.715–2715(e); 45 CFR 147.200(e). *See also* section 2711 of the PHS Act and section 4980D of the Code.

[104] Edward, Jean, Amanda Wiggins, Malea Hoepf Young, Mary Kay Rayens (2019). ''Significant Disparities Exist in Consumer Health Insurance Literacy: Implications for Health Care Reform,'' *Health Literacy Research and Practice,* available at: *https://pubmed.ncbi.nlm.nih.gov/31768496/. See also* Villagra, Victor and Bhumika Bhuva (2019). ''Health Insurance Literacy: Disparities by Race, Ethnicity, and Language Preference,'' *The American Journal of Managed Care,* available at: *https://www.ajmc.com/view/health-insurance-literacy-disparities-by-race-ethnicity-and-language-preference.*

[105] As a condition of receiving a temporary Federal Medical Assistance Percentage (FMAP) increase under section 6008 of the Families First Coronavirus Response Act, states were required to maintain enrollment of nearly all Medicaid enrollees during the COVID–19 PHE. This ''continuous enrollment condition'' was decoupled from the COVID–19 PHE and ended on March 31, 2023 under the Consolidated Appropriations Act, 2023. *See* CMS, Center for Consumer Information and Insurance Oversight, Temporary Special Enrollment Period (SEP) for Consumers Losing Medicaid or the Children's Health Insurance Program (CHIP) Coverage Due to Unwinding of the Medicaid Continuous Enrollment Condition—Frequently Asked Questions (FAQ) (Jan. 27, 2023), available at: *https://www.cms.gov/technical-assistance-resources/temp-sep-unwinding-faq.pdf.*

[106] HHS, Assistant Secretary for Planning and Evaluation, Office of Health Policy, ''Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches,'' August 19, 2022, available at: *https://aspe.hhs.gov/sites/default/files/documents/404a7572048090ec1259d216f3fd617e/aspe-end-mcaid-continuous-coverage_IB.pdf.*

[107] *See* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-term Limited-duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[108] *Id.* (''Carrier expectations for the impact of [regulatory actions including the expansion of short-term, limited-duration insurance policies and other loosely regulated insurance and the repeal of the federal individual shared responsibility payment being reduced to $0] on premiums in the ACA individual market for 2020 are approximately 4 percent in states that have not restricted the sale or duration of STLD policies . . . Among the states that have limited the impact of loosely regulated insurance through reinstating an individual mandate or by restricting STLD expansion, carriers have assumed an average premium impact in 2020 due to regulatory actions that is about 5 percent lower than other states.'') As noted in section VII.B.2.e of this preamble, this study also found that the few carriers that explicitly included a premium adjustment because of the adoption of the new Federal definition of STLDI in the 2018 final rules

For unsubsidized individuals, the costs are borne directly by the consumer, and for subsidized individuals, the costs are borne to a large extent by the Federal Government in the form of increased per capita PTC spending associated with increased individual health insurance coverage premiums. Likewise, the increased reports and anecdotes about fixed indemnity excepted benefits coverage being marketed and sold as an alternative to comprehensive coverage raise concerns about the potential for such practices having a similar impact on the small group and individual market risk pools.

Another study looking at States that have adopted policies that restrict STLDI to shorter durations than allowed under the current Federal regulations found that, from 2018 to 2020, States that restricted or prohibited the sale of STLDI saw fewer consumers enroll in such insurance, were able to keep more healthy people in the individual health insurance coverage market, and saw a greater decline in average medical costs for enrollees in individual health insurance coverage.[109] The study reported that, as a result, the risk score—a measurement of the relative medical costs expected for the populations covered by comprehensive coverage in each State, both on- and off-Exchange—decreased by 40 percent more in States with more regulation of STLDI than States with less regulation.[110] As of January 20, 2020, 12 States had enacted legislation prohibiting health status underwriting for STLDI, effectively banning the sale of STLDI in those States.[111] Thirteen States and the District of Columbia prohibited the sale of STLDI policies with initial contract terms longer than 3 months.[112]

In addition to ensuring that consumers can clearly distinguish STLDI from comprehensive coverage, this new evidence provides an additional basis for the Departments' conclusion that it is important to amend the Federal definition of STLDI.

D. Need for Rulemaking

For the reasons described in this section II, the Departments are of the view that it is necessary to amend the Federal definition of STLDI to ensure that consumers can clearly distinguish STLDI from comprehensive coverage, protect the risk pools and stabilize premiums in the individual market, and promote access to affordable comprehensive coverage.

With respect to individual market fixed indemnity excepted benefits coverage, the combination of the decision in the *Central United* case and the reduction of the individual shared responsibility payment to $0 for months beginning after December 31, 2018, under the Tax Cuts and Jobs Act increased the risk that individuals would purchase fixed indemnity excepted benefits coverage as a substitute for comprehensive coverage. The Departments are of the view that these changes necessitate rulemaking with respect to fixed indemnity excepted benefits coverage. Further, while the Departments did not finalize the proposed amendments to the group market fixed indemnity excepted benefits coverage regulations outlined in the 2016 proposed rules, the Departments noted their intention to address fixed indemnity excepted benefits coverage in future rulemaking.[113] The Departments have continued to monitor the impact of these coverage options and remain concerned about the negative impacts of fixed indemnity excepted benefits coverage on consumers when such products are sold as an alternative to comprehensive coverage. In light of the Departments' ongoing concerns about the numerous negative impacts of STLDI and fixed indemnity excepted benefits coverage being offered as an alternative to comprehensive coverage, as well as the significant changes in market conditions and in the legal landscape since the Departments' last regulatory actions addressing these products, the Departments are proposing changes to the Federal individual and group market regulations governing STLDI and fixed indemnity excepted benefits coverage. For similar reasons, as discussed in more detail in section IV.A of this preamble, the Treasury Department and the IRS propose to clarify the tax treatment of fixed amounts received by a taxpayer through certain employment-based accident or health insurance that are paid without regard to the amount of medical expenses incurred. In addition, the Departments solicit comments on specified disease excepted benefits coverage, as discussed in section III.B.2 of this preamble, and on level-funded plan arrangements, as discussed in section III.C of this preamble.

III. Overview of the Proposed Rules on Short-Term, Limited-Duration Insurance and Fixed Indemnity Excepted Benefits Coverage; Comment Solicitations Regarding Specified Disease Excepted Benefits Coverage and Level-Funded Plan Arrangements—The Departments of the Treasury, Labor, and Health and Human Services

A. Short-Term, Limited-Duration Insurance

The Departments are proposing the following amendments to the Federal regulations at 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103 defining ''short-term, limited-duration insurance'' to better distinguish STLDI from individual health insurance coverage. These amendments would apply to new STLDI policies, certificates, or contracts of insurance sold or issued on or after the effective date of the final rules; that is, the date that is 75 days after publication of the final rules.[114] STLDI policies, certificates, or contracts of insurance sold or issued before the effective date of the final rules (including any subsequent renewals or extensions consistent with applicable law) could still have an initial contract term of less than 12 months and maximum duration of up to 36 months (taking into account any renewals or extensions), subject to any limits under applicable State law, but would be required to comply with the revised notice requirement for renewals and extensions.

1. ''Short-Term''

Under the current Federal regulations, contracts for STLDI must specify an expiration date that is less than 12 months after the original effective date of the contract, and, taking into account renewals or extensions, must have a duration of no longer than 36 months in total.[115] The Departments, however, are no longer of the view that permitting the longer duration for STLDI is in the best interests of consumers.

Taking into account the potential risk to individuals who enroll in STLDI, the

increased premiums by between 0.5 percent and 2 percent in 2020.

[109] *See* Hall, Mark and Michael McCue (2022). ''Short-Term Health Insurance and the ACA Market,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2022/short-term-health-insurance-and-aca-market.*

[110] *Id.*

[111] National Association of Insurance Commissioners (2023). ''Short-Term Limited-Duration Health Plans,'' available at: *https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans.*

[112] *Id.*

[113] Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance; Final Rule, 81 FR 75316 at 75317 (October 31, 2016).

[114] For purposes of this document, the term ''effective date of the final rules'' refers to the date that is 75 days after the date of publication of the final rules.

[115] *See* 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103. *See also* 83 FR 38212 (August 3, 2018).

increased availability of affordable comprehensive coverage options, the potential impact on the individual market risk pools, and consumer challenges in differentiating STLDI from individual health insurance coverage, the Departments propose to reinterpret the phrase ''short-term'' to refer to a contract term of no more than 3 months. More specifically, the Departments propose to amend the Federal definition for STLDI under 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103 such that the coverage would have an expiration date specified in the policy, certificate, or contract of insurance that is no more than 3 months after the original effective date. As discussed further in section III.A.2 of this preamble, the Departments also propose to amend the Federal definition of STLDI to reinterpret the phrase ''limited-duration'' to mean that the maximum permitted duration for STLDI is no longer than 4 months in total, taking into account any renewals or extensions. Further, the new proposed Federal definition would provide that a renewal or extension includes the term of a new STLDI policy, certificate, or contract of insurance issued by the same issuer to the same policyholder within a 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance.

As described further in section III.A.6 of this preamble, these proposed rules would adopt a bifurcated approach to the applicability date that distinguishes between new STLDI that is sold or issued on or after the effective date of the final rules,[116] and existing STLDI sold or issued before the effective date of the final rules. The proposed new Federal definition and maximum duration framework in these proposed rules would apply for new STLDI policies, certificates, or contracts of insurance sold or issued on or after the effective date of the final rules. Under the framework in these proposed rules, existing policies, certificates, or contracts of insurance sold or issued before the effective date (including any subsequent renewals or extensions consistent with applicable law) could still have an initial contract term of less than 12 months, and a maximum duration of up to 36 months (taking into account any renewals or extensions), subject to any limits under applicable State law. In the preamble to the 2018 final rules, the Departments discussed the importance of ensuring that consumers clearly understand the differences between these types of coverage in order to select the type of coverage that suits their needs. However, particularly in light of recent reports regarding deceptive marketing practices (as discussed in section III.A.3 of this preamble) and the risk of consumer confusion, the Departments are now of the view that interpreting ''short-term'' in a manner that prevents STLDI from having terms that are similar in length to a 12-month policy year for comprehensive individual health insurance coverage is the most important tool for consumers to distinguish between STLDI and comprehensive coverage.

In addition, the Departments expressed in the preamble to the 2018 final rules an expectation that the amended definition of STLDI would result in STLDI being distinguishable from comprehensive coverage because of the differences in their initial contract terms; the maximum duration of a policy itself; the types of notice requirements applicable to each type of coverage; and the classification of comprehensive coverage, but not STLDI, as MEC.[117] However, since the 2018 final rules became effective, and in light of the changes in the legal landscape and market conditions discussed in section II of this preamble, the Departments are now of the view that the current Federal definition of STLDI contributes to confusion between STLDI and comprehensive coverage and that confusion results in consumer harm. The Departments' proposal to reinterpret ''short-term'' to refer to coverage with a term of no more than 3 months is one change that would help ensure consumers are better able to distinguish between the two types of coverage and therefore make better informed coverage purchasing decisions.

The Departments are concerned that the current interpretation and definition is too expansive and contributes to confusion regarding whether a policy is STLDI or comprehensive coverage. The combination of deceptive marketing practices (as discussed in section III.A.3 of this preamble) and the near-identical length of coverage for the initial contract term has proven to be confusing for consumers. As such, STLDI policies that include an initial term just shy of 12 months have not been easily distinguishable by consumers from comprehensive coverage available in the individual market, which generally has a 12-month policy year.[118] In addition, the ability to renew or extend STLDI policies for up to 36 months is also somewhat similar to the structure of comprehensive coverage sold in the individual and group markets and makes STLDI harder to distinguish from comprehensive coverage options. As a result, STLDI is being sold in situations, including as a long-term replacement for comprehensive coverage, that the exception from the definition of individual health insurance coverage was not intended to address.[119] In some instances, individuals may mistakenly purchase STLDI as long-term health insurance coverage.[120]

In determining the appropriate length of STLDI for the proposed amended Federal definition, and giving meaning to ''short-term,'' the Departments reflected on instances when individuals may experience a temporary gap in coverage. For example, a college student enrolled in student health insurance coverage that does not provide coverage during the summer when they are not enrolled in classes, or a teacher who changes jobs and has to wait until the fall to enroll in new coverage, would experience a temporary gap in coverage of roughly 3 months and would benefit from access to STLDI during that period. Individuals transitioning between other types of jobs may also experience a temporary break in coverage, even if their break in employment is negligible. In particular, section 2708 of the PHS Act and its implementing regulations permit a group health plan or health insurance issuer offering group health insurance coverage to apply a waiting

[116] The Departments are of the view that an effective date that is 75 days after the date of publication of the final rule provides sufficient time for interested parties to review, understand, and meet their obligations under the final rule, without unnecessarily delaying the implementation of policies that are proposed to be finalized on the effective date. See sections III.A.6 (STLDI) and III.B.1.g (fixed indemnity excepted benefits coverage) for additional discussion of applicability proposals.

[117] 83 FR 38215 (August 3, 2018).

[118] 45 CFR 144.103 (defining policy year for non-grandfathered health plans offered in the individual health insurance market as a calendar year).

[119] *See, e.g.,* Palanker, Dania, and Volk JoAnn (2021). ''Misleading Marketing of Non-ACA Plans Continued During COVID–19 Special Enrollment Period,'' Center on Health Insurance Reforms, available at: *https://georgetown.app.box.com/s/mn7kgnhibn4kapb46tqmv6i7putry9gt. See also* Fernandez, Bernadette, Vanessa Forsberg, and Annie Mach (2018). ''Background Information on Health Coverage Options Addressed in Executive Order 13813,'' Congressional Research Service, available at: *https://crsreports.congress.gov/product/pdf/R/R45216. See also* Corlette, Sabrina, Kevin Lucia, Dania Palanker, and Olivia Hoppe (2019). ''The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses,'' Urban Institute, available at: *https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses.*

[120] Government Accountability Office (2022). ''Private Health Insurance: Limited Data Hinders Understanding Short-Term Plans Role and Value During the COVID–19 Pandemic,'' available at: *https://www.gao.gov/assets/730/720774.pdf.*

period (as defined in section 9801(b)(4) of the Code, section 701(b)(4) of ERISA, and 2704(b)(4) of the PHS Act) of up to 90 days.[121] In addition, the implementing regulations allow for a reasonable and bona fide employment-based orientation period not to exceed 1 month. These provisions can result in a delay of approximately 3 to 4 months before coverage of an individual, who is otherwise eligible to enroll under the terms of a group health plan, can become effective.

Therefore, the Departments propose to amend the Federal definition of ''short-term, limited-duration insurance'' in 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103 to reflect a new interpretation of the phrase ''short-term'' to mean a policy, certificate, or contract of insurance with an issuer that has an expiration date specified in the policy, certificate, or contract of insurance that is no more than 3 months after the original effective date of the policy, certificate, or contract of insurance. This approach is consistent with the group market rules regarding the 90-day waiting period limitation provision under the ACA and with STLDI's role of serving as temporary coverage for individuals transitioning between other types of comprehensive coverage. It also is similar to the less-than-3-month maximum term in the Federal definition of STLDI adopted in the 2016 final rules and already enacted in a number of States,[122] and aligns with the goal of Executive Order 14009 to support protections for people with preexisting conditions, as there are no Federal prohibitions or restrictions on preexisting condition limitations with respect to STLDI.

It is reasonable to look to the group market waiting period rules to guide the proposed amendments to the Federal definition of STLDI in giving meaning to ''short-term,'' because a waiting period is the type of coverage gap that STLDI was initially intended to cover.[123] For longer gaps in coverage, the guaranteed availability protections established under the ACA, COBRA continuation coverage for individuals who were enrolled in employer-based coverage, and the special enrollment period requirements for group health plan and individual health insurance coverage provide individuals various opportunities to enroll in comprehensive coverage through or outside of an Exchange.

The Departments request comments on the proposed interpretation of the phrase ''short-term.'' The Departments also request comments on whether the interpretation of ''short-term'' in the proposed definition of STLDI should instead be no more than 4 months or some other length, and why.

2. ''Limited-Duration''

Under the definition adopted in the 2018 final rules, the Departments interpreted the phrase ''limited-duration'' to preclude renewals or extensions of STLDI that extended a policy beyond a total of up to 36 months, with the total number of consecutive days of coverage under a single (that is, the same) insurance contract being the relevant metric to calculate the permissible duration of coverage. The Departments now propose an update to the Federal definition of ''short-term, limited-duration insurance'' under 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103 that would adopt a different interpretation of the phrase ''limited-duration.'' The Departments propose to reinterpret ''limited-duration'' to refer to a maximum coverage period that is no longer than 4 months in total, taking into account any renewals or extensions. This approach would allow STLDI to be extended, when consistent with applicable State law, to avoid a temporary gap in coverage if, for example, an employer implemented a bona fide employment-based orientation period of up to 1 month under the 90-day waiting period limitation provision under the ACA. An STLDI policy would meet the Federal definition of ''limited-duration'' so long as the coverage was not renewed or extended beyond a total of 4 months from the original effective date of the policy, certificate, or contract of insurance, regardless of whether the coverage has an initial term of 1, 2, or 3 months. For example, an STLDI policy could have an initial term of 3 months and a renewal term of 1 month, or an initial term of 2 months and a renewal term of 2 months, consistent with the proposed amended Federal definition of STLDI.

For this purpose, the Departments propose that a renewal or extension would include the term of a new STLDI policy, certificate, or contract of insurance issued by the same issuer to the same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance. In this context, the phrase ''same issuer'' would refer to the entity licensed to sell the policy, consistent with the definition of health insurance issuer in 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103. Under this proposal, the relevant metric to calculate whether the duration of coverage satisfies the new Federal ''limited-duration'' standard is the total number of days of coverage (either consecutive or non-consecutive) that a policyholder is enrolled in an STLDI policy with the same issuer. That calculation would apply regardless of whether the coverage is a renewal or extension under the same policy, certificate, or contract of insurance, or if it involves the issuance of a new STLDI policy, certificate, or contract of insurance to the same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance.

In the 2018 final rules, the Departments took the position that the maximum length of COBRA continuation coverage serves as an appropriate benchmark for interpreting the term ''limited-duration'' with respect to STLDI. The 2018 final rules likened the limited-duration maximum to the maximum duration that employers are required to provide COBRA continuation coverage to qualified beneficiaries (18, 29, or 36 months depending on the nature of the qualifying event that precipitates the temporary coverage period).[124]

[121] 26 CFR 54.9815–2708, 29 CFR 2590.715–2708, and 45 CFR 147.116.

[122] Pollitz, Karen, Michelle Long, Ashley Semanskee, and Rabah Kamal (2018). ''Understanding Short-Term Limited Duration Health Insurance,'' KFF, available at: *https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/*.

[123] 81 FR 38020 at 38032 (June 10, 2016) (the intent of the initial regulation defining STLDI was to refer to coverage that filled temporary coverage gaps when an individual was transitioning from one plan or coverage to another).

[124] For example, when a qualified employee loses coverage due to the termination of an employee's employment for any reason other than gross misconduct, or a reduction in the number of hours of employment, the group health plan must provide the qualified employee and their covered dependents an opportunity to elect COBRA continuation coverage for up to 18 months. A spouse or dependent child of a covered employee would have the opportunity to elect COBRA continuation coverage for up to 18 months if they lost coverage due to the termination of the covered employee's employment for any reason other than gross misconduct, a reduction in the hours worked by the covered employee, divorce or legal separation of the spouse from the covered employee, or death of the covered employee. In addition, if a child loses coverage because of a loss of dependent child status, the child would have the opportunity to elect up to 36 months of COBRA continuation coverage. The group health plan is required to provide up to 29 months of COBRA continuation coverage only if one of the qualified beneficiaries is disabled and meets certain requirements. A maximum COBRA period of 36 months is only available to a spouse and dependents in limited circumstances such as the occurrence of a second qualifying event (for instance, the death of the covered employee, the divorce or legal separation of a covered employee

Continued

However, unlike STLDI, COBRA requires, and employees expect, that the elected COBRA continuation coverage provides the same benefits as the employee's employment-based coverage, and that the qualified beneficiaries may elect either the same coverage they had the day before the qualifying event occurred or coverage options provided to similarly situated current employees/participants.[125] Additionally, Federal consumer protections and requirements for comprehensive coverage generally apply to COBRA continuation coverage. In contrast, STLDI is primarily designed to fill shorter gaps in coverage, such as when an individual is between enrollment in employment-based coverage, and it is generally not required to comply with Federal consumer protections and requirements for comprehensive coverage,[126] or provide robust, comprehensive benefits.

In response to the 2016 and 2018 proposed rules, the Departments received comments requesting that the Departments not only limit renewals of the same policy, certificate, or contract of insurance, but also prohibit issuers from offering STLDI to consumers who have previously purchased STLDI from the same or different issuer, to prevent consumers from stringing together multiple consecutive policies, a practice commonly referred to as stacking.[127] The Departments share the commenters' concern that stacking STLDI in effect lengthens the duration of coverage without offering the benefits and consumer protections of comprehensive coverage. As those commenters pointed out, this practice effectively circumvents the rules related to maximum duration and makes it more challenging for consumers to distinguish STLDI from comprehensive coverage, concerns that interested parties have reiterated in 2021 and 2022.[128] If an issuer strings together multiple STLDI policies (whether of a 12-month or 4-month maximum) the coverage could be stacked to look very similar to the annual renewals that are common for comprehensive coverage but without the benefits the consumer would receive from comprehensive coverage. For example, when stacking new policies, an issuer could increase premiums and cost sharing and reset the deductible every 4 months. In contrast, if enrolled in comprehensive health insurance coverage, a consumer is guaranteed a stable level of coverage and cost sharing throughout the 12-month plan year, and the coverage is subject to Federal consumer protections and requirements that prohibit practices common to STLDI, including medical underwriting and coverage rescissions. Consumers that have already purchased STLDI policies from the same issuer may not be aware of, and may be less likely, to explore other coverage options that provide more comprehensive coverage at a better price. As a result, some consumers may enroll in STLDI mistaking it for comprehensive coverage or not understanding the limitations of the coverage.

In response to these concerns and continued reports about the impact of the existing Federal definition of STLDI discussed in section III.A.I of this preamble, under the Departments' authority to interpret the phrase ''limited-duration,'' the Departments propose to add new language that provides that, for purposes of applying the new Federal definition, a renewal or extension includes the term of a new STLDI policy, certificate, or contract of insurance issued by the same issuer to the same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance.[129] As explained elsewhere in this preamble section, under this proposal, the relevant metric to calculate and evaluate if the duration of coverage (taking into account any renewals or extensions) satisfies the proposed permitted maximum duration of no more than 4 months is the total number of days (either consecutive or non-consecutive) of coverage that a policyholder is enrolled in an STLDI policy with the same issuer within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance, regardless of whether the coverage issued to the policyholder is under the same or a new policy, certificate, or contract of insurance. This calculation, however, would not include an STLDI policy, contract, or certificate of insurance sold to the same policyholder by a *different* issuer. This distinction would effectively limit stacking of policies sold by the same issuer, would be easier for issuers to track and comply with, and would allow consumers the flexibility to purchase subsequent STLDI policies from other issuers within a 12-month period. The Departments are of the view that subsequent sales to the same policyholder by the same issuer should be treated comparably to renewals for purposes of calculating and applying the maximum-duration standard. To do otherwise would undermine the maximum-duration requirements by allowing issuers to stack policies, and would contravene the initial purpose of STLDI policies to fill temporary gaps in comprehensive coverage.

The Departments solicit comments on the proposed revisions to the Federal definition of ''short-term, limited-duration insurance,'' including the new proposed interpretation of the phrase ''limited-duration,'' and whether there are circumstances under which issuers should be allowed to renew or extend STLDI for periods of time beyond what would be permitted in these proposed rules. The Departments also solicit comments on whether there are

and spouse, or a loss of dependent child status under the plan).

[125] 26 CFR 54.4980B–5.

[126] As noted above, health insurance issuers offering STLDI are subject to the new agent and broker compensation disclosure and reporting requirements in section 2746 of the PHS Act.

[127] The Departments declined to prohibit stacking in the 2016 final rules because the requirement that individuals obtain MEC in order to avoid making an individual shared responsibility payment was an adequate deterrent to discourage consumers from purchasing multiple successive STLDI policies. *See* 81 FR 75318. In the Department's view, reconsideration of such a prohibition is now warranted because the individual shared responsibility payment was reduced to $0 by the Tax Cuts and Jobs Act.

[128] Partnership to Protect Coverage (2021). ''Under-Covered: How 'Insurance-Like' Products are Leaving Patients Exposed,'' available at: *https://www.nami.org/NAMI/media/NAMI-Media/Public%20Policy/Undercovered_Report_03252021.pdf.* (''STLDI plans should not be renewable or allowed to continue for more than three months because of the significant financial risk posed to consumers by their combination of extraordinary deductibles and limited catastrophic financial protection.''). *See also* Letter from 29 organizations to Sec. Xavier Becerra (January 31, 2022), available at: *https://www.lung.org/getmedia/8a510945-cd82-41fe-968e-d83faf2292eb/013122-Letter-to-HHS-Re-Regulation-of-STLDI-policy-preferences-FINAL.pdf.* (''Allowing short-term plans to be renewed or to be sold such that nominally separate policies run consecutively . . . known as ''stacking''—contributes to consumer confusion, increased premiums, and financial risk for consumers.'').

[129] In response to the 2018 proposed rules, the Departments received comments regarding renewal guarantees. As explained in the preamble to the 2018 final rules, renewal guarantees generally permit a policyholder, when purchasing his or her initial insurance contract, to pay an additional amount in exchange for a guarantee that the policyholder can elect to purchase, for periods of time following expiration of the initial contract, another policy or policies at some future date, at a specific premium that would not require any additional underwriting. *See* 83 FR 38219–38220 (Aug. 3, 2018). These proposed rules would not directly regulate renewal guarantees. However, the Departments acknowledge that the proposed revisions to the Federal definition—including the proposal to count the term of a new STLDI contract issued by the same issuer to the policyholder within the same 12-month period beginning on the original effective date of the initial policy, contract, or certificate of insurance toward the total maximum duration of STLDI—would limit the guarantees that such instruments may be able to provide.

additional ways to differentiate STLDI from comprehensive coverage options, including information on State approaches or limits on the sale of STLDI by a different issuer, and how the subsequent issuer would determine whether or not an applicant had previous STLDI with another issuer. The Departments also solicit comments on whether to broaden the limits on stacking to include issuers that are members of the same controlled group.

3. Sales and Marketing Practices

The Departments are concerned by reports of aggressive and deceptive sales and marketing practices related to STLDI. According to these reports, STLDI is often marketed as a substitute for comprehensive coverage,[130] despite being exempt from most of the Federal individual market consumer protections and requirements for comprehensive coverage. For example, some websites selling STLDI utilized logos of well-known issuers even when not affiliated with such issuers, and claimed to provide comprehensive health insurance or be providers of government-sponsored health insurance policies. Misleading marketing includes tactics such as designing websites to suggest the product for sale is comprehensive coverage and using the websites to gather personal information for call centers or brokers that later push consumers to make quick decisions about purchasing STLDI without disclosing that the insurance is not comprehensive coverage.[131]

As another example, consumers shopping for health insurance online are often directed to websites selling STLDI or other plans that are not comprehensive coverage, using terms like ''Obamacare plans'' and ''ACA enroll.'' websites use those terms in an effort to associate STLDI with the Federal consumer protections and requirements for comprehensive coverage.[132] A report from the Government Accountability Office (GAO) uncovered brokers engaging in deceptive marketing practices that misrepresented or omitted information about products or claimed that preexisting conditions were covered when plan documents reflected that they were not.[133] The GAO study also found that brokers have a financial incentive to enroll their clients in STLDI because brokers receive higher commissions for selling that coverage than for selling comprehensive coverage.[134] For example, the financial incentive could be up to 10 times higher commissions when compared to individual market QHPs purchased through an Exchange.[135] State regulators have also received complaints alleging that brokers engaged in deceptive practices to enroll consumers in STLDI over the phone. These practices prevent consumers from making an informed choice about their coverage.[136]

In addition, the Departments have received feedback that the low levels of health insurance literacy, particularly among younger adults and underserved populations, exacerbate the harm caused by deceptive marketing practices of STLDI by issuers and agents and brokers.[137] Consumers have complained they were unaware that the issuer could decide not to renew or issue a new policy, certificate, or contract of insurance to the same consumer at the end of the contract term.[138] Some consumers unwittingly purchase STLDI with fewer protections and less robust benefits than comprehensive coverage because they do not understand the difference between these two types of coverage.[139]

In the Departments' view, this risk of misleading consumers could be further minimized if STLDI was not marketed or sold to consumers during certain periods when a consumer is eligible to enroll in comprehensive coverage, such as the individual market open enrollment period. Allowing STLDI to be marketed or sold during open enrollment can confuse consumers by causing them to perceive STLDI as a substitute for comprehensive coverage, rather than an option to fill temporary gaps in coverage. Inadvertent enrollment in STLDI may subject uninformed consumers to potentially severe financial risks, and cause them not to enroll in comprehensive coverage when eligible to do so. In addition, some healthier individuals may also inadvertently enroll in STLDI instead of comprehensive coverage, and in so doing, either leave or not enter an individual market risk pool. As discussed in section II.C of this preamble, this affects the risk pools for individual health insurance coverage, leading to increased premiums.

The Departments solicit comments on additional ways to help consumers distinguish between STLDI and comprehensive coverage. In particular, the Departments are interested in feedback on ways to prevent or otherwise mitigate the potential for direct competition between STLDI and comprehensive coverage during the open enrollment period for individual market coverage. For example, some States have prohibited the sale of STLDI during open enrollment.[140] The Departments are particularly interested in comments related to experience in States that have prohibited enrollment in STLDI during specific periods of time, including whether prohibiting enrollment has increased enrollment in comprehensive coverage, reduced deceptive marketing practices, or resulted in any premium changes for comprehensive coverage. In addition, the Departments request comments on what additional steps the Departments can take to help consumers better

[130] Federal Trade Commission (2018). ''FTC Halts Purveyors of Sham Health Insurance Plans,'' available at: *https://www.ftc.gov/news-events/news/press-releases/2018/11/ftc-halts-purveyors-sham-health-insurance-plans.*

[131] Palanker, Dania, JoAnn Volk, and Maanasa Kona (2019). ''Seeing Fraud and Misleading Marketing, States Warn Consumers About Alternative Health Insurance Products,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2019/seeing-fraud-and-misleading-marketing-states-warn-consumers-about-alternative-health. See also,* Federal Trade Commission (2022). ''FTC Action Against Benefytt Results in $100 Million in Refunds for Consumers Tricked into Sham Health Plans and Charged Exorbitant Junk Fees,'' available at: *https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-action-against-benefytt-results-100-million-refunds-consumers-tricked-sham-health-plans-charged.*

[132] Corlette, Sabrina, Kevin Lucia, Dania Palanker, and Olivia Hoppe (2019). ''The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses,'' Urban Institute, available at: *https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses.*

[133] Government Accountability Office (2020). ''Private Health Coverage: Results of Covert Testing for Selected Offerings,'' available at: *https://www.gao.gov/products/gao-20-634r.*

[134] *Ibid.*

[135] Keith, Katie (2020). ''New Congressional Investigation of Short-Term Plans,'' *Health Affairs,* available at: *https://www.healthaffairs.org/do/10.1377/forefront.20200626.227261/full/.*

[136] Palanker, Dania, JoAnn Volk, and Maanasa Kona (2019). ''Seeing Fraud and Misleading Marketing, States Warn Consumers About Alternative Health Insurance Products,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2019/seeing-fraud-and-misleading-marketing-states-warn-consumers-about-alternative-health.*

[137] Government Accountability Office (2020). ''Private Health Coverage: Results of Covert Testing for Selected Offerings,'' available at: *https://www.gao.gov/products/gao-20-634r.*

[138] *Id.*

[139] *Id.*

[140] Washington and Maine prohibit the sale of STLDI during open enrollment. In addition, Hawaii prohibits the sale of STLDI to individuals who were eligible to purchase an Exchange plan during open enrollment in the previous calendar year. *See* U.S. House of Representatives Committee on Energy and Commerce (2020). ''Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Health Insurance Plans Is Putting Americans at Risk,'' available at: *https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health.*

understand and distinguish between comprehensive coverage and other forms of health insurance coverage, as well as what steps can be taken to further support State efforts to protect consumers from misleading and deceptive marketing and sales practices.

4. Notice

Under the 2018 final rules, to satisfy the definition of STLDI, issuers must display prominently in the contract and in any application materials provided in connection with enrollment in STLDI a specific notice in at least 14-point type.[141] The 2018 final rules finalized two notices. The first notice (Notice 1) was for policies with a coverage start date before January 1, 2019, and includes language related to the individual shared responsibility payment under section 5000A of the Code. The second notice (Notice 2), which is for policies with a coverage start date on or after January 1, 2019, omits the language related to the individual shared responsibility payment because, effective for months beginning after December 31, 2018, the individual shared responsibility payment was reduced to $0.[142] The Departments propose a non-substantive technical amendment to remove Notice 1, because the period during which Notice 1 was applicable has ended; thus, that provision no longer has any effect.

The Departments continue to be of the view that the notice is important to help consumers distinguish between comprehensive coverage and STLDI. Therefore, the Departments propose to amend the notice to further clarify the differences between STLDI and comprehensive coverage, and identify options for consumers to obtain comprehensive coverage in concise, understandable language that would be meaningful to them. The proposed amendments to the notice would apply to all STLDI policies sold or issued on or after the effective date of the final rules. The proposed amendments to the notice would only apply to existing policies in connection with notices required to be provided upon renewal or extension of existing STLDI coverage on or after the effective date of the final rules.

After consulting with plain-language experts regarding improvements to the current required notice, the Departments propose the following revisions to both the content and formatting of the notice to inform consumers considering purchasing STLDI about the differences between STLDI and comprehensive coverage, support informed coverage purchasing decisions, and promote readability. The Departments propose that issuers must prominently display the notice (in either paper or electronic form) in at least 14-point font, on the first page of the policy, certificate, or contract of insurance, including for renewals or extensions. The Departments further propose that issuers must prominently display the notice in any marketing and application materials provided in connection with enrollment in such coverage, including on websites that advertise or enroll individuals in STLDI, and in any enrollment materials that are provided at or before the time an individual has the opportunity to enroll. In addition, if an individual is required to reenroll for purposes of renewal or extension of STLDI, the notice must be prominently displayed in the reenrollment materials (in either paper or electronic form) that are provided to the individual at or before the time the individual is given the opportunity to reenroll in coverage, as well as on any websites used to facilitate reenrollment in STLDI.

The notice would not affect any separate notice requirements under applicable State law, except to the extent that a State notice requirement would prevent application of any Federal notice requirement. The text of the proposed STLDI notice is as follows:

BILLING CODE 4120–01–, 4150–29–, 4830–01–P

[141] 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103. *See* section I.C of this preamble for further discussion of this requirement.

[142] *See* Public Law 115–97, December 22, 2017.

Notice to Consumers About Short-Term, Limited-Duration Insurance

IMPORTANT: This is short-term, limited-duration insurance. This is temporary insurance. **It isn't comprehensive health insurance.** Review your policy carefully to make sure you understand what is covered and any limitations on coverage.

- This insurance might not cover or might limit coverage for:
  - preexisting conditions; or
  - essential health benefits (such as pediatric, hospital, emergency, maternity, mental health, and substance use services, prescription drugs, or preventive care).
- You won't qualify for Federal financial help to pay for premiums or out-of-pocket costs.
- You aren't protected from surprise medical bills.
- When this policy ends, you might have to wait until an open enrollment period to get comprehensive health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

BILLING CODE 4120–01–, 4150–29–, 4830–01–C

These proposals to revise and enhance the required notice aim to increase consumer understanding of STLDI and combat potential misinformation related to such coverage for all consumers, including historically underserved communities. As noted in section II.B of this preamble, individuals belonging to historically underserved communities often experience more health care challenges, and greater obstacles accessing and using health care services compared to the general population. Underserved communities experience worse health outcomes, higher rates of chronic conditions, lower access to health care, and have more frequent experiences of discrimination in health care settings.[143] The COVID–19 PHE amplified these longstanding inequities, resulting in disparate rates of COVID–19 infection, hospitalization, and death.[144] In addition, research has uncovered significant disparities in health insurance literacy rates nationwide, particularly among those who identify as female, members of underserved racial and ethnic groups, individuals with income below the FPL, and Spanish-speaking enrollees.[145] Because low health insurance literacy increases the likelihood of consumers not fully understanding the differences between comprehensive coverage and STLDI, as well as the potential health and financial risks of STLDI coverage,[146] and in light of Executive Order 13985 which requires the Administration to promote access to equity for underserved communities,[147] the Departments are concerned that members of underserved communities may be particularly vulnerable to misinformation or misleading or aggressive sales tactics. In light of these concerns, it is important for the notice to provide clear and easily readable information alerting consumers to the differences between STLDI coverage and comprehensive coverage. The Departments are of the view that the notice must also provide resources where consumers can access additional information about STLDI coverage and other health coverage options so consumers can make informed choices after considering a range of available health coverage options.

The Departments propose to add language to the notice to help consumers identify where and how they might be able to enroll in comprehensive coverage. The Departments propose to add a website link and telephone number for *HealthCare.gov* to the notice as reliable resources for consumers to get information on the different types of available health coverage options. The Departments are also considering that the notice be tailored to specify a telephone number and a link to the State Exchange's website if the STLDI is filed in a State that does not use

[143] *See* CMS Office of Minority Health (2022). ''The Path Forward: Improving Data to Advance Health Equity Solutions,'' available at: *https://www.cms.gov/files/document/path-forwardhe-data-paper.pdf.*

[144] Moore, Jazmyn, Carolina Luna-Pinto, Heidi Cox, Sima Razi, Michael St. Louis, Jessica Ricaldi, and Leandris Liburd (2021). ''Promoting Health Equity During the COVID–19 Pandemic, United States,'' Bulletin of the World Health Organization, available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8795842.*

[145] *See,* Edward, Jean, Amanda Wiggins, Malea Hoepf Young, Mary Kay Rayens (2019). ''Significant Disparities Exist in Consumer Health Insurance Literacy: Implications for Health Care Reform,'' *Health Literacy Research and Practice,* available at: *https://pubmed.ncbi.nlm.nih.gov/31768496/. See also* Villagra, Victor and Bhumika Bhuva (2019). ''Health Insurance Literacy: Disparities by Race, Ethnicity, and Language Preference,'' *The American Journal of Managed Care,* available at: *https://www.ajmc.com/view/health-insurance-literacy-disparities-by-race-ethnicity-and-language-preference.*

[146] Edward, Jean, Robin Thompson, and Amanda Wiggins (2022). ''Health Insurance Literacy Levels of Information Intermediaries: How Prepared are They to Address the Growing Health Insurance Access Needs of Consumers?,'' *Health Literacy Research and Practice,* 6(1), available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8919673/.*

[147] *See,* Executive Order 13985 of January 20, 2021, 86 FR 7009.

HealthCare.gov.[148] The Departments seek comments on this approach, including the proposed requirement to provide the notice in the marketing, application, and enrollment (or reenrollment) materials, including the extension of the notice requirement to websites that advertise or offer the opportunity to enroll (or reenroll) in STLDI and on the associated administrative burden for issuers, agents, brokers, or others who will be involved in providing the notice to consumers.

If, under any future final rules, the notice must be customized to specify the website and telephone number for *HealthCare.gov* or the State Exchange's website and telephone number, as applicable, the Departments would state that STLDI sold through associations [149] include a link to the website of the Exchange that operates in the State in which the individual to whom the STLDI is sold or marketed resides, regardless of the State in which the association has filed the insurance product. The Departments are considering this approach for coverage sold through associations because association coverage is sold across numerous States, and consumers interested in other coverage options would enroll through the Exchange of the State in which the consumer resides.

The proposed revised notice would also remind consumers that if they are eligible to enroll in employment-based coverage they should contact their employer or family member's employer about the health coverage offered by the employer. In addition, the Departments propose to add language to the notice that directs consumers to contact the State department of insurance for questions and complaints about the STLDI. The Departments seek comments on whether this part of the notice should also be tailored to include the name and phone number of the State department of insurance of the State in which the product is filed. If the State-specific information must be included, for products that are filed in multiple States, the Departments propose that the notice include the name and the phone number of the State department of insurance of the State of residence of the individual to whom the STLDI is sold or marketed, unless the product is not filed in that State. If the product is not filed in the State of residence of the individual to whom the STLDI is sold or marketed, the notice would include the name and the phone number of the State department of insurance of the State in which the product is filed.

The current regulations already state that the applicable notice must be displayed prominently in the contract and in any application materials provided in connection with enrollment in such coverage in at least 14-point type. However, based on information that consumers are not receiving adequate information prior to enrollment in an STLDI policy,[150] the Departments are concerned that the current standard is too subjective and may be contributing to consumers not understanding the limits of STLDI and being unable to distinguish it from comprehensive coverage.[151] Ensuring that issuers, agents, brokers or others who will be involved in providing the notice to consumers also prominently display the notice on the first page of marketing materials would increase consumer awareness, limit the impact of any deceptive marketing practices, and support informed decision making and purchasing decisions by consumers. The Departments therefore propose that the notice be prominently displayed, in at least 14-point font, on the first page of any marketing materials used in connection with enrollment (or reenrollment) in STLDI. The Departments propose to consider the notice to be prominently displayed if it would be reasonably noticeable to a typical consumer within the context of the page on which it is displayed. For example, the notice would be prominently displayed if it uses a font color that contrasts with the background of the document, is not obscured by any other written or graphic content on the page, and when displayed on a website, is viewable without clicking on an additional link. For this purpose, the Departments would consider marketing materials to include any documents or website pages that advertise the benefits or opportunity to enroll (or reenroll) in STLDI coverage. The Departments seek comments on the benefits and burdens of applying the notice requirements to marketing materials, including websites used in connection with advertising or enrollment (or reenrollment) in STLDI coverage, and on the proposed definition of what would be considered marketing materials.

The Departments are considering adding a statement to the STLDI notice describing the maximum permitted length of STLDI under Federal rules, explaining that STLDI cannot be renewed or extended beyond the maximum allowable duration, and explaining that the length of STLDI may be shorter subject to State law. Adding this proposed additional language may reduce the impact of deceptive marketing practices on consumers that may otherwise be unaware or misinformed about the length of STLDI before renewing or extending an existing STLDI policy or enrolling in a new STLDI policy. However, including such language would also add to the length of the notice. The Departments seek comment on whether information about the maximum permitted length of new or existing STLDI and options regarding renewal and extensions would be included in enrollment materials (or reenrollment materials) provided to enrollees as part of the normal course of business. The Departments seek comment on this approach, including how best to clearly and concisely communicate such this information to consumers, including on how to address the bifurcated applicability dates with respect to the proposals around maximum initial contract length and maximum duration, whether such information is already included elsewhere in the plan documents; and on the associated administrative burden for issuers, agents, brokers, or others who would be involved in providing the notice to consumers.

The Departments also solicit comments on whether it would be beneficial to consumers to require issuers to include language on the notice that clearly informs consumers that the notice is an officially required document, such as ''This notice is required by Federal law.''

The Departments seek comments on all aspects of the proposed amendments to the notice and the proposed new Federal definition of STLDI, including whether the proposed language and proposed placement of the notice would achieve the stated aims of helping to inform consumers of the nature of the coverage and combat potential deceptive marketing practices as described in section III.A.3 of this preamble, and whether alternative or additional language, formatting, or mechanisms for delivery of the notice could better accomplish these goals. For example, the Departments request feedback on whether a different presentation, such as a chart comparing

[148] Currently, 33 states use *HealthCare.gov. See, https://www.healthcare.gov/marketplace-in-your-state/.*

[149] *See* discussion in section III.A.5 of this preamble regarding coverage sold through associations.

[150] *See,* Corlette, Sabrina, Kevin Lucia, Dania Palanker, and Olivia Hoppe (2019). ''The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses,'' Urban Institute, available at: *https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses.*

the protections that apply to comprehensive coverage and STLDI, would result in a more useful, consumer-friendly notice than the format proposed in these rules.

As an illustrative example of this different presentation, the Departments offer for consideration an alternative format for this notice that would aim to succinctly show important differences between STLDI and comprehensive coverage using a table. This alternative STLDI notice would include all of the information discussed earlier in this section of the preamble, but it would simplify word choice and reduce sentence length in order to further improve readability. The Departments request feedback on which version of the notice more effectively communicates information to individuals and how the notice format would impact accessibility, particularly for individuals who are vision-impaired or rely on screen readers or other technology to review written documents. The text of the alternative proposed STLDI notice is as follows:

BILLING CODE 4120–01–, 4150–29–, 4830–01–P

WARNING

This is not comprehensive insurance. This is short-term, limited-duration insurance.

This plan has fewer protections than comprehensive insurance options you can find on HealthCare.gov.

This Insurance	Insurance on HealthCare.gov
• May deny you coverage if you have a preexisting condition	• You cannot be denied coverage because of a preexisting condition
• There may be no limit to the amount you have to pay out-of-pocket for care	• The most you have to pay out-of-pocket for essential health benefits in a year is limited
• You will not qualify for Federal financial help to pay your premiums and out-of-pocket costs	• You may qualify for Federal financial help to pay your premiums and out-of-pocket costs
• You may not have access to all essential health benefits, including: pediatric, hospital, emergency, maternity, mental health, and substance use disorder services, prescription drugs, and preventive care	• You will have access to all essential health benefits, including: pediatric, hospital, emergency, maternity, mental health, and substance use disorder services, prescription drugs, and preventive care

Questions?

- For more info about comprehensive coverage, visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325).
- For more info about your employer's coverage, or a family member's employer coverage, contact the employer.

For questions or complaints about this policy, contact your State department of insurance.

BILLING CODE 4120–01–, 4150–29–, 4830–01–C

The Departments seek comments on whether additional changes to the notice language would improve readability or further help individuals distinguish STLDI from comprehensive coverage, and whether there are practical or logistical barriers that would present any challenges to compliance with the new proposed notice standards. The Departments are also interested in comments on whether the proposed placement requirements would substantially improve the likelihood that consumers have a meaningful opportunity to review the notice and their health coverage options before applying, enrolling, or reenrolling in STLDI, as well as any practical or logistical barriers to providing this notice as proposed. The Departments particularly seek comments from members of underserved communities, and organizations that serve such communities, on whether the language accessibility, formatting, and content of the notice sufficiently mitigate barriers that exist to ensuring all individuals can read, understand, and consider the full range of their health coverage options.

The Departments also solicit comments on the prevalence of instances where agents and brokers complete sales transactions with consumers for STLDI before distributing the applicable notice, and solicit comments on additional standards that would encourage salespeople, agents and brokers to notify individuals of the limitations of STLDI in accordance with these proposed rules.

5. Short-Term, Limited-Duration Insurance Sold Through Associations

The Departments understand that most sales of STLDI occur through group trusts or associations that are not related to employment (sometimes referred to as individual membership associations).[152] Under these arrangements, out-of-State issuers file insurance products for approval in one State and then sell the same policies in other States through an association, many times with few requirements for participation in the association by consumers, other than payment of association dues. Many State regulators have reported they lack the authority to track sales of policies made through out-of-State associations, and are unable to approve or regulate such policies when offered for sale by issuers that are not licensed by their State. Further, The Departments have received feedback that many issuers are taking advantage of the ambiguity about which State's jurisdiction applies, to avoid local State regulation. For example, one study found that in a review of 34 policy brochures for STLDI, 28 of the brochures included references to associations.[153] Consumers may not understand that some STLDI marketed in their States is not regulated by their State and does not include State-based consumer protections.

Coverage that is provided to or through associations, but not related to employment, and is sold to individuals, either as certificate holders or policyholders, is not group coverage under section 9832 of the Code, section 733(b)(4) of ERISA, and section 2791(b)(4) of the PHS Act.[154] If the coverage is offered to an association member other than in connection with a group health plan, the coverage is considered coverage in the individual market under Federal law, regardless of whether it is considered group coverage under State law. Thus, any health insurance sold to individuals through a group trust or association, other than in connection with a group health plan, or sold to a group trust or association to the extent the insurance is intended to cover association members who are individuals, must meet the definition of STLDI at 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103, or else be considered individual health insurance coverage that is subject to all the Federal individual market consumer protections and requirements for comprehensive coverage.

The Departments are aware that some group trusts and associations have also marketed STLDI policies to employers as a form of employer-sponsored coverage. As explained in section I.C of this preamble, there is no provision excluding STLDI from the Federal definition of group health insurance coverage.[155] Thus, any health insurance that is sold to or through a group trust or association in connection with a group health plan and which purports to be STLDI would in fact be group health insurance coverage that must comply with the Federal consumer protections and requirements for comprehensive coverage applicable to the group market.

The Departments are not proposing any policies or policy changes specific to STLDI sold through associations, but request comments on what steps, if any, can be taken to support State oversight of STLDI sold to or through associations.

6. Applicability Dates

In 26 CFR 54.9833–1, 29 CFR 2590.736, and 45 CFR 146.125 and 148.102, the Departments propose applicability dates for the proposed amendments to the Federal definition of STLDI that distinguishes between new and existing STLDI. The Departments also propose a technical amendment to 26 CFR 54.9833–1, 29 CFR 2590.736, and 45 CFR 146.125 to remove outdated language that references revisions to 45 CFR parts 144 and 146 that became effective on October 1, 2004, but were superseded by subsequent revisions that became effective on July 1, 2005. The Departments propose the technical amendment would apply to all coverage (that is, both new and existing STLDI) as of the effective date of the final rules.

For new STLDI sold or issued on or after the effective date of the final rules, the amendments to the definition of STLDI would apply for coverage periods beginning on or after such date. The Departments are of the view that timely implementation of the new Federal definition of STLDI, including both the maximum duration and revised notice provisions, for new coverage sold or issued on or after the effective date of the final rules, is critical to maximize the number of individuals benefiting from the consumer protections described throughout this preamble. This proposal would prevent delays in implementation of the new Federal definition of STLDI, while providing a sufficient transition period for interested parties to implement the new definition for new coverage sold on or after the effective date of the final rules.

However, for STLDI sold or issued before the effective date of the final rules (including any subsequent renewal or extension consistent with applicable law), the current Federal definition of such coverage would continue to apply with respect to the maximum allowable duration. Therefore, existing STLDI could continue to have an initial contract term of less than 12 months and a maximum duration of up to 36 months (taking into account any renewals or extensions), subject to any limits under applicable State law. The Departments propose this applicability date with respect to the maximum allowable duration for existing STLDI (including renewals and extensions) to minimize disruption for individuals who purchased or were enrolled in STLDI prior to the effective date of the final rules. The Departments recognize that consumers already enrolled in STLDI may have anticipated having the option of continuing such coverage for a given period of time, consistent with the current rules. The proposal to permit such individuals to remain covered under STLDI for the maximum initial contract term, as well as for renewals and extensions to the extent permitted under the current regulations, subject to any limits under applicable State law, would promote continuous enrollment in coverage and ensure that these consumers have adequate time to transition to comprehensive coverage.

The Departments propose that the amendments to the notice provision at paragraph (2) of the definition of ''short-term, limited-duration insurance'' in 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103 would apply for coverage periods beginning on or after the effective date of the final rules, regardless of whether the coverage was sold or issued before, on, or after the effective date of the final rules.[156] The Departments are of the view that the benefit to consumers, including those currently enrolled in STLDI, of a timely

[152] *See* U.S. House of Representatives Committee on Energy and Commerce (2020). ''Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Health Insurance Plans Is Putting Americans at Risk,'' available at: *https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health.*

[153] Curran, Emily, Dania Palanker, and Sabrina Corlette (2019). ''Short-term Plans Sold Through Out-of-State Associations Threaten Consumer Protections,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2019/short-term-health-plans-sold-through-out-state-associations-threaten-consumer-protections.*

[154] 45 CFR 144.102(c).

[155] *See* section 2791(b)(5) of the PHS Act, which excludes STLDI from the definition of ''individual health insurance coverage.''

[156] As noted above, the proposed revised notice would also apply to new STLDI coverage for coverage periods beginning on or after the effective date of the final rules.

notice update outweighs the burden to issuers of implementing these changes by the effective date of the final rules. Given that the updates to the notice are aimed at alerting consumers to the differences between comprehensive coverage and STLDI and providing consumers with the information necessary to make an informed decision about their coverage options, a delayed applicability date of the proposed changes to the notice could result in unnecessary harm to consumers.

The Departments seek comments on whether the proposed revised notice should apply to only new STLDI or should apply to both new STLDI and existing coverage upon renewal or extension, and whether the application of the proposed revised notice to existing STLDI should instead be delayed until January 1, 2025, or some other date. The Departments seek comments on whether all STLDI policies and any renewals or extensions of such coverage, including existing coverage sold or issued prior to the effective date of the final rules, should instead end upon the effective date of the final rules or some other date. The Departments also seek comments on whether an applicability date that would provide a longer transition period for consumers with policies, certificates, or contracts of STLDI sold or issued before the effective date of the final rules could help alleviate any potential market disruption; for example, allowing consumers to renew existing coverage for an additional 12-month period after any renewals under their original coverage are exhausted. The Departments also seek comments on whether it would be more reasonable for all STLDI policies and any renewals or extensions of such coverage in effect before the date the final rules are published to end before January 1, 2025, or some other date.

7. Severability

In the event that any portion of the final rules implementing one or more proposals in these proposed rules is declared invalid or unenforceable, by its terms or as applied to any entity or circumstance, or stayed pending further agency action, the Departments intend that the proposed amendments to the definition of ''short-term, limited-duration insurance'' be severable, and that the proposed amendments to the definition of ''short-term, limited-duration insurance'' in 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103 would continue even if one or more aspects of the proposed changes is found invalid. To capture this intent, the Departments propose to add a severability provision to the proposed amended definition of ''short-term, limited-duration insurance'' at 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103. The severability of these provisions is discussed in more detail in section VI of this preamble.

B. Independent, Noncoordinated Excepted Benefits Coverage

1. Fixed Indemnity Excepted Benefits Coverage

As described in section I.D of this preamble, Congress identified various types of excepted benefits, each of which is not subject to the Federal consumer protections and requirements for comprehensive coverage.[157] In so doing, Congress established an exemption for those types of coverage that offer more limited and narrow benefits than comprehensive coverage.[158] Insurance that pays a fixed amount under specified conditions without regard to other insurance (that is, ''hospital indemnity or other fixed indemnity insurance'') is considered an excepted benefit if offered on an independent, noncoordinated basis, and such insurance coverage is exempt from Federal consumer protections and requirements for comprehensive coverage.[159]

In order to address reports of troubling marketing and sales tactics and the creation of new benefit designs that mislead consumers to believe that hospital indemnity or other fixed indemnity insurance constitutes comprehensive coverage,[160] as well as the changes in market conditions and in the legal landscape that have taken place since the last regulatory activity on this coverage (discussed in sections I and II of this preamble), the Departments are proposing amendments to the Federal regulations at 26 CFR 54.9831–1(c)(4), 29 CFR 2590.732(c)(4), and 45 CFR 146.145(b)(4) that outline the conditions for hospital indemnity and other fixed indemnity insurance to qualify as an excepted benefit in the group market. HHS is also proposing several amendments to the regulation at 45 CFR 148.220(b)(4) that outline the conditions for such insurance to qualify as excepted benefits coverage in the individual market. These proposals would provide greater clarity regarding what it means for fixed indemnity excepted benefits coverage to be offered on an ''independent, noncoordinated'' basis and to provide benefits in a ''fixed'' amount, consistent with the statutory purpose of exempting this type of coverage from the Federal consumer protections and requirements for comprehensive coverage.

Specifically, HHS proposes to require that fixed indemnity excepted benefits coverage in the individual market must provide benefits that are paid only on a per-period basis. This change to the HHS individual market regulations for excepted benefits would align the standard for individual market fixed indemnity excepted benefits coverage with the Departments' current group market regulations for such coverage.[161]

Additionally, the Departments propose to amend the group market regulations for hospital indemnity and other fixed indemnity insurance to qualify as an excepted benefit, including proposing new standards governing the payment of fixed benefits and examples to clarify these new proposed standards. HHS similarly proposes to amend the standards governing the payment of fixed benefits under such coverage in the individual market. The Departments further propose to add a new example to the group market regulations to address the prohibition on coordination between fixed indemnity excepted benefits coverage and any group health plan maintained by the same plan sponsor. This example illustrates the Departments' proposed interpretation of the ''noncoordination'' requirements for hospital indemnity or other fixed indemnity coverage to qualify as excepted benefits and the extension of this interpretation to situations that do not involve a formal coordination-of-benefits arrangement. HHS similarly proposes to apply this interpretation of the ''noncoordination'' requirement to individual market fixed indemnity excepted benefits coverage. As detailed in section III.B.1.e of this preamble, HHS further proposes to modify the

[157] *See* sections 9831(b)–(c) and 9832(c) of the Code, sections 732(b)–(c) and 733(c) of ERISA, and sections 2722(b)–(c), 2763 and 2791(c) of the PHS Act.

[158] *See* Interim Rules for Health Insurance Portability for Group Health Plans, 62 FR 16894, 16903 (April 8, 1997).

[159] *See* sections 9831(b)–(c) and 9832(c) of the Code, sections 732(b)–(c) and 733(c) of ERISA, and sections 2722(c)(2), 2763(b) and 2791(c)(3)(B) of the PHS Act. *See also* 26 CFR 54.9831–1(c)(4), 29 CFR 2590.732(c)(4), and 45 CFR 146.145(b)(4) and 148.220(b)(4).

[160] *See, e.g.,* Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Coverage is a Problematic Form of ''Junk'' Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance. See also* Partnership to Protect Coverage (2021). ''Under-Covered: How 'Insurance-Like' Products are Leaving Patients Exposed,'' available at: *https://www.nami.org/NAMI/media/NAMI-Media/Public%20Policy/Undercovered_Report_03252021.pdf.*

[161] *See* 26 CFR 54.9831–1(c)(4)(i), 29 CFR 2590.732(c)(4)(i), and 45 CFR 146.145(b)(4)(i).

requirement at current 45 CFR 148.220(b)(4)(ii) to align with the statutory requirement that ''noncoordinated, excepted benefits'' in the individual market be provided without regard to whether benefits are provided under any health insurance coverage maintained by the same health insurance issuer.[162] [163]

The Departments also propose to require a consumer notice be provided when offering fixed indemnity excepted benefits coverage in the group market, in alignment with the existing requirement to provide such a notice in connection with fixed indemnity excepted benefits coverage offered in the individual market. HHS also proposes changes to the consumer notice that must be provided when offering fixed indemnity excepted benefits coverage in the individual market.[164]

These proposed changes are generally intended to more clearly distinguish fixed indemnity excepted benefits coverage from comprehensive coverage in order to reduce confusion and misinformation related to fixed indemnity excepted benefits coverage, increase consumers' understanding of their health coverage options, and provide more information to support consumers in making informed coverage purchasing decisions. In addition, as noted in section II.B of this preamble, the recent experience with the COVID–19 PHE has highlighted the value of a framework that encourages individuals to enroll in comprehensive coverage and also prompted the Departments to examine the Federal regulations governing fixed indemnity excepted benefits coverage. The proposed amendments are also designed to align the fixed indemnity excepted benefits coverage regulations across the individual and group markets when practical and appropriate and clarify the conditions applicable to fixed indemnity excepted benefits coverage for all interested parties, including consumers, issuers, employers, agents, brokers, and State regulators.

[162] See section 2722(c)(2)(C) of the PHS Act.

[163] As discussed in section III.B.1.f of this preamble, HHS is also proposing a technical amendment to redesignate 45 CFR 148.220(b)(4)(ii) as 45 CFR 148.220(b)(4)(i).

[164] The consumer notice for individual market fixed indemnity excepted benefits coverage is currently codified at 45 CFR 148.220(b)(4)(iv). If HHS finalizes the proposed amendments to the individual market fixed indemnity excepted benefit regulation as proposed, the individual market consumer notice would be revised and moved to 45 CFR 148.220(b)(4)(iii). See section III.B.1.d of this preamble for more details.

a. Per-Period Basis Fixed Payment Standard

HHS proposes to amend 45 CFR 148.220(b)(4) to reinstate the condition that to qualify as an excepted benefit in the individual market, hospital indemnity or other fixed indemnity insurance must pay fixed benefits only on a per-period basis and to remove the current option for such coverage to pay fixed benefits on a per-service basis.[165] As proposed, HHS would move the fixed payment standard currently captured in 45 CFR 148.220(b)(4)(iii) to a new proposed paragraph (b)(4)(ii) at 45 CFR 148.220 and revise it to require that benefits are paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day).[166]

Fixed indemnity excepted benefits coverage is intended to serve as a source of income replacement or financial support, paying benefits at a fixed amount per qualifying medical event. This type of coverage is not comprehensive coverage, and benefit payments under fixed indemnity excepted benefits coverage are paid without regard to the actual amount of expenses incurred by a covered individual.[167] HHS is of the view that hospital indemnity or other fixed indemnity insurance products made available in the individual market that closely resemble comprehensive coverage, by incorporating features typically included in comprehensive coverage, obscure the difference between fixed indemnity excepted benefits coverage and comprehensive coverage. HHS is no longer of the view that the value of providing issuers with the flexibility to offer fixed indemnity excepted benefits coverage in the individual market that pays benefits on a per-service basis outweighs the potential harm to consumers who may purchase fixed indemnity excepted benefits coverage as a substitute for, or under the misapprehension that they are purchasing, comprehensive coverage. Because fixed indemnity excepted benefits coverage typically provides benefits that are far below actual medical expenses, individuals who rely on this type of coverage as their primary form of health insurance are at risk of financial harm.[168]

Significant legal and market developments since the 2014 final rule was published have altered the landscape in which fixed indemnity excepted benefits coverage is marketed and sold to consumers.[169] The Departments are of the view that these changes have increased the likelihood that individual market consumers may purchase fixed indemnity excepted benefits coverage as a substitute for comprehensive coverage, rather than as a form of income replacement or financial support that supplements comprehensive coverage. Therefore, these changes have also altered the balance that HHS intended to achieve with the amendments to the individual market fixed indemnity excepted benefits coverage regulation in its 2014 final rule.

In addition to these changes, HHS has observed concerning trends in how fixed indemnity excepted benefits coverage in the individual market is designed and marketed. As noted in the preamble to the 2014 proposed rule, hospital indemnity or other fixed indemnity insurance policies that pay benefits on a ''per-service'' basis have been widely available in the individual market for many years, including prior to the 2014 final rule, in part because many State regulators determined that consumers valued the ability to purchase per-service hospital indemnity or other fixed indemnity insurance to complement MEC, emphasizing its value as a supplement to (rather than a replacement for) comprehensive

[165] As discussed further in section III.B.1.b of this preamble, HHS proposes other amendments to the new proposed paragraph (b)(4)(ii) at 45 CFR 148.220 to capture the proposed new additional payment standards for hospital indemnity or other fixed indemnity insurance to qualify as excepted benefits. As part of other amendments to 45 CFR 148.220(b), HHS also proposes to revise and move the consumer notice requirement applicable to individual market fixed indemnity excepted benefits coverage. See section III.B.1.d of this preamble for further details. As part of other technical and conforming amendments to the individual market regulation, HHS also proposes to move and modify the existing individual market ''noncoordination'' standard from its current location at 45 CFR 148.220(b)(4)(ii) to 45 CFR 148.220(b)(4)(i). See section III.B.1.e and III.B.1.f of this preamble for further details.

[166] As discussed further in section III.B.1.b of this preamble, HHS proposes other amendments to the new proposed paragraph (b)(4)(ii) at 45 CFR 148.220 to capture the proposed new additional payment standards for hospital indemnity or other fixed indemnity insurance to qualify as excepted benefits.

[167] 26 CFR 54.9831–1(c)(4)(i), 29 CFR 2590.732(c)(4)(i), and 45 CFR 146.145(b)(4)(i) and 148.220(b)(4)(iii).

[168] *See* Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Coverage is a Problematic Form of ''Junk'' Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance.*

[169] See discussion elsewhere in this preamble (for example, in sections I.A, I.D.1 and II of this preamble) related to such developments, including the enactment of the Tax Cuts and Jobs Act and the decision in *Central United Life* v. *Burwell.*

coverage.[170] Since the 2014 final rule was finalized, however, HHS has seen products marketed and sold in the individual market as fixed indemnity excepted benefits coverage with features that make the products more closely resemble comprehensive coverage than traditional forms of fixed indemnity excepted benefits coverage, but without many of the required consumer protections of comprehensive coverage.

For example, some issuers now offer individual market fixed indemnity policies that pay benefits on the basis of extensive, variable schedules with tens or hundreds of thousands of different benefit amounts that vary by item or service.[171] Some benefits associated with particular items and services appear to be based on Medicare fee-for-service or Diagnosis Related Group (DRG) service descriptions.[172] Some marketing materials claim that benefits are based on ''relative value units,'' an apparent reference to an element of Medicare's physician fee schedule formula, and that exact benefits will vary by the Current Procedural Terminology® (CPT) code submitted by the health care provider furnishing the relevant service, suggesting that benefit levels are based on either actual or estimated costs of care. Benefits under this coverage might be provided related to the receipt of items and services outside the scope of a traditional understanding of ''hospitalization or illness,'' such as preventive cancer screenings, pediatric vaccines, or wellness visits, which further increases the likelihood that a consumer could confuse the coverage with comprehensive coverage.

Common benefit designs for individual market fixed indemnity coverage include fixed benefit schedules (for example, $50 per office visit, $100 per surgical procedure, or $20 per generic prescription), payments made on a percentage basis up to a cap that might itself vary based on benefit category (for example, 25 percent of a fixed amount for a hospitalization, capped at $5,000), or on the basis of ''tiers'' of complexity (for example, $500 for a lower-complexity ''Tier 7'' surgery such as a tonsillectomy or up to $50,000 for a major organ transplant categorized as a ''Tier 1'' procedure). Some issuers of hospital indemnity or other fixed indemnity insurance in the individual market advertise the availability of a network of providers that accept a lower rate of reimbursement. Additionally, some hospital indemnity or other fixed indemnity insurance pay benefits directly to the health care provider or facility that furnished services to the covered individual, rather than directly to the policyholder (as would be expected if the benefits were actually functioning as income replacement or a supplement to comprehensive coverage).[173] In this manner, these policies operate in a way that is similar to the way in which plans and issuers frequently reimburse providers under comprehensive coverage.

Therefore, to limit the practice of designing complex, fee-for-service style fixed indemnity plans that are marketed and sold as an alternative to comprehensive coverage, HHS proposes to reinterpret what it means for hospital indemnity or other fixed indemnity insurance to provide ''fixed'' benefits in the individual market and remove the language that permits individual market fixed indemnity excepted benefits coverage to provide fixed benefits on a per-service basis. HHS also proposes to update the parenthetical reference that captures the allowance for issuers to provide fixed benefits per other period, to refer to per other ''time'' period, to further emphasize the prohibition on providing benefits on a per-service or per-item basis. To implement these changes, HHS proposes to move the current fixed payment standard from 45 CFR 148.220(b)(4)(iii) to a new proposed paragraph (b)(4)(ii) at 45 CFR 148.220 and revise it to require that benefits are paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day).[174]

Under this proposal, issuers may offer coverage similar to hospital indemnity or other fixed indemnity insurance that pays benefits on a per-service basis, subject to applicable State law requirements, but under Federal law these plans would not be considered excepted benefits and would be required to comply with the Federal consumer protections and requirements for comprehensive coverage.

HHS seeks comments on these proposed changes. In particular, HHS seeks comments on how the proposed amendment to require individual market fixed indemnity excepted benefits coverage to pay fixed benefits only on a per-period basis may affect consumers' ability to make an informed choice regarding health insurance options and how it may impact affordability or access to health coverage or care.

b. Additional Fixed Payment Standards

The Departments propose to amend the group market fixed indemnity excepted benefits coverage provisions at 26 CFR 54.9831–1(c)(4), 29 CFR 2590.732(c)(4), and 45 CFR 146.145(b)(4) to recodify existing payment standards and to establish additional standards related to the payment of benefits under fixed indemnity excepted benefits coverage in the group market. These proposals are intended to provide greater clarity and reduce the potential for consumers to mistakenly enroll in excepted benefits coverage as a replacement for or alternative to comprehensive coverage by further interpreting what it means for hospital indemnity or other fixed indemnity insurance to provide ''fixed'' benefits.

Specifically, these proposed rules provide that to be hospital indemnity or other fixed indemnity insurance that qualifies as an excepted benefit in the group market, the benefits must also meet each of the additional fixed payment standards specified in new proposed 26 CFR 54.9831–1(c)(4)(ii)(D)(*1*), 29 CFR 2590.731–1(c)(4)(ii)(D)(*1*), and 45 CFR 146.145(b)(4)(ii)(D)(*1*).[175] These new proposed rules would retain and

[170] National Association of Insurance Commissioners (2013). ''Letter to Secretaries of Labor, Treasury, and Health and Human Services,'' available at: *https://naic.soutronglobal.net/Portal/Public/en-GB/RecordView/Index/23541.*

[171] *See* Appleby, Julie (2021). ''New Health Plans Offer Twists on Existing Options, With a Dose of 'Buyer Beware','' KFF Health News, available at: *https://khn.org/news/article/new-health-plans-offer-twists-on-existing-options-with-a-dose-of-buyer-beware.*

[172] Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Coverage is a Problematic Form of ''Junk'' Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance.*

[173] See section III.B.1.c of this preamble for a discussion of the Departments' concerns with respect to benefit designs for hospital indemnity or other fixed indemnity insurance that provides direct reimbursement to health care providers and facilities.

[174] As discussed in section III.B.1.b of this preamble, HHS proposes other amendments to the new proposed paragraph (b)(4)(ii) at 45 CFR 148.220 to capture the proposed new additional payment standards for hospital indemnity or other fixed indemnity insurance to qualify as excepted benefits in the individual market.

[175] To qualify as excepted benefits coverage in the group market, hospital indemnity or other fixed indemnity insurance would continue to be required to satisfy each of the conditions currently captured in 26 CFR 54.9831–1(c)(4)(ii)(A) through (C), 29 CFR 2590.731–1(c)(4)(ii)(A) through (C), and 45 CFR 146.145(b)(4)(ii)(A) through (C). If these proposed rules are finalized as proposed, the issuer would also be required to comply with the consumer notice requirements in new proposed 26 CFR 54.9831–1(c)(4)(ii)(D)(*2*) through (*4*), 29 CFR 2590.731–1(c)(4)(ii)(D)(*2*) through (*4*), and 45 CFR 146.145(b)(4)(ii)(D)(*2*) through (*4*).

amend [176] the existing per-period fixed payment standard to require that benefits under hospital indemnity or other fixed indemnity insurance be paid as a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100 day) regardless of the amount of expenses incurred.[177] In doing so, these proposed rules would require that benefits be offered as ''fixed'' amounts, align with the statutory condition that the coverage be offered on a noncoordinated basis,[178] and distinguish fixed indemnity excepted benefits coverage from coverage for actual health care costs incurred or services received. These proposed rules thus reflect that fixed indemnity excepted benefits coverage is intended to offer income replacement or financial support for medical expenses not covered by comprehensive coverage or for non-medical related expenses in the event of an unexpected or serious health event.

Rather than transferring risk for health care costs from a participant, beneficiary, or enrollee to the issuer or plan sponsor or otherwise providing comprehensive coverage, fixed indemnity excepted benefits coverage is intended to provide a fixed, pre-determined level of cash benefits. These benefits payments are made upon the occurrence of a health-related event, such as a period of hospitalization or illness, but are otherwise unrelated to expenses incurred or health care services received. Coverage that varies benefits based on health care costs, services received, or benefits paid under other forms of coverage does not provide the kind of ''fixed'' benefits that are fixed indemnity excepted benefits exempt from the Federal consumer protections and requirements for comprehensive coverage.

The Departments therefore propose to expand the existing payment standards for group market fixed indemnity excepted benefits coverage to further interpret what it means to provide ''fixed'' benefits. The Departments also propose to require that benefits under fixed indemnity excepted benefits coverage in the group market be paid regardless of the actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered participant or beneficiary, or any other characteristics particular to a course of treatment received by a covered participant or beneficiary. The Departments further propose to amend the group market fixed indemnity excepted benefit regulations to affirm that benefits cannot be paid on any other basis (such as on a per-item or per-service basis). The Departments propose to set forth these new payment standards for group market fixed indemnity excepted benefits coverage at 26 CFR 54.9831–1(c)(4)(ii)(D)(*1*), 29 CFR 2590.732(c)(4)(ii)(D)(*1*), and 45 CFR 146.145(b)(4)(ii)(D)(*1*). HHS proposes parallel amendments to similarly expand the payment standards for individual market fixed indemnity excepted benefits coverage in 45 CFR 148.220(b)(4)(ii). These new proposed payment standards are designed to further distinguish fixed indemnity excepted benefits coverage from comprehensive coverage, in order to reduce the potential for consumer confusion that can result in consumers mistakenly enrolling in hospital indemnity or other fixed indemnity insurance as a replacement for or alternative to comprehensive coverage. Additionally, these proposals would ensure that hospital indemnity or other fixed indemnity insurance that qualifies as excepted benefits is providing benefits in a ''fixed'' amount per-day or per other time period.

These proposals also would help to prevent attempts to circumvent otherwise applicable Federal consumer protections and requirements for comprehensive coverage by labeling a policy that provides extensive benefits that vary based on expenses incurred, services or items received, or other clinical or diagnostic criteria as fixed indemnity excepted benefits coverage.[179] The Departments are aware of some policies sold as hospital indemnity or other fixed indemnity insurance in the group market that appear to label benefits as though they are being paid on a ''per-period'' basis, when benefits are effectively based on the types of services or items received. For example, a policy may provide a fixed payment of $25 ''per day'' that a participant or beneficiary fills a prescription, receives a medical exam, or undergoes a wellness screening. In these cases, the benefit is effectively provided on a per-service basis because typically an individual does not fill a prescription or receive a medical exam or wellness screening more than once per day; therefore, merely affixing ''per day'' (or per other period) to the benefit description does not serve to limit payment to a per-period benefit in any meaningful sense.

In addition, some issuers offering these policies pay benefits according to a ''tiered'' payment schedule under which the benefit amount increases (or decreases) based on the severity of the participant's, beneficiary's, or enrollee's condition or the complexity of a service or item received, with exact benefit amounts based on the relative value unit for the exact service code for the service or item provided. Similarly, a structure that provides higher benefit amounts as a result of a covered individual taking air versus ground transportation services represents another example of a benefit and payment structure for hospital indemnity or other fixed indemnity insurance that varies based on actual costs or estimated cost of services or severity of the illness, injury or condition of a covered participant or beneficiary.

The Departments are of the view that these benefit designs and practices circumvent the requirement that fixed indemnity excepted benefits coverage provide benefits on a fixed, per-period basis. The proposed regulatory amendments and changes to the interpretation of what it means to provide benefits in a ''fixed'' amount, particularly the proposal that benefits be paid without regard to items or services received, would further safeguard against practices designed to evade the existing per-period requirement in the group market and would strengthen the proposed parallel requirement in the individual market. The proposed update to the parenthetical reference in new proposed 26 CFR 54.9831–1(c)(4)(ii)(D)(*1*), 29 CFR 2590.732(c)(4)(ii)(D)(*1*), and 45 CFR 146.145(b)(4)(ii)(D)(*1*) that captures the allowance for plans and issuers to provide fixed benefits per other period, to refer to per other ''time'' period, further emphasizes the prohibition on providing benefits on a per-service or per-item basis. Additionally, the proposed new example at 26 CFR 54.9831–1(c)(4)(iv)(B), 29 CFR 2590.732(c)(4)(iv)(B), and 45 CFR

[176] Similar to the individual market fixed indemnity excepted benefits coverage regulation, the Departments propose to update the parenthetical reference that captures the allowance for plans and issuers to provide fixed benefits per other period to refer to per other ''time'' period, to further emphasize the prohibition on providing benefits on a per-service or per-item basis.

[177] 26 CFR 54.9831–1(c)(4)(i), 29 CFR 2590.731–1(c)(4)(i), and 45 CFR 146.145(b)(4)(i).

[178] Section 9832(c)(3) of the Code, section 733(c)(3) of ERISA, and section 2791(c)(3) of the PHS Act. *See also* section 9831(c)(2) of the Code, section 732(c)(2) of ERISA, and sections 2722(c)(2) and 2763(b) of the PHS Act.

[179] When analyzing whether a policy, certificate, or contract of insurance is subject to the Federal consumer protections and requirements for comprehensive coverage, the Departments look past the label used, to examine whether the policy, certificate, or contract of insurance meets applicable requirements or conditions to qualify as an excepted benefit, or whether it is comprehensive coverage that is subject to the Federal consumer protections and requirements applicable to such coverage.

146.145(b)(4)(iii)(B), and discussed elsewhere in this preamble section, specifically provides that merely appending a ''per day'' (or per other time period) label to a benefit that is being paid on the basis of the provision of an item or service does not meet the requirement that fixed indemnity excepted benefits coverage provide benefits on the basis of a period of hospitalization or illness.

The Departments will closely examine as part of potential enforcement actions whether any product offered as fixed indemnity excepted benefits coverage in the group market that claims to provide benefits per day (or other period) of hospitalization or illness is in effect making payment on any other basis, such as a per-service or per-item basis, for example, by simply affixing a ''per day'' term to benefits offered that are related to the receipt of specific items and services. HHS will take a similar approach with respect to products offered as fixed indemnity excepted benefits in the individual market if the proposal to require that individual market fixed indemnity excepted benefits be paid only on a per-period basis is finalized.

In addition, some interested parties have suggested that a fixed indemnity plan that pays benefits on a per-service schedule is paying benefits regardless of the amount of expenses incurred if the plan does not vary benefits based on the actual amounts charged for services received. However, varying benefits based on items or services increases the risk that consumers will confuse fixed indemnity excepted benefits coverage with comprehensive coverage, undermining a central reason for exempting this type of coverage from the Federal consumer protections and requirements for comprehensive coverage. The provisions of these proposed rules to require that fixed indemnity excepted benefits coverage pay benefits in a fixed amount regardless of the actual or estimated amount of expenses incurred, services or items received, or severity of illness or injury experienced would help further distinguish fixed indemnity excepted benefits coverage from comprehensive coverage, mitigate the potential for consumers to confuse the two types of coverage, and thereby reduce the risk that a consumer would enroll in fixed indemnity excepted benefits coverage as a replacement for or alternative to comprehensive coverage.

The Departments are also considering whether the requirement that hospital or other fixed indemnity insurance pay a fixed dollar amount ''per day (or per other period) of hospitalization or illness'' in the group market regulations [180] should be interpreted as a requirement that benefits be paid on the basis of an actual period of time during which a covered individual experiences a qualifying period of hospitalization or illness (subject to the terms of the contract) in order to qualify as an excepted benefit. Under this interpretation, hospital or fixed indemnity insurance that pays a fixed dollar benefit on a per-period basis but not specifically related to a period of ''hospitalization or illness''—such as $50 per day that an individual receives one or more specified screening tests—would not qualify as fixed indemnity excepted benefits. For example, benefit payments that are provided solely on the basis of the receipt of a surgical service or medical exam rather than a period of time during which a covered individual is hospitalized or experiences an illness would not qualify as fixed indemnity excepted benefits under the approach the Departments are considering.

The Departments seek comment on this interpretation, including how adopting this approach would affect existing products that are sold and marketed as fixed indemnity excepted benefits coverage and how such an interpretation would enhance or detract from consumer access to high-quality, affordable health care. HHS similarly requests comment on the effects of applying this interpretation of the phrase ''per day (or per other period) of hospitalization or illness'' in the individual market regulation at 45 CFR 148.220(b)(4)(ii),[181] if the proposal to require that individual market fixed indemnity excepted benefits be paid only on a per-period basis is finalized and the Departments finalize this additional interpretation of what it means to provide benefit payments in a ''fixed'' amount.

Finally, the Departments propose to amend the payment standards for fixed indemnity excepted benefits coverage to require that benefits be paid in a fixed amount regardless of any other characteristics particular to a course of treatment received by the covered participant or beneficiary. This standard is proposed as part of the proposed new payment standards in the group market regulations at 26 CFR 54.9831–1(c)(4)(ii)(D)(*1*), 29 CFR 2590.732(c)(4)(ii)(D)(*1*), and 45 CFR 146.145(b)(4)(ii)(D)(*1*). For purposes of this proposal, a ''course of treatment'' refers to a coordinated series of items or services intended to treat a particular health condition over a fixed period of time or indefinitely, pursuant to a plan of care established and managed by a health care professional or team of health care professionals. For example, an oncologist may establish a course of treatment for an individual with a cancer diagnosis that includes a sequence of surgery, chemotherapy, and radiation, scheduled to begin and end over a set period of months; or a psychiatrist and therapist may work together to establish a course of treatment for an individual with a chronic mental health condition that includes prescription medication and group and individual talk therapy on an ongoing basis without a specified end date.

Because a course of treatment is a set of coordinated services, interpreting ''fixed'' benefits to exclude payments based on a course of treatment is aligned with and strengthens the proposal to require that benefits be paid regardless of items or services received. Such interpretation also prevents plans and issuers of hospital indemnity or other fixed indemnity insurance from basing payment on a set of multiple items or services, thereby circumventing the requirement that payment not be based on items or services received. It is similarly aligned with the proposals to require that benefits be paid regardless of actual or estimated cost of services and regardless of the severity of illness or injury. Additionally, consumers are more likely to have difficulty distinguishing between comprehensive coverage and fixed indemnity excepted benefits coverage that adopts such benefit designs and are therefore more likely to enroll in fixed indemnity excepted benefits coverage under the mistaken belief that it is a suitable replacement for or alternative to comprehensive coverage.

The Departments are concerned about the practice among some issuers, employers, agents, brokers, and associations of offering fixed indemnity excepted benefits coverage as a package in combination with other products (including other excepted benefits) in order to appear to provide comprehensive coverage.[182] In addition, as discussed in section III.B.1.e of this preamble, the Departments are

[180] 26 CFR 54.9831–1(c)(4)(i), 29 CFR 2590.731–1(c)(4)(i), and 45 CFR 146.145(b)(4)(i).

[181] As discussed in section III.B.1.f of this preamble, HHS is also proposing a technical amendment to redesignate 45 CFR 148.220(b)(4)(ii) as 45 CFR 148.220(b)(4)(i).

[182] Palanker, Dania and Kevin Lucia (2021). ''Limited Plans with Minimal Coverage Are Being Sold as Primary Coverage, Leaving Consumers at Risk,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2021/limited-plans-minimal-coverage-are-being-sold-primary-coverage-leaving-consumers-risk*.

concerned about the practice among some employers and issuers of presenting a group health plan that includes only limited benefits coupled with an extensive fixed indemnity policy. In light of the potential harm to consumers who may enroll in fixed indemnity excepted benefits coverage under the mistaken impression that they have access to comprehensive coverage because it was paired with a limited employer-sponsored group health plan, the Departments are of the view that prohibiting fixed indemnity excepted benefits coverage from paying benefits on the basis of a course of treatment would further reduce the risk that this coverage would be packaged with other forms of coverage to circumvent Federal consumer protections and requirements for comprehensive coverage. Therefore, the Departments propose to adopt a new interpretation of what it means for fixed indemnity excepted benefits coverage to provide ''fixed'' benefits and require such coverage to also pay benefits in a ''fixed'' amount that does not vary based on the characteristics particular to a course of treatment received by a covered participant or beneficiary. The Departments seek comments on whether this proposal is a necessary complement to the other additional fixed payment standards in these proposed rules.

The Departments also propose including a new example (Example 2) in the group market regulations, at new proposed 26 CFR 54.9831–1(c)(4)(iv)(B), 29 CFR 2590.732(c)(4)(iv)(B), 45 CFR 146.145(b)(4)(iii)(B), to illustrate the requirement that fixed indemnity excepted benefits coverage in the group market must pay a fixed dollar amount per day (or per other period) of hospitalization or illness. This proposed example would also illustrate the new payment standards proposed in these rules that fixed indemnity excepted benefits coverage in the group market pay benefits without regard to services received. This new example describes a group health plan or health insurance issuer offering coverage through an insurance policy that provides benefits related to the receipt of specific items and services in a fixed amount, such as $50 per blood test or $100 per visit. The example concludes that the policy would not qualify as fixed indemnity excepted benefits coverage, because the benefits are not paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness. The proposed example also explains that the conclusion would be the same even if the policy added a per day (or per other time period) term to the benefit description, such as ''$50 per blood test per day,'' because the benefits are not paid regardless of the services or items received. The Departments also propose to retain, while making technical and conforming amendments to, the existing example (which the Departments propose to designate as Example 1) in the group market rules.[183]

HHS also proposes parallel amendments to the individual market fixed indemnity excepted benefits coverage regulation at new proposed 45 CFR 148.220(b)(4)(ii) to require that fixed indemnity excepted benefits coverage in the individual market provide benefits in a ''fixed'' amount regardless of the actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered individual, or any other characteristics particular to a course of treatment received by a covered individual.

In addition, and as discussed in greater detail in section III.B.1.e of this preamble, HHS proposes to include language in new proposed 45 CFR 148.220(b)(4)(ii) to align with section 2722(c)(2)(C) of the PHS Act, which provides that benefits under fixed indemnity excepted benefits coverage in the individual market must also be paid without regard to whether benefits are provided with respect to the event under any other health insurance coverage maintained by the same health insurance issuer. HHS further proposes in new proposed 45 CFR 148.220(b)(4)(ii) to affirm that benefits cannot be paid on any other basis (such as on a per-item or per-service basis). For the same reasons as described in this section with respect to the Departments' parallel changes to the group market regulations, HHS is of the view that these changes to the interpretation of what it means to provide benefits in a ''fixed'' amount are necessary to ensure that issuers of fixed indemnity excepted benefits coverage in the individual market are not able to circumvent the fixed payment standards at new proposed 45 CFR 148.220(b)(4)(ii) that the coverage be provided on a per-period basis. These proposed changes would also align the payment standards for what it means to provide ''fixed'' benefits across the group and individual markets and serve to further distinguish fixed indemnity excepted benefits coverage from comprehensive coverage in both markets.

The Departments request comments on all aspects of these proposed additional standards for fixed payment as they would apply to fixed indemnity excepted benefits coverage offered in the group and individual markets, as well as the proposed new example to illustrate the proposed new ''fixed'' payment standards. Specifically, the Departments seek comments on the effectiveness of the proposed additional fixed payment standards in furthering the Departments' goal of differentiating fixed indemnity excepted benefits coverage from comprehensive coverage to reduce the likelihood that consumers would enroll in fixed indemnity excepted benefits coverage as an alternative to or replacement for comprehensive coverage, including feedback on each proposed payment standard. Additionally, the Departments seek comments on how the proposed payment standards, if finalized, would interact with the existing requirement that group market fixed indemnity excepted benefits coverage provide benefits on a per-period basis only, either individually or collectively, and whether the proposed payment standards would support the effectiveness of the per-period basis requirement and prevent issuers from attempting to circumvent Federal requirements. Similarly, HHS seeks comments on how the proposed additional fixed payment standards would interact with the proposed requirement that individual market fixed indemnity excepted benefits coverage offer benefits on a per-period basis only, if the per-period-only requirement were finalized, including whether the proposed additional payment standards would support the effectiveness of the proposed per-period payment standard, either individually or collectively.

c. Payments Made Directly to Providers

The Departments are aware that some hospital indemnity and other fixed indemnity insurance in the group and individual markets labeled as excepted benefits pay benefits directly to the providers or facilities providing the services or items, rather than to the participant, beneficiary, or enrollee. These arrangements may remove participants, beneficiaries, and enrollees from the payment transaction entirely, if the benefit amount under the hospital

[183] The Departments propose to retain the existing example describing a group health plan that provides benefits only for hospital stays at a fixed percentage of expenses up to a maximum of $100 a day in new proposed 26 CFR 54.9831–1(c)(4)(iv)(A), 29 CFR 2590.732(c)(4)(iv)(A), and 45 CFR 146.145(b)(4)(iii)(A). Consistent with the conclusion reflected in the Departments' current group market regulations, even if the benefits under such a policy satisfy the other applicable conditions, because the policy pays benefits based on a percentage of expenses incurred, the policy does not qualify as excepted benefits coverage. This is the result even if, in practice, the policy pays the maximum of $100 for every day of hospitalization.

indemnity or other fixed indemnity insurance is less than or equal to the provider's or facility's billed charges for care. In other cases, the hospital indemnity or other fixed indemnity insurance may pay benefits directly to the provider or facility as a form of reimbursement for items and services, and issue any balance of benefits to the participant, beneficiary, or enrollee after paying the provider or facility.

For example, one fixed indemnity insurance issuer provides policyholders with a debit card that allows for payment of benefits at the point of service in the form of a temporary advance of the benefits the policyholder may ultimately be eligible to receive. In these cases, the policyholder cannot access any benefit payment under the fixed indemnity insurance until the advance payment to the provider or facility is reconciled with the actual costs and a final determination of benefits is made. Other products labeled as fixed indemnity insurance advertise plan ID cards that participants, beneficiaries, or enrollees are encouraged to use to allow providers to file claims directly with the plan or third-party administrator.[184] Another fixed indemnity plan advertises that members who go to an ''in-network'' retail clinic or urgent care clinic for covered services for the cost of a flat ''co-pay'' will avoid a ''balance bill,'' suggesting that the fixed indemnity coverage is providing direct payment for ''in-network'' services.

By providing direct reimbursement for health care items and services to a provider or facility, these arrangements further obscure the differences between fixed indemnity excepted benefits coverage and comprehensive coverage. In the Departments' view, these arrangements generally are not structured in a way that would meet the current requirement in the group market for benefits to be paid on a per-period basis or the parallel proposed requirement for the individual market. Because the amount of any payment to a provider is often based on the amount reimbursed by another plan or coverage, these arrangements may also be structured in a way that does not meet the statutory requirement that benefits be noncoordinated and paid without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same plan sponsor, or with respect to individual health insurance coverage, under any health insurance coverage offered by the same health insurance issuer.[185] The Departments are also concerned that some of these arrangements may not meet the existing requirement for fixed indemnity excepted benefits coverage to pay a fixed amount regardless of the amount of the expenses incurred.[186]

The Departments reiterate that it is important to look past the label used on any given product to examine whether the coverage meets applicable requirements to qualify as an excepted benefit or is instead coverage that is subject to the Federal consumer protections and requirements for comprehensive coverage. The Departments will closely examine as part of enforcement actions [187] whether any product labeled as fixed indemnity excepted benefits coverage actually satisfies all the applicable requirements, including products that employ a design feature (as opposed to a case-by-case assignment of benefits specifically made by a covered participant, beneficiary, or enrollee) under which benefits are paid directly to health care providers and facilities rather than to the policyholder or participant. HHS intends to follow a similar approach for examining whether any given individual market product meets applicable requirements to qualify as an excepted benefit or is instead comprehensive coverage subject to the Federal consumer protections and requirements for comprehensive coverage.

Although these proposed rules do not include policy or regulatory changes specific to the payment of benefits to providers under fixed indemnity excepted benefits coverage, the Departments seek comments on changes that interested parties think may be useful in this context. The Departments also seek comments on whether additional guidance or rulemaking is needed with respect to such payment arrangements.

d. Notice

To further ensure that consumers purchasing fixed indemnity excepted benefits coverage are aware of the limitations of the coverage and that it is not mistakenly purchased as an alternative or replacement for comprehensive coverage, the Departments propose to require that a consumer notice be provided in relation to group market fixed indemnity excepted benefits coverage.

By requiring a notice be provided to consumers considering enrolling or re-enrolling in group market fixed indemnity excepted benefits coverage, the Departments aim to reduce the potential for consumers to mistakenly enroll in hospital indemnity or other fixed indemnity insurance as their primary source of coverage and increase consumer understanding of the differences between fixed indemnity excepted benefits coverage and comprehensive coverage. As noted in section II.B of this preamble, individuals belonging to historically marginalized populations often experience greater health challenges, as well as greater challenges accessing and using health care services, compared to the general population, including worse health outcomes, higher rates of chronic conditions, lower access to health care, and more frequent experiences of discrimination in health care settings.[188] The Departments are concerned that members of these populations may be particularly vulnerable to misinformation or misleading or aggressive sales tactics. The COVID–19 PHE amplified these longstanding inequities, resulting in disparate rates of COVID–19 infection, hospitalization, and death.[189] In light of these concerns, as well as research identifying disparities in health insurance literacy among certain racial and ethnic minorities and people with incomes below the FPL,[190] these proposals aim

[184] Young, Christen Linke, and Kathleen Hannick (2020). ''Fixed Indemnity Coverage is a Problematic Form of ''Junk'' Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance.*

[185] See section 9831(c)(2)(C) of the Code, section 732(c)(2)(C) of ERISA, and sections 2722(c)(2)(B)–(C) of the PHS Act.

[186] *See* 26 CFR 54.9831–1(c)(4)(i), 29 CFR 2590.732(c)(4)(i), and 45 CFR 146.145(b)(4)(i) and 148.220(b)(4)(iii).

[187] For an overview of applicable enforcement mechanisms, *see* Staman, Jennifer (2020). ''Federal Private Health Insurance Market Reforms: Legal Framework and Enforcement,'' Congressional Research Service, available at *https://crsreports.congress.gov/product/pdf/R/R46637.*

[188] *See* CMS Office of Minority Health (2022). ''The Path Forward: Improving Data to Advance Health Equity Solutions,'' available at: *https://www.cms.gov/files/document/path-forwardhe-data-paper.pdf.*

[189] Moore, Jazmyn, Carolina Luna-Pinto, Heidi Cox, Sima Razi, Michael St. Louis, Jessica Ricaldi, and Leandris Liburd (2021). ''Promoting Health Equity During the COVID–19 Pandemic, United States,'' Bulletin of the World Health Organization, available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8795842.*

[190] Edward, Jean, Amanda Wiggins, Malea Hoepf Young, and Mary Kay Rayens (2019). ''Significant Disparities Exist in Consumer Health Insurance Literacy: Implications for Health Care Reform,'' *Health Literacy Research and Practice,* available at: *https://pubmed.ncbi.nlm.nih.gov/31768496/. See also* Villagra, Victor and Bhumika Bhuva (2019). ''Health Insurance Literacy: Disparities by Race, Ethnicity, and Language Preference,'' *The American Journal of Managed Care,* available at: *https://www.ajmc.com/view/health-insurance-literacy-disparities-by-race-ethnicity-and-language-preference.*

to ensure that all consumers, including those in underserved communities, have the necessary information to make an informed choice after considering and comparing the full range of health coverage options available to them.

The current notice requirement, which applies only in the individual market, requires that the following language be provided in application materials in at least 14-point type:

BILLING CODE 4120–01–, 4150–29–, 4830–01–P

THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES.[191]

In order to align the notice with the changes made by the Tax Cuts and Jobs Act to section 5000A of the Code, and to clarify the message to consumers, the Departments propose to require the following consumer notice for group market fixed indemnity excepted benefits coverage:

Notice to Consumers About Fixed Indemnity Insurance

IMPORTANT: This is fixed indemnity insurance. **This isn't comprehensive health insurance** and **doesn't** have to include most Federal consumer protections for health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

BILLING CODE 4120–01–, 4150–29–, 4830–01–C

This proposed notice would not affect any separate notice requirements under applicable State law, except to the extent that a State notice requirement would prevent application of any Federal notice requirement.

In developing the proposed notice language, the Departments sought to balance the goals of distinguishing fixed indemnity excepted benefits coverage from comprehensive coverage and combatting potential sources of misinformation by directing consumers to appropriate resources to learn more about comprehensive coverage, with the need to provide a concise, understandable notice that would be meaningful to and actionable by consumers. After consulting with plain-language experts, the Departments propose to require the notice as proposed in this section of the preamble, including both the content and formatting of the notice, in order to promote readability, including requiring the notice be provided in sentence case rather than all-caps case (except for the lead-in word ''IMPORTANT'') and requiring the limited use of bold formatting.[192]

The Departments propose to require that plans and issuers prominently display the notice (in either paper or electronic form, including on a website) in at least 14-point font, on the first page of any marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll in the coverage. For this purpose, the Departments would consider marketing materials to include any documents or website pages that advertise the benefits or opportunity to enroll (or reenroll) in fixed indemnity excepted benefits coverage. The Departments are of the view that requiring plans and issuers offering fixed indemnity excepted benefits coverage in the group market to provide the proposed notice to participants (rather than to both participants and any beneficiaries) would appropriately balance the need to ensure that consumers who are considering whether to enroll themselves and their beneficiaries in such coverage are sufficiently informed of their health coverage options with the administrative burden on plans and issuers to provide the notice. The Departments propose to consider the notice to be prominently displayed if it would be easily noticeable to a typical consumer within the context of the page (either print or electronic) on which it is displayed (for example, using a font color that contrasts with the background of the document; ensuring the notice is not obscured by any other written or graphic content on the page; and, when displayed on a website, ensuring the notice is visible without requiring the viewer to click on a link to view the notice). Additionally, if participants are

[191] 45 CFR 148.220(b)(4)(iv). In these proposed rules, HHS proposes to revise and move the individual market consumer notice to 45 CFR 148.220(b)(4)(iii).

[192] Arbel, Yonathan and Andrew Toler (2020). ''ALL–CAPS,'' *Journal of Empirical Legal Studies,* available at: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3519630.* (Finding that all-caps clauses in consumer contracts fail to appreciably improve consumer understanding or information recall, and may have a disproportionately harmful effect on older consumers).

required to reenroll (in either paper or electronic form) for purposes of renewal or reissuance of the group market fixed indemnity excepted benefits coverage, the notice would be required to be displayed in the reenrollment materials that are provided to the participants at or before the time they are given the opportunity to reenroll in coverage. If a plan or issuer provides the required group market notice in accordance with the timeframes in these proposed rules, the obligation to provide the notice would be satisfied for both the plan and issuer.

HHS also proposes to revise the existing individual market consumer notice requirement to use the same content and formatting proposed to be required for the group market fixed indemnity excepted benefits coverage notice and to move the individual market notice requirement to new proposed 45 CFR 148.220(b)(4)(iii). With respect to the individual market fixed indemnity excepted benefits coverage notice, HHS proposes to require that issuers prominently display the notice (in either print or electronic form) in at least 14-point font on the first page of any marketing, application, and enrollment materials that are provided at or before the time an individual has the opportunity to enroll or re-enroll in coverage, in alignment with the proposed group market notice requirements set out in this section of the preamble. For this purpose, HHS would also consider marketing materials to include any documents or website pages that advertise the benefits or opportunity to enroll (or reenroll) in fixed indemnity excepted benefits coverage. HHS further proposes that the individual market notice must also be provided on the first page of the policy, certificate, or contract of insurance, including any documents related to renewals or extensions of fixed indemnity excepted benefit coverage. Similar to the proposed group market notice requirement, the proposed individual market notice would not affect any separate notice requirements under applicable State law, except to the extent that a State notice requirement would prevent the application of any Federal notice requirement.

The Departments are proposing slightly different placement requirements with respect to the group market consumer notice compared to those proposed by HHS with respect to the individual market consumer notice. These different proposed placement requirements are intended to reflect the differences between the types of documents that consumers in the individual market typically receive when considering enrolling or reenrolling in fixed indemnity excepted benefits coverage compared to participants in the group market.

Because the group policy, certificate, or contract of insurance in the group market is often provided to the plan sponsor or the group health plan administrator, the Departments do not propose to require that plans and issuers include the consumer notice in these documents for group market fixed indemnity excepted benefits coverage. Rather, the Departments propose to require that plans and issuers provide this notice on the first page of any marketing, application and enrollment materials (including on a website advertising or offering an opportunity to enroll in fixed indemnity excepted benefits coverage) provided to participants at or before the time they are given the opportunity to enroll. In addition, if participants are required to reenroll (in either paper or electronic form) for purposes of renewal or reissuance of group market fixed indemnity excepted benefits coverage, the notice must be displayed in all reenrollment materials that are provided to the participants at or before the time participants are given the opportunity to reenroll in coverage.

With respect to individual market fixed indemnity excepted benefits coverage, HHS proposes that issuers in the individual market also provide the notice on the first page of the policy, certificate, or contract of insurance, including renewals or extensions, because individual market consumers are likely to receive these documents upon enrollment. This is in addition to providing the notice in all marketing, application and enrollment (or reenrollment) materials for individual market excepted benefit coverage, and also includes prominently displaying the notice on websites that advertise or offer an opportunity to enroll (or reenroll) in fixed indemnity excepted benefits coverage. These proposed requirements related to notice placement are intended to ensure that the notice is provided on documents that consumers are most likely to have the opportunity to review before application, enrollment or reenrollment, based on the Departments' and HHS' understanding of how consumers receive information related to group market versus individual market fixed indemnity excepted benefits coverage.

The Departments also solicit comments on whether it would be beneficial to consumers to require plans and issuers to include some language on the notice that clearly informs consumers that the notice is an officially required document, such as ''This notice is required by Federal law.''

The Departments seek comments on all aspects of the proposed consumer notice for both individual and group market fixed indemnity excepted benefits coverage, including whether its language, formatting, and placement would achieve the stated aims of informing consumers of the nature of the coverage and reducing misinformation, and whether alternative or additional language or mechanisms or timing for delivery could better accomplish these goals. For example, the Departments seek comments on whether providing more detailed information about the Federal consumer protections and requirements for comprehensive coverage versus fixed indemnity excepted benefits coverage, similar to the proposed amendments to the consumer notice for STLDI discussed in section III.A.4 of this preamble, would be valuable to consumers; and if so, what details would be most helpful to highlight for consumers and what format (such as a chart, list, or other presentation) would be most effective to convey this more detailed information.

In addition, the Departments seek comment on alternative language to convey the information in the proposed notice. The Departments offer for consideration an illustrative example. This alternative notice would include the information in the proposed notice, with simplified word choice and reduced sentence length in order to further improve readability. The Departments request feedback on which version of the notice more effectively communicates information to individuals. The text of the alternative proposed fixed indemnity excepted benefits coverage notice is as follows:

WARNING

This is not comprehensive health insurance. This is fixed indemnity insurance.

This may provide a cash benefit when you are sick or hospitalized. It is not intended to cover the cost of your care.

Contact your State department of insurance if you have questions or complaints about this policy.

For info on comprehensive health insurance coverage options:

- Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325)
- Contact your employer or family member's employer

Similar to the proposed consumer notice for STLDI, the Departments are also considering whether the fixed indemnity excepted benefits consumer notice should include State-specific contact language. The Departments therefore also seek comments on any benefits or burdens associated with requiring plans and issuers of fixed indemnity excepted benefits coverage to direct consumers to State-specific resources, including requiring that the notice identify the applicable State Exchange, if the fixed indemnity excepted benefits coverage is filed in a State that does not use *HealthCare.gov*. The Departments also seek comments on any burdens that would be created by a requirement to provide State-specific contact information for the State agency responsible for regulating fixed indemnity excepted benefits coverage in the State where the coverage is filed, rather than a generic reference to the consumer's State department of insurance, as is proposed. If the notice were finalized to require State-specific information, for products that are filed in multiple States, the Departments are considering and solicit comments on whether the notice should include the name of and the phone number for the State department of insurance of the State in which the individual to whom the fixed indemnity excepted benefits coverage is sold or marketed resides, unless the product is not filed in that State. If the product is not filed in the State in which the individual to whom the fixed indemnity excepted benefits coverage is sold or marketed resides, under this approach, if adopted, the Departments would require that the notice include the name and phone number for the department of insurance of the State in which the fixed indemnity excepted benefits coverage policy is filed.

The Departments particularly seek comments from members of underserved communities, and organizations that serve such communities, on whether the language accessibility, formatting, and content of the notice sufficiently mitigate barriers that exist to help all individuals read, understand, and consider the full range of their health coverage options. The Departments also seek comments on the proposed requirement to provide the notice in the marketing, application, and enrollment (or reenrollment) materials for group market coverage, and in the policy, certificate, or contract of insurance, as well as in the marketing, application and enrollment (or reenrollment) materials, for individual market coverage, including the extension of the notice requirement to websites that advertise or offer the opportunity to enroll (or reenroll) in fixed indemnity excepted benefits coverage in the individual and group markets.

The Departments are also interested in comments on whether the proposed placement requirements would substantially improve the likelihood that consumers have a meaningful opportunity to review the notice and their health coverage options before applying, enrolling, or reenrolling in the fixed indemnity excepted benefits coverage, as well as any practical or logistical barriers to providing this notice requirement as proposed.

e. ''Noncoordination'' Requirements

To be considered excepted benefits coverage, hospital indemnity or other fixed indemnity insurance must provide benefits on an independent, noncoordinated basis.[193] Thus, benefits under the coverage must be provided under a separate policy, certificate, or contract of insurance.[194] In addition, consistent with section 9831(c)(2)(B) of the Code, section 732(c)(2)(B) of ERISA, and section 2722(c)(2)(B) of the PHS Act, the group market regulations at 26 CFR 54.9831–1(c)(4)(ii)(B), 29 CFR 2590.732(c)(4)(ii)(B), and 45 CFR 146.145(b)(4)(ii)(B) prohibit coordination between the provision of benefits under fixed indemnity excepted benefits coverage and an exclusion of benefits under any group health plan maintained by the same plan sponsor. Consistent with section 9831(c)(2)(C) of the Code, section 732(c)(2)(C) of ERISA, and section 2722(c)(2)(C) of the PHS Act, the group market regulations at 26 CFR 54.9831–1(c)(4)(ii)(C), 29 CFR 2590.732(c)(4)(ii)(C), and 45 CFR 146.145(b)(4)(ii)(C) further provide that benefits under fixed indemnity excepted benefits coverage must be paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor.

Despite these statutory and regulatory requirements regarding noncoordination, the Departments are aware that some employers offer employees a ''package'' of coverage options that include a non-excepted benefit group health plan that provides minimal coverage (for example, coverage of preventive services only) with fixed indemnity insurance that provides benefits associated with receiving a broad category of other services, but is labeled as an excepted benefit. An employee's coverage associated with any non-preventive service provided under the fixed indemnity insurance is typically treated by the plan or issuer as exempt from the

[193] See section 9832(c) of the Code, section 733(c)(3) of ERISA, and sections 2722(c), 2763(b), and 2791(c)(3) of the PHS Act.

[194] *Id.*

Federal consumer protections and requirements for comprehensive coverage because the insurance has been labeled an excepted benefit.[195] The Departments are concerned that some employers are attempting to circumvent the Federal consumer protections and requirements for comprehensive coverage that otherwise apply to group health plans by offering most benefits associated with receiving health care services as fixed indemnity insurance with an excepted benefit label, potentially leaving employees without crucial Federal consumer protections. This is particularly concerning if the employees are under the impression or are misled to believe that their employee health benefits package or plan provides comprehensive coverage and therefore forgo pursuing other available options that would provide comprehensive coverage.

To further address this concern and capture the Departments' interpretation of the requirement that hospital indemnity and other fixed indemnity insurance must offer ''noncoordinated'' benefits to be considered an excepted benefit, the Departments propose to include a new example (Example 3) in the group market regulations at 26 CFR 54.9831–1(c)(4)(iii)(C), 29 CFR 2590.731–1(c)(4)(iii)(C), and 45 CFR 146.145(b)(4)(iii)(C).[196] This new example illustrates the Departments' proposed interpretation of the ''noncoordination'' requirements for hospital indemnity or other fixed indemnity coverage to qualify as excepted benefits and reflects that the prohibition on coordination of benefits is not limited to only those situations involving a formal coordination of benefits arrangement, but rather also encompasses other situations that involve ''coordination.''

In this proposed new example, an employer sponsors a group health plan that provides two benefit packages. The first benefit package excludes benefits associated with all services other than preventive services.[197] The second benefit package provides coverage through an insurance policy that pays a fixed dollar amount per day of hospitalization or illness, for a wide variety of illnesses that are not preventive services covered under the first benefit package. The two benefit packages are offered to employees at the same time and can be elected together. The benefit packages are not subject to a coordination-of-benefits arrangement. However, as explained in the new example, because the benefits under the fixed indemnity insurance are designed to fill coverage gaps in, and are effectively tied to an exclusion of benefits under, the group health plan maintained by the same plan sponsor (in this case, the preventive services benefit package), the benefits offered under the fixed indemnity insurance would not satisfy the ''noncoordination'' requirements. Instead, under this arrangement, there is coordination between the provision of benefits under the fixed indemnity insurance with an exclusion(s) of benefits under a group health plan maintained by the same plan sponsor. This arrangement violates the ''noncoordination'' requirements because benefits under the fixed indemnity insurance are provided, and therefore paid, with respect to an event *with* regard to (rather than *without* regard to) whether benefits are provided with respect to the event under a group health plan maintained by the same plan sponsor. Therefore, the insurance policy under the second benefit package is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under the Federal framework. The proposed new example also notes that the conclusion would be the same even if the benefit packages were not offered to employees at the same time or if the second benefit option's insurance policy did not pay benefits associated with a wide variety of illnesses.

The term ''noncoordination'' (or ''coordination'') for purposes of hospital indemnity or other fixed indemnity insurance to be considered excepted benefits is not defined in the relevant statutory provisions or enacting legislation. While the current examples make clear that the existing framework prohibits coordination of benefits when there is a formal coordination of benefits arrangement, the current group market regulations do not directly address other situations that involve coordination and therefore violate the ''noncoordination'' requirements. The new proposed example, which would be added to the group market fixed indemnity excepted benefits coverage regulations, reflects the Departments' proposed interpretation of the undefined term ''noncoordination,'' when applied to fixed indemnity excepted benefits coverage, as also including a scenario in which a sponsor of a group health plan offers both hospital indemnity or other fixed indemnity insurance along with a second benefit package that excludes benefits with respect to events that are covered by the hospital indemnity or other fixed indemnity insurance.

In these cases, the hospital indemnity or other fixed indemnity insurance and the other benefit package offered by the same group health plan sponsor to the same employees (and their dependents, if applicable) are reasonably considered to be ''coordinated'' in terms of providing complementary benefits. It is the Departments' view that these arrangements violate the ''noncoordination'' requirements for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit, even though they do not involve formal coordination of benefits. As explained elsewhere in this preamble section, these arrangements violate these requirements because they involve coordination between the provision of benefits under the hospital indemnity or other fixed indemnity insurance and an exclusion of benefits under a group health plan maintained by the same plan sponsor. Under these arrangements, benefits are provided, and therefore paid, under the fixed indemnity insurance with respect to an event *with* regard (rather than *without* regard) to whether benefits are provided with respect to the event under a group health plan maintained by the same plan sponsor. Thus, as reflected in the proposed new example, the Departments would not consider the hospital indemnity or other fixed indemnity insurance offered as part of this arrangement to be an excepted benefit that is exempt from the Federal consumer protections and requirements for comprehensive coverage.

The Departments seek comments on the proposed addition of this example to

[195] The Departments note that such an arrangement would not be treated as providing minimum value if it failed to provide substantial coverage of inpatient hospital services and physician services. 26 CFR 1.36B–6; 45 CFR 156.145.

[196] As detailed in section III.B.1.b of this preamble, the Departments also propose including another new example (Example 2) in the group market regulations, at new proposed 26 CFR 54.9831–1(c)(4)(iv)(B), 29 CFR 2590.732(c)(4)(iv)(B), and 45 CFR 146.145(b)(4)(iii)(B), to illustrate the new proposed payment standards for fixed indemnity excepted benefits coverage.

[197] The Departments are aware that some large employers offer group health plans that cover only preventive services, as reflected in this hypothetical example, and are not directly addressing such plans in these proposed rules, which are instead focused on the accompanying coverage, labeled ''fixed indemnity'' insurance in the example. However, the Departments discourage the provision of such limited coverage because it exposes employees to significant health and financial risk in the event that they require any health care services other than preventive services. *See, e.g.,* Hancock, Jay (2015). ''How Not to Find Out Your Health Plan Lacks Hospital Benefits,'' KFF, available at: *https://khn.org/news/how-not-to-find-out-your-health-plan-lacks-hospital-benefits.* Additionally, such coverage would not provide minimum value, such that the employer may be subject to an assessable payment under 4980H(b) of the Code if one or more full-time employees is certified as having enrolled in a qualified health plan for which a premium tax credit or cost-sharing reduction is allowed.

the group market regulations and the proposal to interpret the term ''noncoordination'' (or ''coordination'') to also prohibit situations involving benefit coordination beyond those that involve formal coordination-of-benefits arrangements.

Although the proposed example would be added to the group market regulations, parallel statutory and regulatory requirements related to ''noncoordination'' apply in the individual market. Under 2722(c)(2)(C) of the PHS Act, ''noncoordinated, excepted benefits'' with respect to individual market hospital indemnity or other fixed indemnity excepted benefits coverage must be paid with respect to an event without regard to whether benefits are provided under any health insurance coverage maintained by the same health insurance issuer. Consistent with the interpretation and application of the statutory requirement that fixed indemnity excepted benefits coverage in the individual market must be offered on a noncoordinated basis, HHS is proposing to modify the requirement at current 45 CFR 148.220(b)(4)(ii) [198] to specify that benefits under fixed indemnity excepted benefits coverage must be paid with respect to an event without regard to whether benefits are provided with respect to such an event under any other health coverage ''maintained by the same issuer''. For this purpose, HHS proposes that the phrase ''same issuer'' would refer to the entity licensed to sell the policy, consistent with the definition of health insurance issuer in 45 CFR 144.103. HHS solicits comments on whether to broaden the limits on coordination to include issuers that are members of the same controlled group.

In parallel with this proposed amendment, HHS proposes to apply the same interpretation of the term ''noncoordination'' to individual market fixed indemnity excepted benefits coverage as proposed in this preamble section for group market fixed indemnity excepted benefits. If this proposal is finalized, benefits that are paid under fixed indemnity insurance with respect to an event *with* regard to whether benefits are provided with respect to the event under any other health coverage maintained by the same issuer would not meet the requirement that individual market fixed indemnity excepted benefits coverage be provided on a noncoordinated basis, regardless of whether there is a formal coordination-of-benefits arrangement between the fixed indemnity insurance and any other coverage. HHS seeks comment on these proposals.

f. Technical Amendments

The Departments propose to strike the last sentence in 26 CFR 54.9831–1(c)(4)(i), 29 CFR 2590.732(c)(4)(i), and 45 CFR 146.145(b)(4)(i), in order to consolidate the requirements that are specific to hospital indemnity or other fixed indemnity insurance to qualify as an excepted benefit in a new proposed 26 CFR 54.9831–1(c)(4)(ii)(D), 29 CFR 2590.732(c)(4)(ii)(D), and 45 CFR 146.145(b)(4)(ii)(D). This current fixed payment standard would be retained as part of the fixed payment standards proposed to be captured in new proposed 26 CFR 54.9831–1(c)(4)(ii)(D)(*1*), 29 CFR 2590.732(c)(4)(ii)(D)(*1*), and 45 CFR 146.145(b)(4)(ii)(D)(*1*).

The Departments also propose technical amendments to clarify certain language in the existing example (now proposed Example 1) at new proposed 26 CFR 54.9831–1(c)(4)(iii)(A), 29 CFR 2590.732(c)(4)(iii)(A), and 45 CFR 146.146(b)(4)(iii)(A). The proposed technical amendments would clarify that the insurance policy in the example provides benefits only ''related to'' hospital stays (as opposed to ''for'' hospital stays), and emphasize the requirement that such benefits must be provided on a per-period basis. The general facts and ultimate conclusion in this example, however, remain the same.

HHS further proposes a technical amendment to the individual market excepted benefits rules to remove the existing requirement at 45 CFR 148.220(b)(4)(i) that fixed indemnity excepted benefits coverage must be provided only to individuals who attest, in their fixed indemnity insurance application, that they have other health coverage that is MEC, or that they are treated as having MEC due to their status as a bona fide resident of any possession of the United States pursuant to section 5000A(f)(4)(B) of the Code. This proposal would remove the regulatory provision that was invalidated in *Central United* v. *Burwell*.[199] As an accompanying conforming technical amendment, HHS also proposes to move the proposed revised noncoordination requirement described in section III.B.1.e of this preamble, that there is no coordination between the provision of benefits under the individual market hospital indemnity or other fixed indemnity insurance and an exclusion of benefits under any other health coverage maintained by the same issuer, from 45 CFR 148.220(b)(4)(ii) to 45 CFR 148.220(b)(4)(i).

g. Applicability Dates

In 26 CFR 54.9831–1(c)(4)(iv), 29 CFR 2590.732(c)(4)(iv), and 45 CFR 146.145(b)(4)(iv), the Departments are proposing applicability dates that distinguish between new and existing fixed indemnity excepted benefits coverage in the group market. HHS proposes a similar approach to applicability with respect to new and existing fixed indemnity excepted benefits coverage in the individual market at 45 CFR 148.220(b)(4)(iv). The applicability date proposals described in this section of the preamble are similar to the bifurcated approach for STLDI applicability dates proposed at 26 CFR 54.9833–1, 29 CFR 2590.736, and 45 CFR 146.125 and 148.102 and described in section III.A.6 of this preamble.

The Departments propose that the proposed amendments related to group market fixed indemnity excepted benefits coverage would apply to new coverage that is sold or issued on or after the effective date of the final rules with respect to plan years that begin on or after such date. HHS proposes the same applicability date for the proposed amendments related to individual market fixed indemnity excepted benefits coverage for new coverage that is sold or issued on or after the effective date of the final rules. The Departments are of the view that timely implementation of the proposed amendments to the fixed indemnity excepted benefits coverage regulations is essential for maximizing the number of individuals benefiting from the consumer protections described throughout this preamble.

The Departments propose that the proposed amendments related to group market fixed indemnity excepted benefit coverage would apply to existing coverage that is sold or issued before the effective date of the final rules with respect to plan years that begin on or after January 1, 2027, except with respect to the new group market notice requirements proposed at 26 CFR 54.9831–1(c)(4)(ii)(D)(*2*) through (*4*), 29 CFR 2590.732–1(c)(4)(ii)(D)(*2*) through (*4*), and 45 CFR 146.145(b)(4)(ii)(D)(*2*) through (*4*), the technical amendments described in section III.B.1.f of this preamble, and the proposed severability provision at 26 CFR 54.9831–1(c)(4)(v), 29 CFR 2590.732–1(c)(4)(v), and 45 CFR 146.145(b)(4)(v). The Departments propose that the provisions related to

[198] As discussed in section III.B.1.f of this preamble, HHS is also proposing a technical amendment to redesignate 45 CFR 148.220(b)(4)(ii) as 45 CFR 148.220(b)(4)(i).

[199] 827 F.3d 70 (D.C. Cir. July 1, 2016).

the notice would apply for plan years beginning on or after the effective date of the final rules and the technical amendments and severability provision would apply to new and existing group market fixed indemnity excepted benefits coverage beginning on the effective date of the final rules. As discussed further in this preamble section, HHS proposes to adopt a similar bifurcated approach to the applicability date for the proposed amendments related to individual market fixed indemnity excepted benefits coverage.

The Departments are aware that the proposed amendments to the group and individual market regulations for fixed indemnity excepted benefits coverage could, if finalized, affect hospital or other fixed indemnity insurance coverage that was sold or issued before the effective date of the final rules. In these cases, consumers may have chosen to purchase or enroll in fixed indemnity excepted benefits coverage in reliance on a framework that could be altered by the final rules. The Departments recognize that these proposed rules, if finalized, could also affect existing policies, including coverage or costs. Therefore, the Departments are of the view that the proposed bifurcated approach to the applicability date that provides for a more extended transition period for existing coverage to come into compliance with the applicable new payment standards and noncoordination requirements is appropriate with respect to fixed indemnity excepted benefits coverage sold or issued before the effective date of the final rules. This period is intended to provide plans, issuers, and those currently enrolled in group and individual market fixed indemnity excepted benefits with sufficient time to consider the effects and prepare for implementation of these proposed rules with respect to existing fixed indemnity excepted benefits coverage, without unnecessarily delaying their applicability to new coverage.

However, the Departments propose that the proposed notice requirement at 26 CFR 54.9831–1(c)(4)(ii)(D)(*2*) through (*4*), 29 CFR 2590.732–1(c)(4)(ii)(D)(*2*) through (*4*), and 45 CFR 146.145(b)(4)(ii)(D)(*2*) through (*4*) would apply with respect to all group market fixed indemnity excepted benefits coverage that was sold or issued before the effective date of the final rules (including renewals) for plan years that begin on or after the effective date of the final rules. HHS proposes a similar applicability date for the revised individual market fixed indemnity excepted benefits coverage notice at 45 CFR 148.220(b)(4)(iii). As such, the proposed notice requirements would apply to both new and existing fixed indemnity excepted benefit coverage in the group or individual market for notices required to be provided for coverage periods (including renewals) beginning on or after the effective date of the final rules. In the Departments' view, the benefit to consumers, including those currently enrolled in group market fixed indemnity excepted benefits coverage, of this information outweighs the burden to plans and issuers of implementing these changes for existing fixed indemnity excepted benefits coverage by the effective date of the final rules.

The Departments also propose that the technical amendments to the group market regulations described in section III.B.1.f of this preamble would apply to group market fixed indemnity excepted benefits on the effective date of the final rules. These changes are primarily aimed at consolidating and clarifying existing requirements and aligning regulatory language with current legal standards, and would impose limited if any additional burden on interested parties, if finalized. Therefore, the Departments are of the view that a longer transition period is unnecessary, and a bifurcated approach could contribute to confusion without benefitting interested parties.

For similar reasons, the Departments propose that the severability provision proposed at 26 CFR 54.9831–1(c)(4)(v), 29 CFR 2590.731–2(c)(4)(v), and 45 CFR 146.145(b)(4)(v) would apply on the effective date of the final rules. This provision is intended to ensure that, in the event of any successful legal challenge to one or more discrete provisions of the final rules, remaining provisions of the final rules can continue to be successfully implemented. The Departments are of the view that delaying the applicability date of this provision for fixed indemnity excepted benefits coverage sold or issued prior to the effective date of the final rules would be confusing and difficult to implement in the event of a legal challenge and would not provide any clear benefit to consumers, issuers, States, or other interested parties.

HHS similarly proposes that the proposed amendments related to individual market fixed indemnity excepted benefits coverage would generally apply to coverage that is sold or issued before the effective date of the final rule beginning on the first renewal on or after January 1, 2027. However, the changes related to the notice proposed at 45 CFR 148.220(b)(4)(iii) would apply to notices required to be provided in connection with the first renewal on or after the effective date of the final rules. The technical amendments to the individual market regulation described in section III.B.1.f of this preamble and the severability provision proposed at 45 CFR 148.220(b)(4)(v) would also become effective on the effective date of the final rules for existing individual market excepted benefits coverage. Under the proposed bifurcated applicability date, all of the proposed amendments related to individual market fixed indemnity excepted benefits coverage would apply to new coverage that is sold or issued on or after the effective date of the final rules beginning with coverage periods (including renewals) on or after the effective date of the final rules.

The Departments seek comments on their approach to applicability for fixed indemnity excepted benefits coverage, including whether applying the updated fixed indemnity excepted benefits regulations to fixed indemnity excepted benefits coverage sold or issued on or after the effective date of the final rules would provide a sufficient transition period in the group and individual markets for new coverage, or whether delaying the applicability date, such as for plan years or coverage periods beginning on or after January 1, 2025, would ensure a smoother transition to the new Federal standards for the sale of new fixed indemnity excepted benefits coverage. Additionally, the Departments seek comments on whether delaying applicability of most of the proposed changes to the fixed indemnity excepted benefits regulations for existing fixed indemnity excepted benefits coverage until plan years beginning on or after January 1, 2027, provides a sufficient transition period or if it should be modified to provide a shorter transition. In particular, the Departments are interested in feedback on whether the proposed January 1, 2027, effective date would leave consumers with this coverage at risk of harm generally, or with respect to any specific proposal, and if so, whether a more immediate applicability date (such as the effective date of the final rules or an interim date such as January 1, 2025), would strike a better balance by applying new consumer protections sooner while still providing a smooth transition to the new requirements.

The Departments also seek comment on the proposal to apply the proposed notice requirements to existing fixed indemnity excepted benefits coverage beginning with plan years or coverage periods (including renewals) on or after

the effective date of the final rules, and whether a different applicability date (such as January 1, 2027, or an interim date such as January 1, 2025) for the notice requirements would be appropriate for this cohort since they already opted to enroll in such coverage and would be permitted to continue their existing coverage or could seek to enroll in new coverage on or after the effective date of the final rules.

h. Severability

In the event that any portion of the final rules implementing one or more proposals in these proposed rules is declared invalid, the Departments intend that the proposals related to group market fixed indemnity excepted benefits coverage in these proposed rules be severable, and that the amendments the Departments propose with respect to the Federal regulations at 26 CFR 54.9831–1(c)(4), 29 CFR 2590.732(c)(4), and 45 CFR 146.145(b)(4) that outline the conditions for hospital indemnity and other fixed indemnity insurance to qualify as an excepted benefit in the group market would continue even if one or more aspects of the proposed changes is found invalid. To capture this intent, the Departments propose to add a severability provision at 26 CFR 54.9831–1(c)(4)(v), 29 CFR 2590.731–2(c)(4)(v), and 45 CFR 146.145(b)(4)(v). Similarly, HHS intends that its proposed amendments to the regulation at 45 CFR 148.220(b)(4) that outlines the conditions for such insurance to qualify as excepted benefits coverage in the individual market continue even if one or more of the proposed changes is found invalid. To capture this intent, HHS proposes to add a severability provision at 45 CFR 148.220(b)(4)(v). The severability of these provisions is discussed in more detail in section VI of these proposed rules.

2. Specified Disease Excepted Benefits Coverage

These proposed rules do not propose amendments to the Federal regulations regarding specified disease excepted benefits coverage. However, the Departments solicit comments on whether the proposed changes to fixed indemnity excepted benefits coverage in these proposed rules could have unintended consequences that would affect the market for specified disease excepted benefits coverage, if finalized. For example, would such changes have the effect of shifting consumers from hospital indemnity or other fixed indemnity insurance to specified disease excepted benefits coverage as an alternative to or replacement for comprehensive coverage? Would the proposed changes incentivize issuers, agents, and brokers that offer specified disease excepted benefits coverage to shift the misleading or aggressive sales, advertising, and marketing tactics to encourage enrollment in specified disease excepted benefits coverage as an alternative to or replacement for comprehensive coverage? The Departments also seek comments on whether and what additional protections or clarifications are necessary or would be helpful to more clearly distinguish specified disease excepted benefits coverage from comprehensive coverage and to increase consumer understanding of the differences between these two types of health coverage.

Additionally, the Departments seek comments on typical benefit design features of specified disease excepted benefits coverage. For example, under what circumstances would that coverage pay benefits based on a diagnosis versus on the basis of receipt of services for one or more specified medical conditions, and which design is more common? Under what circumstances and how common is it for specified disease excepted benefits coverage to pay benefits in a hybrid fashion, meaning some benefits are paid based on a diagnosis, and other benefits are paid based on receipt of services for one or more specified medical conditions? To the extent benefits under specified disease excepted benefits coverage policies are paid based on receipt of services for one or more specified medical conditions, are benefits typically paid to the policyholder or to the provider of the services? If the latter, do the issuers typically require use of a provider network for the enrollee to receive benefits (or more favorable benefits) under the specified disease excepted benefits coverage policy?

The Departments also seek comments on potential sources of information and data related to specified disease excepted benefits coverage policies offered for sale in the group and individual markets, including the number of policies sold, the types of individuals who typically purchase this coverage, the reasons for which they purchase it, and the types of common benefit exclusions or limitations.

C. Level-Funded Plan Arrangements

As stated in section I.F of this preamble, the Departments understand that an increasing number of group health plan sponsors, particularly small employers, are utilizing a funding mechanism or plan arrangement known as level-funding. According to the KFF Employer Health Benefits Survey, 42 percent of small employers (defined as having 3–199 workers) reported offering a level-funded plan in 2021, compared to just 13 percent in 2020.[200] This figure remained at approximately the same level in 2022, with 38 percent of small employers reporting that they offered a level-funded plan.[201] These arrangements are often marketed to small employers on the premise that level-funding provides predictable, and generally lower, costs and risk associated with potential high-dollar claims for plan sponsors, relative to traditional methods of self-funding.

As the uptake of level-funded plan arrangements increases, the Departments have heard concerns and received questions from interested parties related to level-funded arrangements' status as self-funded plans. Because level-funded arrangements purport to be, and are often regulated as, self-funded plans, they are typically not regulated by States.[202]

In general, ERISA applies to private, employment-based group health plans.[203] [204] Therefore, in a level-funded plan arrangement sponsored by a private employer, the self-funded plan is the entity that is legally responsible for compliance with ERISA group health plan requirements. The parallel group market PHS Act requirements apply to health insurance issuers offering group health insurance coverage and also generally apply to non-Federal Governmental plans.[205] [206] In a self-

[200] KFF (2021). ''2021 Employer Health Benefits,'' available at: *https://www.kff.org/report-section/ehbs-2021-section-10-plan-funding/.*

[201] KFF (2022). ''2022 Employer Health Benefits,'' available at: *https://www.kff.org/report-section/ehbs-2022-section-10-plan-funding/.*

[202] The Departments further recognize that increased uptake of level-funded plans among small employers with fewer than 20 employees has caused continuation- of- coverage issues. This is because (i) the Federal COBRA rules do not apply to such plan sponsors, and (ii) a plan that is a level-funded plan is treated as self-insured, such that state continuation-of- coverage rules would not apply.

[203] Section 3(1) of Title I of ERISA defines the term ''employee welfare benefit plan'' to include: ''[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise. . .''

[204] The PHS Act cross-references ERISA in its definitions. *See, e.g.,* the definitions for ''group health plan'', ''group health insurance coverage'', ''employer'', ''employee'', ''church plan'', ''governmental plan'', ''participant'', and ''plan sponsor'' in section 2791(a)(1), (b)(4), (d)(5)—(d)(8), (d)(11), and (d)(13) of the PHS Act, respectively.

[205] The definition of ''non-federal governmental plan'' at section 2791(d)(8)(C) of the PHS Act

insured, level-funded arrangement sponsored by a public employer, the plan sponsor or employer is the entity legally responsible for compliance with applicable group health plan requirements under the PHS Act.[207]

Interested parties have raised concerns that stop-loss coverage, a product traditionally purchased by large employers sponsoring self-funded plans, is not required to comply with the Federal consumer protections and requirements applicable to group health plans or health insurance issuers offering group health insurance coverage, or meet requirements under State regulations that apply to health insurance coverage. Interested parties have expressed that these concerns are exacerbated when small employers utilize level-funded plan arrangements with stop-loss coverage that has low attachment points. This is because the majority of the benefits covered under such an arrangement would be provided via the stop-loss coverage, which may deny or limit the individual's claim in a way that would be prohibited under the group market Federal consumer protections and requirements. This means that if the stop-loss insurer defines the scope of coverage more narrowly than otherwise permitted by the Federal consumer protections and requirements applicable to group health plans or health insurance issuers offering group health insurance coverage (for example, by including a preexisting condition exclusion), the small employer remains liable for the claim for coverage, yet may be unprepared to absorb such costs. This is in large part due to the complexity of level-funding arrangements; because small employers typically pay a monthly amount that resembles a premium, they may not understand whether their health plan is self-funded or insured and, furthermore, that coverage of certain benefits may vary depending on where the attachment point is set. In addition, covered individuals generally do not know whether their claim is being paid by the group health plan itself or by the stop-loss coverage. This raises additional concerns when an extensive portion of the individuals' claims are covered by the stop loss coverage that is not subject to the group market Federal consumer protections and requirements and has a low attachment point. For example, the stop loss coverage might deny a claim due to application of a lifetime or annual dollar limit in a way that would be prohibited under the group market Federal consumer protections and requirements.

Level-funded plans are most commonly adopted by small employers who are leaving the small group health insurance market, where policies must cover State- and Federally-mandated benefits and include various essential health benefits and consumer protections such as those included in MHPAEA.[208] Interested parties have expressed that small employers that switch from fully-insured coverage to level-funded arrangements may be unaware that the self-funded plans they are offering to their employees may not include certain benefits that would have to be covered if the plan were fully-insured.

The Departments are also aware of interested parties' concerns that if level-funded plan arrangements are marketed only to small employer plan sponsors with relatively low expected claims costs, this may lead to adverse selection in the State's small group health insurance market and may destabilize the States' small group market risk pools. The potential for adverse selection caused by the increasing use of these level-funded plan arrangements is further compounded by the fact that these arrangements are not generally treated as being subject to the guaranteed renewability and single risk pool requirements that apply to fully-insured small group market coverage.

The Departments also acknowledge interested parties' concerns that if level-funded plan sponsors' contributions are not properly segregated from other funds held by the plans' service providers, those service providers might inadvertently be establishing multiple employer welfare arrangements, which would result in the plans being subject to a wide range of State regulation and additional requirements under ERISA.[209] If they are unaware that their plan is a multiple employer welfare arrangement, they may not be complying with all of the applicable requirements.

Given the growing number of level-funded plans, the Departments are soliciting comments to better understand the prevalence of level-funded plans, such plans' designs and whether additional guidance or rulemaking is needed to clarify a plan sponsor's obligation with respect to coverage provided through a level-funded plan arrangement. The Departments solicit comments on the following issues:

How prevalent are level-funded group health plans among private and public employers? How many individuals are covered under level-funded plans? The Departments are also interested in information or data on whether the percentage of plan sponsors offering level-funded plans varies by State, geographic area, or other factors.

Are there data other than KFF's Employer Health Benefits Survey that the Departments should consider?

What factors are leading an increasing number of plan sponsors, particularly small employers, to utilize level-funded plans?

What are the administrative costs associated with offering level-funded plans, and how do these costs compare to the administrative costs associated with offering fully-insured plans?

What types of benefits are commonly offered or not offered by level-funded plans?

What kinds of level-funded benefit options are generally made available to plan sponsors? How do the benefit packages differ from fully-insured plans? Do level-funded plan arrangements offer robust benefits similar to the comprehensive coverage offerings of fully-insured plans?

Are benefits provided by level-funded plans generally as comprehensive as fully-insured plans available to small employers? What benefits and consumer protections are generally no longer included when a small employer converts its plan from fully-insured coverage to a level-funded arrangement? Are changes in benefits and consumer protections communicated to plan

incorporates the definition of ''governmental plan'' under ERISA section 3(32).

[206] Sponsors of self-funded non-Federal governmental group health plans are permitted to elect to exempt those plans from (''opt out of'') certain provisions of title XXVII of the PHS Act. *See, e.g.,* section 2722(a)(2) of the PHS Act, as amended by the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), and 45 CFR 146.180. *Also see* the Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Proposed Rule, 79 FR 15807 at 15814–15815 (March 21, 2014) and *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/nonfedgovplans.*

[207] *See, e.g.,* 45 CFR 150.305.

[208] MHPAEA does not apply directly to plans offered by small employers. Code section 9812(c)(1), ERISA section 712(c)(1), and PHS Act section 2716(c)(1). However, most plans offered by small employers are insured and therefore subject to MHPAEA through regulations implementing the essential health benefit coverage requirements. 45 CFR 156.115(a)(3). In the case of a level-funded plan, if the entire arrangement is treated as self-insured, the essential health benefit requirements would not apply.

[209] *See* ERISA section 3(40); see also ERISA section 514(b)(6); *see also* U.S. Department of Labor, Employee Benefits Security Administration (2022). ''MEWAs: Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation,'' available at: *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf.*

participants and beneficiaries, and if so, how?

Are additional safeguards needed with respect to level-funded arrangements to ensure that individuals and/or small employers are not subjected to unexpected costs resulting from the stop-loss coverage failing to comply with Federal group health plan requirements? How do level-funded plans determine anticipated administrative costs and expected claims costs?

With respect to stop-loss coverage, how, and by whom, is the attachment point determined and what factors are considered in setting the attachment point?

What impact, if any, does the use of level-funding for plans offered by small employers have on the insured small group market?

How do plans' service providers manage plan sponsors' contributions for level-funded plans, including amounts that exceed actual plan costs (that is, costs for claims, administrative fees, and stop-loss premiums)? Are such arrangements consistent with section 403 of ERISA?

How are the amounts of any refunds paid to plan sponsors by stop-loss providers determined? Are refunds remitted to participants and beneficiaries who have made contributions under the plan? If so, how are they determined and remitted?

How do plan sponsors of level-funded arrangements account for compliance with the consumer protections and mandated benefits that would apply to health benefits provided by a plan sponsor through a level-funded arrangement that is reimbursed through stop-loss insurance?

Do employers offering level-funded plans generally understand and comply with any applicable reporting requirements under sections 6055 and 6056 of the Code?

IV. Overview of the Proposed Rules on Tax Treatment and Substantiation Requirements for Fixed Indemnity Insurance and Certain Other Accident or Health Insurance—Department of the Treasury and the IRS

The Treasury Department and the IRS are proposing amendments to the rules under section 105(b) of the Code. These amendments would clarify the tax treatment of amounts received by a taxpayer through employment-based accident or health insurance that are paid without regard to the amount of incurred medical expenses under section 213(d) of the Code and where the premiums or contributions for the coverage are paid on a pre-tax basis. These amendments would also clarify that, under longstanding regulations and guidance issued by the Treasury Department and the IRS, the substantiation requirements for reimbursement of qualified medical expenses apply to reimbursements under section 105(b) of the Code in order for those reimbursements to be excluded from an individual's gross income. Additionally, the amendments would update several cross-references in the rules implementing section 105(b) of the Code to reflect statutory changes since the rules were first issued.[210]

The Treasury Department and the IRS are aware of certain arrangments that purport to avoid income and employment taxes by characterizing income replacement benefits or other cash benefits as amounts paid for reimbursement of medical care, even though those amounts are paid without regard to the actual amount of any incurred, and otherwise unreimbursed, medical expenses. Frequently, these arrangements are marketed as supplemental coverage that saves employers and employees money by avoiding employment taxes when replacing income lost by an employee due to a health-related event experienced by the employee. In some arrangements, employees are paid an amount every month, purportedly for medical expenses, even if they do not incur any medical expenses, or if they simply complete certain health-related activities.

Fixed indemnity excepted benefits[211] coverage pays pre-determined benefits upon the occurrence of certain health-related events. Benefits under this type of coverage in the group market must be paid in a fixed amount on a per period basis.[212] Although a benefit payment at the pre-determined level under that coverage may incidentally cover all or a portion of the cost of medical care stemming from the precipitating health-related event, it is typically not designed to do so and is paid without regard to the amount of the medical care expense incurred. Some specified disease excepted benefits coverage operates in a similar manner. For example, coverage only for a specified disease or illness might offer lump sum payments upon a specific diagnosis or on the basis of treatment received, or it might offer fixed payments per day or other time period of hospitalization or illness.[213]

The principle that these types of accident or health insurance are not generally intended to provide reimbursement for incurred medical expenses is further illustrated by the fact that taxpayers covered by these arrangments will, in many cases, receive benefits upon the occurrence of a health-related event under these arrangements even if any incurred expenses associated with that event are already reimbursed through other coverage. This is because these types of group market excepted benefits must be ''noncoordinated'' such that benefits are paid with respect to an event without regard to whether benefits are provided for that same event under any group health plan maintained by the same plan sponsor.[214] Thus, for example, if a particular medical expense incurred during hospitalization is reimbursed by a taxpayer's primary, comprehensive coverage and the taxpayer also receives a benefit in a fixed amount for the hospitalization from fixed indemnity or specified disease excepted benefits coverage, the taxpayer would receive the fixed benefit without having any need to use the fixed amount received to pay for that medical expense.

These amendments are being proposed in response to ongoing questions about the proper tax treatment of payments pursuant to these arrangements. While these arrangments are sold under a variety of names, they are commonly sold as fixed indemnity excepted benefits coverage or specified disease excepted benefits coverage. However, the changes in these proposed amendments would not be limited to these types of coverage. The Treasury Department and the IRS note that it is important to look past the label on any given accident or health insurance product to determine whether amounts received by an employee are, in fact, for reimbursement of medical expenses or whether the amounts could be used for any purpose. For example, even if a benefit payment under the arrangement is *used* to reimburse an employee's medical expenses, if the amount of the payment is not tied to the amount of the expense incurred and the employee is entitled to keep any amounts by which the benefit payment exceeds the

[210] The current rules reference section 105(d) of the Code, which has been repealed. The rules also reference the definition of a dependent in section 152(f) which may, in some circumstances, not include children up to the age of 26 that must be eligible to enroll in a group health plan or group or individual health insurance coverage under section 2714 of the PHS Act (which is incorporated in section 9815 of the Code) if the plan or coverage makes available dependent coverage of children.

[211] Excepted benefits are described in section 9832 of the Code. Excepted benefits are generally not subject to the consumer protections under Chapter 100 of the Code, part 7 of ERISA, and title XXVII of the PHS Act.

[212] 26 CFR 54.9831–1(c)(4).

[213] *Id.*

[214] *Id.*

incurred expenses, that would indicate that the benefit is not actually a reimbursement for medical expenses. The Treasury Department and the IRS request comments on whether additional clarification is needed regarding how these rules would apply to types of benefits provided through employment-based accident or health insurance other than fixed indemnity excepted benefits coverage or specified disease excepted benefits coverage, including incentives offered through wellness programs, where the insurance, those programs, or both provide benefits without regard to the amount of medical expenses incurred and where the premiums are paid on a pre-tax basis.

A. Tax Treatment of Benefits

As described in section I.E of this preamble, hospital indemnity and other fixed indemnity insurance and coverage only for a specified disease or illness are treated as accident or health insurance under sections 104, 105, and 106 of the Code whether or not they are excepted benefits. Amounts received from accident or health insurance are excluded from a taxpayer's gross income under section 104(a)(3) of the Code if the premiums are paid for on an after-tax basis. The taxation of amounts received by an employee from accident or health insurance where the premiums or contributions are paid on a pre-tax basis by the employer or through salary reduction under a cafeteria plan is determined under section 105 of the Code.

Under section 105(a) of the Code, amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income; however, section 105(b) of the Code excludes from gross income amounts received by an employee to reimburse the employee's medical expenses under section 213(d) of the Code. As is noted in section I.E of this preamble, 26 CFR 1.105–2 provides that the exclusion from gross income in section 105(b) of the Code ''applies only to amounts that are paid specifically to reimburse the taxpayer for expenses incurred by him for the prescribed medical care. Thus, section 105(b) does not apply to amounts that the taxpayer would be entitled to receive irrespective of whether or not he incurs expenses for medical care.'' Further, 26 CFR 1.105–2 also provides that ''section 105(b) is not applicable to the extent that such amounts exceed the actual expenses for such medical care.''

The Treasury Department and the IRS are cognizant that the language in the current rule has led to confusion among taxpayers about the circumstances under which benefits from accident or health insurance may be excluded from an individual's gross income when the premiums for the coverage were paid on a pre-tax basis and the benefits are not directly related to a medical expense incurred by an employee. In particular, some have interpreted the current rule to mean that benefits provided to a taxpayer through an accident or health insurance policy that provides benefits without regard to the amount of medical expenses incurred, such as fixed indemnity excepted benefits coverage or specified disease excepted benefits coverage, are nonetheless excluded from the taxpayer's gross income because they are paid upon the occurrence of a health-related event. Others have interpreted the current rule to mean that benefits can be excluded from gross income so long as the amount received does not exceed the amount of the medical expense arising from the occurrence of a health-related event.[215]

The Treasury Department and the IRS interpret section 105(b) of the Code to not apply to benefits paid without regard to the actual amount of incurred and otherwise unreimbursed section 213(d) medical expenses. Because payment of these amounts is not a reimbursement of section 213(d) medical expenses, the amount of reimbursement is immaterial, with the result that the payment is not excluded from gross income under section 105(b) of the Code. The benefits would, therefore, be included in the taxpayer's gross income.

Thus, the Treasury Department and the IRS propose to amend 26 CFR 1.105–2 to clarify that the exclusion from gross income under section 105(b) of the Code does not apply to amounts received from accident or health insurance that pays an amount or distributes a benefit if the benefit is paid without regard to the actual amount of section 213(d) medical expenses incurred by the employee. This interpretation would apply, for example, to benefit payments under fixed indemnity excepted benefits coverage and to benefit payments under specified disease excepted benefits coverage that pays benefits without regard to the amount of medical expenses incurred.

Payments that are excludible from gross income under section 104 or 105(b) of the Code and under section 3121(a) of the Code are excluded from wages subject to Federal Insurance Contributions Act (FICA) taxes under sections 3101 and 3111. Similarly, under section 3306(b) of the Code, these payments are not wages subject to Federal Unemployment Tax Act (FUTA) taxes under section 3301 of the Code. Also, under section 3401(a) of the Code, they are not wages subject to income tax withholding under section 3402 of the Code. Temporary 26 CFR 32.1 provides rules governing the application of FICA taxes to payments on account of sickness or accident disability. Section 32.1(a) provides, in effect, that payments to or on behalf of an employee on account of sickness or accident disability are not excluded from wages unless the payments are received under a workers' compensation law or qualify for an exception under section 3121(a)(4) of the Code (payments on account of sickness or accident disability made after the expiration of 6 calendar months). Section 32.1(d) provides that for purposes of 26 CFR 32.1(a) ''payments on account of sickness or accident disability'' subject to FICA tax include payments includible in gross income under section 105(a) of the Code and, thus, does not include any amount that is not expended for medical care as described in section 105(b) of the Code and 26 CFR 1.105–2. Under the proposed amendment to 26 CFR 1.105–2, accident and health insurance payments that would not be excluded from employees' gross income under section 105(b) because the amounts were paid without regard to the actual amount of incurred or otherwise unreimbursed section 213(d) medical care expenses would be wages subject to FICA, FUTA, and income tax withholding. Thus, if these rules are finalized as proposed, taxpayers would need to consider the impact this proposal would have on determinations of whether amounts received under accident and health plans constitute wages for employment tax and income tax withholding purposes.

[215] Revenue Ruling 69–154, 1969–1 CB 46, provides that section 105(b) of the Code is not applicable to the extent that amounts received from accident or health insurance exceed the amount of the actual expenses for the medical care. The facts of the revenue ruling concerned a medical expense reimbursed by multiple coverages, with neither coverage paying the entire expense but the combination of coverages paying more than the amount of the medical expense. Nevertheless, the Treasury Department and the IRS are aware that some individuals have relied on the ruling to support their claims that section 105(b) allows for an exclusion from gross income for all benefits provided by accident or health insurance up to the amount of medical expenses with only the excess ''indemnification'' being included in gross income, even when the taxpayer is enrolled in only one coverage.

B. Substantiation Requirement

The regulation at 26 CFR 1.105–2 currently states, in part, that ''[i]f the amounts are paid to the taxpayer solely to reimburse him for expenses which he incurred for the prescribed medical care, section 105(b) is applicable even though such amounts are paid without proof of the amount of the actual expenses incurred by the taxpayer. . .'' This language has been interpreted by certain interested parties to suggest that substantiation of a taxpayer's incurred medical expenses is not required for the exclusion under section 105(b) of the Code to apply.

In this rulemaking, the Treasury Department and the IRS propose to amend 26 CFR 1.105–2 to clarify that, for amounts to be excluded from income under section 105(b) of the Code, the payment or reimbursement must be substantiated. Longstanding regulations and guidance issued by the Treasury Department and the IRS have confirmed that amounts paid to reimburse medical expenses under section 213(d) of the Code by employment-based accident or health insurance must be substantiated to be excluded under section 105(b) of the Code.[216] Further, if there were not a substantiation requirement under section 105(b) of the Code, the other proposed clarification that would be made to 26 CFR 1.105–2—that amounts received from accident or health insurance must be for reimbursement of incurred medical expenses for section 105(b) of the Code to apply—could be manipulated. The Treasury Department and the IRS understand that, in most circumstances, substantiation of medical expenses typically occurs prior to reimbursement but are of the view that substantiation must occur at least within a reasonable period thereafter. The Treasury Department and the IRS request comments on whether any final rules should specifically address timing requirements for substantiation.

C. Applicability Date

Generally, the proposed modifications to the tax treatment of employer reimbursements of employee medical expenses under certain accident and health plans are a clarification of long-standing Treasury Department and IRS rules and guidance limiting the exclusion from gross income to amounts that are fully substantiated and paid only with respect to the actual amount of section 213(d) medical care expenses incurred by the employee. However, in recognition that some plan sponsors and issuers may not have understood the requirements and may require time to come into compliance with the proposed amendments to 26 CFR 1.105–2, assuming that they are finalized as proposed, it is proposed that these amendments would apply as of the later of the date of publication of the final regulations or January 1, 2024.

V. Response to Comments

Because of the large number of comments the Departments normally receive on **Federal Register** documents, the Departments are not able to acknowledge or respond to them individually. The Departments will consider all comments received by the date and time specified in the **DATES** section of the preamble, and, when the Departments proceed with a subsequent document, the Departments will respond to the comments in the preamble to that document.

VI. Severability

As previously described, the Departments are proposing to amend the Federal definition of ''short-term, limited-duration insurance'' and the conditions for hospital indemnity and other fixed indemnity insurance to qualify as an excepted benefit in the group market, for the purpose of distinguishing STLDI and fixed indemnity excepted benefits coverage from comprehensive coverage. Similarly, HHS is proposing to amend the conditions for hospital indemnity and other fixed indemnity insurance to qualify as an excepted benefit in the individual market for the same purpose. The Departments and HHS are also proposing certain technical amendments to the regulations governing fixed indemnity excepted benefits in the group and individual markets, respectively, in order to consolidate and clarify existing requirements and align the individual market regulations with the decision of the U.S. Court of Appeals for the District of Columbia in *Central United Life Insurance Company* v. *Burwell.* The Departments' and HHS' authority to propose these amendments is well-established in law and practice, and should be upheld in any legal challenge. However, in the event that any portion of the final rules related to any of the proposals in this notice of proposed rulemaking is declared invalid, the Departments intend that the other provisions would be severable.

For example, if any proposed provision in this rulemaking related to STLDI is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, it shall be considered severable from its section and other sections of these rules; and it shall not affect the remainder thereof or the application of the provision to other entities not similarly situated or to dissimilar conditions. Thus, if the Departments were to finalize the portion of the STLDI definition that limits the sale of multiple consecutive policies exceeding a total duration of 4 months by the same issuer to the same policyholder within a 12-month period, and a court were to find that portion or any other aspect of the new Federal STLDI definition to be unlawful, the Departments intend the remaining aspects of these proposed rules related to STLDI would stand, if finalized.

Similarly, the Departments propose that if any proposed provision in this rulemaking related to group market fixed indemnity excepted benefits coverage is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, it shall be considered severable from its section and it shall not affect the remainder thereof or the application of the provision to other entities not similarly situated or to dissimilar conditions. For example, if the Departments were to finalize all proposals related to additional fixed payment standards for group market fixed indemnity excepted benefits coverage and a court were to find one or more of those payment standards to be unlawful, the Departments intend that the other payment standards, along with the other proposals related to fixed indemnity excepted benefits coverage in the group market set forth in these proposed rules would stand, if finalized.

Similarly, HHS proposes that if any proposed provision in this rulemaking related to individual market fixed indemnity excepted benefits is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, it shall be considered severable from its section and it shall not affect the remainder thereof or the application of the provision to other entities not similarly situated or to dissimilar conditions. For example, if HHS were to finalize all proposals related to the additional fixed payment standards for individual market fixed indemnity excepted benefits coverage and a court were to find one or more of the payment standards to be unlawful, HHS intends that the other payment standards for individual market fixed

[216] *See, e.g.,* 84 FR 28888, 28917 (June 20, 2019) (describing substantiation requirements for employer-sponsored health reimbursement arrangements); *see also* Q44–55 of IRS Notice 2017–67, 2017–47 IRB 517; Prop. Treas. Reg. § 1.125–6 (72 FR 43938, 43960–43965 (August 6, 2007)); IRS Notice 2002–45, 2002–2 CB 93.

indemnity excepted benefits coverage, along with the other proposals related to fixed indemnity excepted benefits coverage in the individual market set forth in these proposed rules would stand, if finalized.

The Departments also intend for the STLDI proposals in this rulemaking to be severable from the fixed indemnity excepted benefits coverage proposals, and vice versa.

VII. Regulatory Impact Analysis

A. Summary—Departments of Health and Human Services and Labor

These proposed rules would revise the Federal definition of STLDI for new policies, certificates, or contracts of insurance to require the coverage to have an expiration date specified in the policy, certificate, or contract of insurance that is no more than 3 months after the original effective date. These proposed rules would also revise the Federal definition of STLDI so that the maximum total coverage duration, taking into account any renewals or extensions, is no longer than 4 months. For purposes of this definition, a renewal or extension would include the term of a new STLDI policy, certificate, or contract of insurance issued by the same issuer to the same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance.

For new STLDI, meaning policies, certificates, or contracts of STLDI sold or issued on or after the effective date of the final rules, the maximum duration amendments to the definition of STLDI in these proposed rules would apply for coverage periods beginning on or after the effective date of the final rules. Under these proposed rules, existing STLDI, meaning policies, certificates, or contracts of STLDI sold or issued before the effective date of the final rules (including any subsequent renewals or extensions consistent with applicable law) could still have an initial contract term of less than 12 months and a maximum duration of up to 36 months (taking into account any renewals or extensions), subject to any limits under applicable State law.

These proposed rules would also revise the notice that must be prominently displayed (in either paper or electronic form) in at least 14-point font on the first page of the policy, certificate, or contract of insurance and in any marketing, application, and enrollment materials including for renewals or extensions (including on websites that advertise or enroll individuals in STLDI) for both new and existing STLDI for coverage periods beginning on or after the effective date of the final rules.

These proposed rules also would require that to be fixed indemnity excepted benefits coverage, the insurance must pay only a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day), and not on a per-service or per-item basis, as is possible under the current HHS excepted benefit regulation applicable to the individual market. Further, for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit in the group or individual market under these proposed rules, payment must be made regardless of the actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered participant, beneficiary, or enrollee, or other characteristics particular to a course of treatment, or on any other basis (such as per-item or per-service). All of these proposed provisions and amendments, if finalized, would apply to new group and individual market fixed indemnity excepted benefits coverage sold or issued on or after the effective date of the final rules. For existing group market fixed indemnity excepted benefits coverage sold or issued before the effective date of the final rules, the proposed provisions generally would apply with respect to plan years beginning on or after January 1, 2027. The technical amendments to the group market regulations described in section III.B.1.f of this preamble and the severability provision at 26 CFR 54.9831–1(c)(4)(v), 29 CFR 2590.732–1(c)(4)(v), and 45 CFR 146.145(b)(4)(v) would apply beginning on the effective date of the final rules. HHS similarly proposes that these requirements generally would apply to individual market fixed indemnity excepted benefits coverage sold before the effective date of the final rule upon the first renewal on or after January 1, 2027, except the technical amendments to the individual market regulation described in section III.B.1.f of this preamble and the severability provision at 45 CFR 148.220(b)(4)(v) would apply beginning on the effective date of the final rule.

Additionally, these proposed rules would revise the notices that must be prominently displayed (in either paper or electronic form) on the first page of the policy, certificate, or contract of insurance, and any marketing and application materials provided in connection with enrollment (or re-enrollment) in fixed indemnity excepted benefits coverage in the individual market and would require a similar notice be provided for fixed indemnity excepted benefits coverage in the group market. The Departments propose that the new notice requirements for group market fixed indemnity coverage be applicable to both new and existing coverage for notices required to be provided with respect to plan years (including renewals) beginning on or after the effective date of the final rules. Similarly, HHS proposes that the changes to the notice requirements for individual market fixed indemnity coverage be applicable to existing individual market fixed indemnity coverage for notices required to be provided beginning upon the first renewal on or after the effective date of the final rule. For new individual market fixed indemnity coverage sold or issued on or after the effective date of the final rules, HHS proposes to apply the updated notice requirements with respect to coverage periods (including renewals) beginning on or after the effective date of the final rules.

The Departments have examined the effects of these proposed rules as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993),[217] Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011),[218] Executive Order 14094 (April 6, 2023),[219] the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security 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).[220]

B. Executive Orders 12866, 13563, and 14094—Departments of Health and Human Services and Labor

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 14094 on Modernizing Regulatory Review amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory

[217] Executive Order 12866 of September 30, 1993, 58 FR 51735.

[218] Executive Order 13563 of January 18, 2011, 76 FR 3821.

[219] Executive Order 14094 of April 6, 2023, 88 FR 21879.

[220] Executive Order 13132 of August 4, 1999, 64 FR 43255.

action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for changes in gross domestic product), or adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Territorial, or Tribal governments or communities; (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 legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for rules with significant regulatory action or with significant effects as per section 3(f)(1) ($200 million or more in any 1 year). Based on the Departments' estimates, OMB's OIRA has determined this rulemaking is significant under section 3(f)(1) as measured by the $200 million threshold in any 1 year. With respect to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, OMB's OIRA has also determined that these rules fall within the definition provided by 5 U.S.C. 804(2). Therefore, OMB has reviewed these proposed rules, and the Departments have provided the following assessment of their impact.

1. Need for Regulatory Action

The 2018 final rules permit enrollment in an STLDI policy with a total duration that could extend up to 36 months (including renewals or extensions). This insurance might therefore be viewed as a substitute for (and, in some cases, has been deceptively marketed as) comprehensive coverage, rather than as a way to bridge a temporary gap in comprehensive coverage.[221] Evidence shows the number of consumers buying STLDI increased following the effective date of the 2018 final rules. Data from the NAIC indicate that the number of individuals covered by STLDI sold to individuals more than doubled between 2018 and 2019, from approximately 87,000 to 188,000, and further increased to approximately 238,000 in 2020 before declining to approximately 173,000 in 2021 following the expansion of PTC subsidies provided through the ARP.[222] While these figures do not capture the total number of individuals covered by STLDI throughout each year (rather, only at the end of the calendar year), and do not include individuals covered by STLDI sold to or through associations, they do show the trend of increased enrollment in STLDI following the implementation of the 2018 final rules. Projections by the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) suggest that 1.5 million people could currently be enrolled in STLDI,[223] and CMS previously estimated that 1.9 million individuals would enroll in STLDI by 2023.[224] However, as noted in section VII.B.2.b, these projections were developed prior to the expansion of PTC subsidies provided through the ARP and the IRA.

Given that STLDI generally is not subject to the Federal consumer protections and requirements for comprehensive coverage sold in the individual market, STLDI policies tend to offer limited benefit coverage and have relatively low actuarial values.[225] These plans therefore expose enrollees to the risk of high out-of-pocket health expenses and medical debt.[226]

In recent years, fixed indemnity excepted benefits coverage is increasingly being designed to resemble comprehensive coverage and might therefore also be mistakenly viewed as a substitute for comprehensive coverage, rather than as independent, noncoordinated benefits that are supplemental to comprehensive coverage.[227]

Because both types of coverage are sold outside of the Exchanges and are not generally subject to the Federal consumer protections and requirements for comprehensive coverage, consumers may have limited information about the limitations, value, and quality of the coverage being sold.[228] The recent reports of consumer confusion regarding STLDI and fixed indemnity excepted benefits coverage [229] support the need to

[221] For one example of deceptive marketing practices, *see* Federal Trade Commission (2022). ''FTC Action Against Benefytt Results in $100 Million in Refunds for Consumers Tricked into Sham Health Plans and Charged Exorbitant Junk Fees,'' available at: *https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-action-against-benefytt-results-100-million-refunds-consumers-tricked-sham-health-plans-charged.*

[222] National Association of Insurance Commissioners (2021). ''Accident and Health Policy Experience Reports for 2018–2021,'' available at: *https://naic.soutronglobal.net/portal/Public/en-US/Search/SimpleSearch.*

[223] Congressional Budget Office (2020). ''CBO's Estimates of Enrollment in Short-Term, Limited-Duration Insurance,'' available at: *https://www.cbo.gov/publication/56622.* CBO and JCT projected that enrollment in STLDI would reach 1.6 million by 2028. *See* Congressional Budget Office (2019). ''How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans,'' available at: *https://www.cbo.gov/publication/54915.*

[224] CMS Office of the Actuary (2018). ''Estimated Financial Effects of the Short-Term, Limited-Duration Policy Proposed Rule,'' available at: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/STLD20180406.pdf.*

[225] *See, e.g.,* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[226] *See, e.g.,* Deam, Jenny (2021). ''He Bought Health Insurance for Emergencies. Then He Fell Into a $33,601 Trap,'' ProPublica, available at: *https://www.propublica.org/article/junk-insurance.*

[227] *See, e.g.,* Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Health Coverage Is a Problematic Form of ''Junk Insurance'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance/.*

[228] *See* Williams, Jackson (2022). ''Addressing Low-Value Insurance Products With Improved Consumer Information: The Case of Ancillary Health Products,'' National Association of Insurance Commissioners, *Journal of Insurance Regulation,* available at: *https://content.naic.org/sites/default/files/cipr-jir-2022-9.pdf.*

[229] Regarding consumer confusion related to short-term, limited-duration insurance, *see, e.g.,* Deam, Jenny (2021). ''He Bought Health Insurance for Emergencies. Then He Fell Into a $33,601 Trap,'' ProPublica, available at: *https://www.propublica.org/article/junk-insurance. See also* Palanker, Dania and Kevin Lucia (2021). ''Limited Plans with Minimal Coverage Are Being Sold as Primary Coverage, Leaving Consumers at Risk,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2021/limited-plans-minimal-coverage-are-being-sold-primary-coverage-leaving-consumers-risk. See also* Schwab, Rachel and Maanasa Kona (2018). ''State Insurance Department Consumer Alerts on Short-Term Plans Come Up Short,'' Center on Health Insurance Reforms, available at: *https://chirblog.org/state-insurance-department-consumer-alerts-short-term-plans-come-short/. See also* Corlette, Sabrina, Kevin Lucia, Dania Palanker, and Olivia Hoppe (2019). ''The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses,'' Urban Institute, available at: *https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses.*

For a discussion of consumer confusion related to fixed indemnity excepted benefits coverage, *see, e.g.,* Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Health Coverage Is a Problematic Form of ''Junk Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance/.*

improve consumer understanding of these types of coverage (and their coverage limitations) compared to comprehensive coverage. These proposed rules would revise the notice that must be prominently displayed (in either paper or electronic form) in at least 14-point font, on the first page of the policy, certificate, or contract of insurance and in any marketing, application, and enrollment materials provided at or before the time an individual has the opportunity to enroll (or reenroll) in STLDI, including on any websites used to advertise or enroll (or reenroll) individuals in STLDI. These proposed rules would also revise the notice that must be prominently displayed (in either paper or electronic form) in at least 14-point font on the first page of any marketing, application, and enrollment materials provided in connection with fixed indemnity excepted benefits coverage in the individual market, and on the first page of the policy, certificate, or contract of insurance of such coverage.

These proposed rules would also require the same notice be provided in the same manner in connection with fixed indemnity excepted benefits coverage in the group market in any marketing, application, or enrollment materials provided to participants at or before the time participants are given an opportunity to enroll in the coverage. The fixed indemnity excepted benefits coverage required notices would also be required to be prominently displayed on websites used in connection with advertising or enrolling (or re-enrolling) individuals in such coverage. This would help ensure that consumers can better understand and properly distinguish fixed indemnity excepted benefits coverage from comprehensive coverage.

These proposed rules would encourage enrollment in comprehensive coverage and lower the risk that STLDI and fixed indemnity excepted benefits coverage are viewed or marketed as a substitute for comprehensive coverage.[230]

2. Summary of Impacts

The expected benefits, costs, and transfers associated with these proposed rules are summarized in Table 1 and discussed in detail later in this section of this preamble.

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[230] As discussed in section I.B of this preamble, these proposed rules would build on Executive Order 14009, ''Strengthening Medicaid and the Affordable Care Act,'' and Executive Order 14070, ''Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage,'' by encouraging enrollment in high-quality, comprehensive coverage. The Departments also note that the affordability of comprehensive coverage offered in the individual market has increased for many consumers in recent years, due in part to the expanded PTC subsidies provided through the ARP and the IRA, as discussed in section II of this preamble. Further, as discussed in section II of this preamble, the COVID–19 PHE has highlighted the importance of encouraging enrollment in comprehensive coverage.

TABLE 1: Accounting Table

Benefits:				
Non-Quantified: • Reductions in information asymmetries in health insurance markets through increased consumer understanding of STLDI and fixed indemnity excepted benefits coverage in relation to comprehensive coverage. • Increased enrollment in comprehensive coverage, with an estimated increase in enrollment in individual health insurance coverage purchased on an Exchange by approximately 60,000 people in 2026, 2027, and 2028 associated with the proposed provisions regarding STLDI. • Improvement in market stability and market risk pools for comprehensive coverage. • Reduction in the risk of high out-of-pocket health expenses, lower incidence of medical debt, improved health outcomes, and increased health equity, for individuals who switch to comprehensive coverage. • Potential reduction in the overall number of STLDI coverage rescissions or claims denials, if enrollment in STLDI declines. • Potential reduction in deceptive or aggressive marketing practices regarding the sale of STLDI and fixed indemnity excepted benefits coverage.				
Costs:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized ($/year)	$17,369	2023	7 percent	2024-2028
	$16,154	2023	3 percent	2024-2028
Quantified: • One-time regulatory review cost of approximately $76,200 for issuers of STLDI, issuers of fixed indemnity excepted benefits coverage, and other interested parties.				
Non-Quantified: • Potential increase in premium costs for individuals who switch from STLDI to comprehensive coverage and are not eligible for the PTC. • Potential increase in the number of uninsured individuals, if some individuals with STLDI who would no longer be permitted to renew or extend their coverage with the same issuer are unable to purchase STLDI from another issuer during a 12-month period, and must wait until open enrollment to obtain comprehensive coverage, or choose not to purchase comprehensive coverage. • Potential increase in health care spending, if individuals switch to comprehensive coverage and increase their use of health care as a result. • Potential costs to States associated with enacting new legislation and implementing new laws regarding STLDI and fixed indemnity excepted benefits coverage in response to the provisions included in these proposed rules.				
Transfers:	Estimate	Year Dollar	Discount Rate	Period Covered
Annualized Monetized ($/year)	- $67.1 million	2023	7 percent	2024-2028
	- $69.9 million	2023	3 percent	2024-2028
Quantified: • Decrease in Federal spending on PTC of approximately $120 million in 2026, 2027, and 2028 associated with the proposed provisions regarding STLDI. • Reduction in gross premiums for individuals enrolled in individual health insurance coverage purchased on an Exchange by approximately 0.5 percent in 2026, 2027, and 2028 associated with the proposed provisions regarding STLDI.				
Non-Quantified: • Potential transfer from issuers to consumers if consumers switch from STLDI and fixed indemnity excepted benefits coverage to comprehensive coverage and experience a reduction in out-of-pocket costs.				

Table 2 presents the estimated effects of the provisions regarding STLDI on enrollment in and gross premiums for individual health insurance coverage purchased on an Exchange and on Federal spending on the PTC (by

calendar year), as discussed further in sections VII.B.2.c and VII.B.2.e of this preamble.

TABLE 2: Estimated Effects of the Provisions Regarding STLDI on Enrollment in and Gross Premiums for Individual Health Insurance Coverage Purchased on an Exchange and on Federal Spending on the PTC

Calendar Year	2024	2025	2026	2027	2028
Change in Enrollment in Individual Health Insurance Coverage Purchased on an Exchange	0	0	60,000	60,000	60,000
Percentage Change in Gross Premiums for Individual Health Insurance Coverage Purchased on an Exchange	0	0	-0.5	-0.5	-0.5
Change in Federal Spending on the PTC (in millions)	$0	$0	-$120	-$120	-$120

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a. Background

STLDI and fixed indemnity excepted benefits coverage generally are not subject to the Federal consumer protections and requirements for comprehensive coverage as discussed in more detail in section I.A of this preamble. STLDI and fixed indemnity excepted benefits coverage therefore expose enrollees to financial and health risks, as discussed in this section and section II.B of this preamble.

STLDI and fixed indemnity excepted benefits coverage typically do not cover all essential health benefits (including, for example, prescription drugs, maternity services, and mental health and substance use disorder services), and typically do not cover preexisting conditions.[231] STLDI can offer fewer benefits overall.[232] While fixed indemnity excepted benefits coverage is designed to provide a source of income replacement or financial support following a covered illness or injury, fixed indemnity benefits are often far below a covered individual's incurred costs.[233] Both STLDI and fixed indemnity excepted benefits coverage typically have lower medical loss ratios (MLRs) or lower actuarial values than coverage subject to the Federal consumer protections and requirements for comprehensive coverage. In one study of the medical claims of approximately 47 million enrollees in commercial plans in 2016, for example, the implied actuarial value of the STLDI coverage in the study was 49 percent, compared to an implied actuarial value of approximately 74 percent for off-Exchange comprehensive coverage plans and an implied actuarial value of 87 percent for on-Exchange plans.[234] Additionally, according to an NAIC report, across 28 issuers of STLDI for individuals in 2021, the nationwide loss ratio was approximately 70 percent.[235] Across 95 issuers of other non-comprehensive coverage for individuals, which includes fixed indemnity excepted benefits coverage, the nationwide loss ratio was approximately 40 percent in 2021.[236] By contrast, according to data from MLR annual reports for the 2021 MLR reporting year, the average MLR in the individual market for comprehensive coverage was approximately 87 percent in 2021.[237]

These statistics suggest that relative to issuers of comprehensive coverage, issuers of STLDI and fixed indemnity excepted benefits coverage tend to spend a lower percentage of premium dollars on health care items and services or, in the case of fixed indemnity excepted benefits coverage, payment of benefits. Such insurance might therefore be highly profitable for issuers,[238] depending on the extent to which issuers incur costs related to marketing

[231] *See, e.g.,* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market. See also* Pollitz, Karen, Michelle Long, Ashley Semanskee, and Rabah Kamal (2018). ''Understanding Short-Term Limited Duration Health Insurance,'' KFF, available at: *https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/. See also* Sanger-Katz, Margot (2018). ''What to Know Before You Buy Short-Term Health Insurance,'' *The New York Times,* available at: *https://www.nytimes.com/2018/08/01/upshot/buying-short-term-health-insurance-what-to-know.html. See also* Young, Christen Linke and Kathleen Hannick (2020). ''Fixed Indemnity Health Coverage Is a Problematic Form of ''Junk Insurance,'' U.S.C.-Brookings Schaeffer Initiative for Health Policy, available at: *https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance. See also* Partnership to Protect Coverage (2021). ''Under-Covered: How 'Insurance-Like' Products are Leaving Patients Exposed,'' available at: *https://www.nami.org/NAMI/media/NAMI-Media/Public%20Policy/Undercovered_Report_03252021.pdf.*

[232] *See, e.g.,* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[233] *See* Williams, Jackson (2022). ''Addressing Low-Value Insurance Products With Improved Consumer Information: The Case of Ancillary Health Products,'' National Association of Insurance Commissioners, *Journal of Insurance Regulation,* available at: *https://content.naic.org/sites/default/files/cipr-jir-2022-9.pdf.*

[234] Pelech, Daria and Karen Stockley (2022). ''How Price and Quantity Factors Drive Spending in Nongroup and Employer Health Plans,'' Health Services Research, available at: *https://onlinelibrary.wiley.com/doi/10.1111/1475-6773.13962.*

[235] National Association of Insurance Commissioners (2022). ''2021 Accident and Health Policy Experience Report,'' available at: *https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf.* Data regarding issuers of STLDI and non-comprehensive coverage are only available for the individual market.

[236] *Id.*

[237] Based on internal calculations. Source: CMS, Medical Loss Ratio Data and System Resources, available at: *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[238] *See* Appleby, Julie (2018). ''Short-Term Health Plans Boost Profits For Brokers And Insurers,'' NPR, available at: *https://www.npr.org/sections/health-shots/2018/12/21/678605152/short-term-health-plans-boost-profits-for-brokers-and-insurers. See* also Pear, Robert (2018). '' 'Short Term' Health Insurance? Up to 3 Years Under New Trump Policy,'' *The New York Times,* available at: *https://www.nytimes.com/2018/08/01/us/politics/trump-short-term-health-insurance.html.*

(including agent/broker compensation [239]), policy underwriting, and overhead. At the same time, the limited coverage provided through most STLDI and fixed indemnity excepted benefits coverage exposes individuals enrolled in such plans to health and financial risks, including the risk of high medical bills and high out-of-pocket expenses. These high out-of-pocket expenses, in turn, could contribute to an increased risk of medical debt and bankruptcy, which is particularly problematic given the extent of medical debt already present in the United States.[240]

Compensation for agents and brokers from sales of STLDI can also be significant, incentivizing aggressive and/or deceptive marketing tactics that may mislead customers into enrolling in STLDI instead of comprehensive coverage.[241] [242] [243] One study suggests that commissions for STLDI are up to 10 times higher than those obtained for enrollment in individual health insurance coverage (averaging approximately 23 percent for STLDI, compared to 2 percent for individual health insurance coverage).[244] Data that specify compensation levels for agents and brokers selling fixed indemnity excepted benefits coverage are not available. However, one survey suggests that lead-generating websites direct consumers to insurance brokers selling both STLDI and other types of non-comprehensive coverage, including fixed indemnity excepted benefits coverage, and that both types of coverage are often marketed to resemble comprehensive coverage.[245]

Misleading marketing of STLDI and fixed indemnity excepted benefits coverage is reported to have taken place during individual health insurance coverage open enrollment periods or special enrollment periods (including during the COVID–19 special enrollment period, under which the Exchanges that used the Federal eligibility and enrollment platform operationalized functionality during a 6-month period in 2021 to make a special enrollment period available on *HealthCare.gov* to allow qualified individuals to enroll in 2021 individual health insurance coverage through those Exchanges amid the COVID–19 PHE).[246] For example, one study showed that enrollment in STLDI policies by brokers increased by approximately 60 percent in December 2018 and by more than 120 percent in January 2019, suggesting that overall enrollment in STLDI spiked during the ACA open enrollment season.[247]

In order to protect consumers, a number of States and the District of Columbia enacted legislation or issued regulations regarding STLDI after the 2018 final rules were published.[248] State regulatory actions regarding such coverage have been wide-ranging. For example, according to one report, as of January 2020, 5 States prohibited underwritten STLDI, 9 States limited the total duration of enrollment in underwritten STLDI (including renewals or extensions) to less than 364 days, and 11 States limited the initial contract term for enrollment in STLDI to less than 364 days.[249] Other State regulatory actions on STLDI have included banning coverage rescissions (except in cases such as fraud on the part of the enrollee), adding preexisting condition protections, and requiring a certain MLR, among other restrictions.[250] Lastly, some States have largely aligned their regulations regarding STLDI with the 2018 final rules.[251] In some States that allow sales of STLDI, but otherwise regulate STLDI, issuers do not offer STLDI.[252]

Recent analysis has found that States that allow the initial contract term of STLDI to last up to 364 days have seen a 27 percent reduction in enrollment, on average, in non-Exchange plans that are subject to the ACA Federal consumer protections and requirements for comprehensive coverage from 2018 to 2020, compared with a 4 percent

[239] Compensation includes commissions, fees, or other incentives (for example, rewards or bonuses) as established in the relevant contract between an issuer and the agent or broker.

[240] *See, e.g.,* Consumer Financial Protection Bureau (2022). ''Medical Debt Burden in the United States,'' available at: *https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.*

[241] See, *e.g.,* Appleby, Julie (2018). ''Short-Term Health Plans Boost Profits For Brokers And Insurers,'' NPR, available at: *https://www.npr.org/sections/health-shots/2018/12/21/678605152/short-term-health-plans-boost-profits-for-brokers-and-insurers.*

[242] Government Accountability Office (2020). ''Private Health Coverage: Results of Covert Testing for Selected Offerings,'' available at: *https://www.gao.gov/products/gao-20-634r.*

[243] However, even as some issuers offer higher compensation for STLDI, many brokers continue to refuse to sell products they view as overly risky for consumers, like STLDI. *See, e.g.,* Corlette, Sabrina, Erik Wengle, Ian Hill, and Olivia Hoppe (2020). ''Perspective from Brokers: The Individual Market Stabilizes While Short-Term and Other Alternative Products Pose Risks,'' Urban Institute, available at: *https://www.urban.org/research/publication/perspective-brokers-individual-market-stabilizes-while-short-term-and-other-alternative-products-pose-risks.*

[244] U.S. House of Representatives Committee on Energy and Commerce (2020). ''Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Health Insurance Plans is Putting Americans at Risk,'' available at: *https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health.*

[245] Corlette, Sabrina, Kevin Lucia, Dania Palanker, and Olivia Hoppe (2019). ''The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses,'' Urban Institute, available at: *https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses.*

[246] *See* Palanker, Dania and JoAnn Volk. (2021). ''Misleading Marketing of Non-ACA Health Plans Continued During COVID–19 Special Enrollment Period,'' Center on Health Insurance Reforms, available at: *https://georgetown.app.box.com/s/mn7kgnhibn4kapb46tqmv6i7putry9gt. See* also Corlette, Sabrina, Kevin Lucia, Dania Palanker, and Olivia Hoppe (2019). ''The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses,'' Urban Institute, available at: *https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses.* Regarding the COVID–19 special enrollment period, *see* E.O. 14009; *see* also CMS (2021). ''2021 Special Enrollment Period in Response to the COVID–19 Emergency,'' available at: *https://www.cms.gov/newsroom/fact-sheets/2021-special-enrollment-period-response-covid-19-emergency.* Regarding the extension of the COVID–19 special enrollment period (to the 6-month period between February 15, 2021 and August 15, 2021), *see* CMS (2021). ''Extended Access Opportunity to Enroll in More Affordable Coverage Through *HealthCare.gov*,'' available at: *https://www.cms.gov/newsroom/fact-sheets/extended-access-opportunity-enroll-more-affordable-coverage-through-healthcaregov.*

[247] U.S. House of Representatives Committee on Energy and Commerce (2020). ''Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Health Insurance Plans Is Putting Americans at Risk,'' available at: *https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health.*

[248] Norris, Louise (2020). '' 'So Long' to Limits on Short-Term Plans,'' *Healthinsurance.org,* available at: *https://www.healthinsurance.org/so-long-to-limits-on-short-term-plans/. See* also Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[249] As of January 2020. Giovannelli, Justin, JoAnn Volk, and Kevin Lucia (2020). ''States Work to Make Individual Market Health Coverage More Affordable, But Long-Term Solutions Call for Federal Leadership,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/publications/issue-briefs/2020/jan/states-make-indivldual-coverage-more-affordable-federal-needed.*

[250] Palanker, Dania, Maanasa Kona, and Emily Curran (2019). ''States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/publications/issue-briefs/2019/may/states-step-up-protect-markets-consumers-short-term-plans.*

[251] Norris, Louise (2020). '' 'So Long' to Limits on Short-Term Plans,'' *Healthinsurance.org,* available at: *https://www.healthinsurance.org/so-long-to-limits-on-short-term-plans/.*

[252] *See* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

reduction in enrollment, on average, in those plans in States that banned STLDI or limited its duration to 6 months or less.[253] This analysis also found that market-wide risk scores (a measure of relative expected health care costs for a population) declined more in States that banned or limited STLDI coverage (−11.8 percent) than in States with less restrictions on STLDI (−8.3 percent), suggesting that the less restrictive States saw more healthier individuals enroll in STLDI policies in lieu of comprehensive coverage, which put upward pressure on the average expected health care costs among those with comprehensive coverage.

b. Number of Affected Entities

These proposed rules would directly impact individuals who are currently enrolled in STLDI or fixed indemnity excepted benefits coverage or who may choose to purchase or consider purchasing such coverage in the future. The Departments have limited information about the number of individuals currently enrolled in STLDI. Data from the NAIC indicate that approximately 173,000 individuals were covered by STLDI sold to individuals at the end of 2021.[254] However, as noted in section VII.B.1, this figure does not capture the total number of individuals covered by STLDI throughout the year, and does not include individuals covered by STLDI sold to or through associations. As noted in section VII.B.1, projections by CBO and JCT suggest that 1.5 million people could currently be enrolled in STLDI,[255] and CMS previously estimated that 1.9 million individuals would enroll in STLDI by 2023.[256] However, the CBO and JCT and CMS estimates were developed prior to the expansion of PTC subsidies provided through the ARP and the IRA, which likely supported increased enrollment in individual health insurance coverage purchased on an Exchange in lieu of STLDI and other forms of health insurance not subject to the Federal consumer protections and requirements for comprehensive coverage.[257] The number of enrollees in STLDI might have also been affected by any changes in State law or regulation that occurred since the 2018 final rules were issued. The Departments are unaware of any estimates or sources of information for the number of individuals enrolled in fixed indemnity excepted benefits coverage.

These proposed rules would also directly impact issuers of STLDI and fixed indemnity excepted benefits coverage, and agents and brokers who enroll consumers in that coverage. The NAIC reported that there were at least 28 issuers of STLDI for individuals across the U.S. in 2021.[258] Due to a lack of data, the Departments are unable to estimate the number of issuers of individual market fixed indemnity excepted benefits coverage that would be affected by these proposed rules, though as noted earlier in this section of this preamble, the NAIC reported that there were at least 95 issuers of ''other non-comprehensive coverage'' (including fixed indemnity excepted benefits coverage) for individuals across the U.S. in 2021.[259] The Departments also lack data about the number of agents and brokers that currently enroll individuals in STLDI or fixed indemnity excepted benefits coverage.

Lastly, these proposed rules could also indirectly impact consumers enrolled in comprehensive coverage due to the effects of increased enrollment in comprehensive coverage on risk pools, premiums, plan offerings, or issuer participation in the markets for that coverage. While the Departments are unable to estimate whether or how these proposed rules would impact plan offerings or issuer participation in the markets for comprehensive coverage, in sections VII.B.2.c and VII.B.2.e of this preamble, the Departments discuss the estimated effects of the provisions regarding STLDI included in these proposed rules on enrollment in and premiums for individual health insurance coverage purchased on an Exchange.

The Departments seek comments on the number of entities that would be affected by these proposed rules. In particular, the Departments seek comments on the number of issuers and the number of associations offering STLDI, the number of issuers offering individual market fixed indemnity excepted benefits coverage, the number of issuers offering group market fixed indemnity excepted benefits coverage, the number of enrollees in each type of coverage, and the number of agents and brokers that enroll individuals in these types of non-comprehensive coverage options.

c. Benefits

These proposed rules are expected to reduce the harm caused to consumers who are misled into enrolling in STLDI or fixed indemnity excepted benefits coverage as an alternative to or replacement for comprehensive coverage. The proposed notices would improve consumer understanding of STLDI and fixed indemnity excepted benefits coverage in relation to comprehensive coverage. The Departments are of the view that the proposed notices would help ensure individuals are made aware that these plans are not comprehensive coverage. This is also expected to reduce the level of deceptive marketing of STLDI and fixed indemnity excepted benefits coverage. Consumers who switch from STLDI or fixed indemnity excepted benefits coverage to comprehensive coverage would have better access to health care, better consumer protections, more robust benefits, and therefore would be expected to experience better health outcomes.

The Departments anticipate these proposed rules would lead to an increase in enrollment in high-quality, affordable, comprehensive coverage that is subject to the Federal consumer protections and requirements for comprehensive coverage. Individuals would be less likely to wait until after they incur major medical expenses or develop a medical condition to switch from STLDI or fixed indemnity excepted benefits coverage to comprehensive coverage. This could lead to more stable markets for comprehensive coverage and improved market risk pools for such coverage. However, as noted earlier in this section of this preamble, the expanded PTC subsidies provided through the ARP and the IRA have likely already resulted in increased enrollment in individual health

[253] Hall, Mark and Michael McCue (2022). ''Short-Term Health Insurance and the ACA Market,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2022/short-term-health-insurance-and-aca-market.*

[254] National Association of Insurance Commissioners (2022). ''2021 Accident and Health Policy Experience Report,'' available at: *https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf.*

[255] Congressional Budget Office (2020). ''CBO's Estimates of Enrollment in Short-Term, Limited-Duration Insurance,'' available at: *https://www.cbo.gov/publication/56622.* CBO and JCT projected that enrollment in STLDI would reach 1.6 million by 2028. *See* Congressional Budget Office (2019). ''How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans,'' available at: *https://www.cbo.gov/publication/54915.*

[256] CMS Office of the Actuary (2018). ''Estimated Financial Effects of the Short-Term, Limited-Duration Policy Proposed Rule,'' available at: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/STLD20180406.pdf.*

[257] *See, e.g.,* Ortaliza, Jared, Krutika Amin, and Cynthia Cox (2022). ''As ACA Marketplace Enrollment Reaches Record High, Fewer Are Buying Individual Market Coverage Elsewhere,'' KFF, available at: *https://www.kff.org/policy-watch/as-aca-marketplace-enrollment-reaches-record-high-fewer-are-buying-individual-market-coverage-elsewhere/.*

[258] National Association of Insurance Commissioners (2022). ''2021 Accident and Health Policy Experience Report,'' available at: *https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf.*

[259] *Id.*

insurance coverage purchased on an Exchange in lieu of STLDI or fixed indemnity excepted benefits coverage, so the immediate overall effects of these proposed rules on enrollment, market stability, and risk pools are expected to be limited in 2024 and 2025.[260] The CMS Office of the Actuary (OACT) estimates that, relative to current law, the proposed provisions regarding STLDI would not affect enrollment in individual health insurance coverage purchased on an Exchange in 2024 and 2025, but would increase enrollment by approximately 60,000 people in 2026, 2027, and 2028.[261]

To the extent that these proposed rules would lead to an increase in enrollment in comprehensive coverage that is subject to the Federal consumer protections and requirements for comprehensive coverage, these rules would likely result in a reduction in out-of-pocket expenses, medical debt, and risk of medical bankruptcy for consumers switching to comprehensive coverage. These proposed rules could also lead to a reduction in surprise bills from out-of-network providers in certain circumstances, to the extent the proposed rules lead to an increase in enrollment in coverage that is subject to the surprise billing protections for consumers under the No Surprises Act.

By encouraging enrollment in comprehensive coverage, these proposed rules could also reduce the number of coverage rescissions, claims denials, premium increases, or coverage exclusions that are common for STLDI.

d. Costs

Individuals with STLDI or fixed indemnity excepted benefits coverage who switch to individual health insurance coverage—particularly those individuals who are not eligible for the PTC—might incur higher premium costs depending on their choice of available Exchange and off-Exchange comprehensive coverage plans, their PTC eligibility (if applicable), and the amount of advance payment of the PTC they receive (if any).[262]

These proposed rules could also lead to an increase in the number of individuals without some form of health insurance coverage, if some individuals with STLDI or fixed indemnity excepted benefits coverage lose coverage and have to wait until the next open enrollment period to purchase comprehensive coverage (for example, if an individual with existing coverage exhausts their renewal options outside of an open enrollment period), or choose to become uninsured. Those individuals who become uninsured could face an increased risk of higher out-of-pocket expenses and medical debt, reduced access to health care, and potentially worse health outcomes.

To the extent that these proposed rules would lead to an increase in enrollment in comprehensive coverage, they could result in an increase in overall health care utilization and spending, given that this coverage tends to have higher MLRs and actuarial values and might offer lower cost-sharing requirements and more generous benefits.[263]

Additionally, these proposed rules could impose costs on States that change their laws regarding STLDI or fixed indemnity excepted benefits coverage in response to the proposed provisions included in these proposed rules. The Departments seek comments on the magnitude of the costs that States might incur associated with enacting new legislation, implementing new laws, and updating existing regulations regarding STLDI and fixed indemnity excepted benefits coverage.

The Departments expect that plans and issuers would incur minimal costs to replace the existing notices with the revised ones (which would be provided by the Departments, as discussed in section VII.D of this preamble). The Departments also expect that since plans and issuers change their policy documents routinely, the costs to plans and issuers to change their policy documents in response to these proposed rules would be part of plans' and issuers' usual business costs.

e. Transfers

Individuals currently enrolled in STLDI may be healthier on average than individuals enrolled in comprehensive coverage, as STLDI policies are not subject to Federal requirements that would prohibit them from excluding individuals or charging individuals higher premiums on the basis of health status, gender, and other factors. These proposed rules might cause some of these individuals to switch to comprehensive coverage. If such a switch occurs, it would improve the individual market (or merged market) risk pools and lead to lower overall premiums for individual health insurance coverage. CMS previously estimated that gross premiums for individual health insurance coverage purchased on an Exchange in 2022 would be 6 percent higher under the 2018 proposed rules than they would have been in the absence of those rules.[264] CBO and JCT previously estimated that the 2018 final rules for STLDI, in conjunction with changes made through the 2018 Department of Labor rule entitled ''Definition of 'Employer' Under Section 3(5) of ERISA—Association Health Plans'',[265] would increase premiums in the individual and small group health insurance coverage markets by around 3

[260] *See, e.g.,* Ortaliza, Jared, Krutika Amin, and Cynthia Cox (2022). ''As ACA Marketplace Enrollment Reaches Record High, Fewer Are Buying Individual Market Coverage Elsewhere,'' KFF, available at: *https://www.kff.org/policy-watch/as-aca-marketplace-enrollment-reaches-record-high-fewer-are-buying-individual-market-coverage-elsewhere/.*

[261] In developing these estimates, OACT assumed that STLDI coverage would be significantly less expensive than individual health insurance coverage purchased on an Exchange (where available) and would be an attractive option for individuals and families with relatively low health care costs and little to no subsidies. Using their health reform model, OACT estimated that, under current law, about 60,000 people would move from individual health insurance coverage purchased on an Exchange to STLDI in 2026, when the additional PTC subsidies available through 2025 through the IRA expire. In addition, since those switching to STLDI are assumed to be healthier than average, the average premium for individual health insurance coverage purchased on an Exchange would increase by roughly 0.5 percent. Changing the maximum duration of an STLDI policy, certificate, or contract of insurance to no more than 3 months, as proposed in these proposed rules, would negate these effects.

[262] This might occur if premiums for STLDI are lower than premiums for individual health insurance coverage. One study, for example, showed that by screening out individuals with preexisting conditions and providing fewer comprehensive benefits, issuers may be able to offer STLDI at rates 54 percent below those for (unsubsidized) comprehensive coverage. *See* Levitt, Larry, Rachel Fehr, Gary Claxton, Cynthia Cox, and Karen Pollitz (2018). ''Why do Short-Term Health Insurance Plans Have Lower Premiums than Plans that Comply with the ACA?,'' KFF, available at: *https://files.kff.org/attachment/Issue-Brief-Why-Do-Short-Term-Health-Insurance-Plans-Have-Lower-Premiums-Than-Plans-That-Comply-with-the-ACA.*

[263] As noted earlier in this RIA, many STLDI policies offer limited benefits coverage and have relatively low actuarial values. Many STLDI issuers spend a relatively high percentage of premium dollars on administration and overhead *See* National Association of Insurance Commissioners (2022). ''Accident and Health Policy Experience Report for 2021,'' available at: *https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf.* Regarding the differences in cost-sharing requirements and out-of-pocket expenses between STLDI and individual health insurance coverage, *see, e.g.,* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[264] CMS Office of the Actuary (2018). ''Estimated Financial Effects of the Short-Term, Limited-Duration Policy Proposed Rule,'' available at: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/STLD20180406.pdf.*

[265] 83 FR 28912 (June 21, 2018). The District Court of D.C. vacated this rule. *See State of New York, et al.* v. *United States Department of Labor,* et al., 363 F.Supp.3d 109 (D.D.C. 2019).

percent.[266] An analysis of individual health insurance coverage rate filing materials for 2020 also found that the few carriers that explicitly included a premium adjustment because of the 2018 final rules increased premiums by between 0.5 percent and 2 percent in 2020.[267] These analyses suggest that these proposed rules could have an effect in the opposite direction, potentially reducing gross premiums for individual health insurance coverage. However, since the expanded PTC subsidies provided through the ARP and the IRA have likely already led to a reduction in enrollment in STLDI and fixed indemnity excepted benefits coverage and an increase in enrollment in individual health insurance coverage purchased on an Exchange, the Departments anticipate that the premium impact of these proposed rules would be relatively small. OACT estimates that the proposed provisions regarding STLDI would not affect gross premiums for individuals with individual health insurance coverage purchased on an Exchange in 2024 and 2025, but would reduce gross premiums by approximately 0.5 percent in 2026, 2027, and 2028.[268]

The proposed provisions regarding STLDI are expected to reduce Federal spending on PTC after the end of the expanded PTC subsidies provided through the IRA. These proposed provisions are expected to reduce gross premiums for individual health insurance coverage purchased on an Exchange and therefore lower per capita PTC spending. This effect would be partly offset by an increase in the number of individuals enrolling in Exchange coverage that would be eligible to receive the PTC (by approximately 20,000 in 2026, 2027, and 2028). On net, OACT estimates that these proposed provisions would have no impact on Federal spending on PTC in 2024 and 2025 given the expanded PTC subsidies provided through the IRA, but would reduce Federal spending on the PTC by approximately $120 million in 2026, 2027, and 2028.[269] This reduction in Federal spending on the PTC would be viewed as a reduction in the amount of the transfer from the Federal Government to individuals.

These proposed rules could also lead to a transfer in the form of reduced out-of-pocket expenses from issuers to consumers who switch from STLDI or fixed indemnity excepted benefits coverage to comprehensive coverage, since more health care services would be covered under comprehensive coverage and the cost-sharing requirements for comprehensive coverage might be lower than those for STLDI or fixed indemnity excepted benefits coverage.[270]

f. Uncertainty

As noted throughout this preamble, due to a lack of data and information, there are several areas of uncertainty regarding the potential impacts of these proposed rules. The Departments are unable to forecast how all of the provisions of these proposed rules would affect enrollment in STLDI and fixed indemnity excepted benefits coverage, as the Departments are uncertain how many individuals are currently enrolled in these types of coverage and would switch to comprehensive coverage, how many individuals would try to find another issuer of STLDI once their current policy ends, how many individuals would choose to remain enrolled in fixed indemnity excepted benefits coverage (particularly if their employers restructure their plan offerings in response to these proposed rules), or how many individuals would choose not to purchase any form of coverage as a result of these proposed rules.[271] As a result, there is also some uncertainty about the potential impact on risk pools, premiums, Federal expenditures on PTC, and compensation for agents and brokers selling STLDI, fixed indemnity excepted benefits coverage, and individual health insurance coverage. The Departments seek comments on all of these areas of uncertainty regarding the impacts of these proposed rules.

g. Health Equity Impact

Due to the typical underwriting practices and plan eligibility requirements in the market for STLDI, individuals might face higher premiums or might not be able to purchase STLDI because of preexisting health conditions, gender, or other factors.[272] STLDI and fixed indemnity excepted benefits coverage typically do not cover certain essential health benefits including prescription drugs, mental health and substance use disorder services, or maternity services,[273] which could contribute to disparities in access to health care and health outcomes (regarding mental health, maternal health, or infant health, for instance).[274]

Consumers with low health literacy, which disproportionately includes consumers with low incomes, may also be misled into purchasing STLDI or fixed indemnity excepted benefits coverage under the mistaken impression that it would lower their out-of-pocket costs while providing comprehensive coverage with lower premiums. Consumers with low income or who are members of underserved racial and ethnic groups are more likely to be uninsured and face barriers in accessing care.[275] Individuals in these populations

[266] Congressional Budget Office (2019). ''How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans,'' available at: *https://www.cbo.gov/publication/54915.*

[267] Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[268] This estimate accounts for the end of the expanded PTC subsidies provided through the IRA.

[269] In fiscal year terms, this would be a reduction in Federal spending of $90 million in 2026, $120 million in 2027, and $120 million in 2028.

[270] As noted in the Costs subsection of this RIA, regarding the differences in cost-sharing requirements and out-of-pocket expenses between STLDI and individual health insurance coverage, *see, e.g.,* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[271] Previous studies have estimated the impact of the STLDI definition adopted in the 2018 final rules on enrollment in individual health insurance coverage, but in conjunction with the impact of elimination of the individual shared responsibility payment. *See* Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[272] *See, e.g.,* Barnes, Justin and Fumiko Chino (2022). ''Short-term Health Insurance Plans Come Up Short for Patients with Cancer,'' *JAMA Oncology,* Vol 8 Issue 8: 1101–1103, available at: *https://jamanetwork.com/journals/jamaoncology/article-abstract/2793127.*

[273] Dieguez, Gabriela and Dane Hansen (2020). ''The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market,'' Milliman, available at: *https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market.*

[274] *See, e.g.,* Hill, Latoya, Samantha Artiga, and Usha Ranji (2022). ''Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them,'' KFF, available at: *https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-in-maternal-and-infant-health-current-status-and-efforts-to-address-them/.*

[275] *See* Tolbert, Jennifer, Kendal Orgera, and Anthony Damico (2020). ''Key Facts about the Uninsured Population,'' KFF, available at: *https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/. See also* Artiga, Samantha, Latoya Hill, Kendal Orgera, and Anthony Damico (2021). ''Health Coverage by Race and Ethnicity, 2010–2019,'' KFF, available at: *https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity/. See also* KFF (2021). ''Adults Who Report Not Having a Personal Doctor/Health Care Provider by Race/Ethnicity,'' available at: *https://www.kff.org/other/state-indicator/percent-of-adults-reporting-not-having-a-personal-doctor-by-raceethnicity/. See* also KFF (2021). ''Adults Who Report Not Seeing a

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arguably face the greatest health and financial consequences in the event that STLDI or fixed indemnity excepted benefits coverage proves inadequate. These individuals are also potentially most vulnerable to practices like post-claims underwriting and rescission that are common in the STLDI market, which could leave them without any coverage in a health crisis.

These proposed rules would partly address these health inequities by increasing regulation of issuers offering STLDI and fixed indemnity excepted benefits coverage and encouraging enrollment in comprehensive coverage.

The Departments seek comments on the potential health equity implications of these proposed rules.

h. Regulatory Review Cost Estimation

If regulations impose administrative costs on entities, such as the time needed to read and interpret rules, regulatory agencies should estimate the total cost associated with regulatory review. The Departments assume that approximately 250 entities will review these proposed rules, including 28 issuers of STLDI,[276] 95 issuers of other non-comprehensive coverage,[277] and other interested parties (for example, State insurance departments, State legislatures, industry associations, and advocacy organizations). The Departments acknowledge that this assumption may understate or overstate the number of entities that will review these proposed rules.

Using wage information from the Bureau of Labor Statistics, for Business Operations Specialists, All Other (Code 13–1199), to account for average labor costs (including a 100 percent increase for the cost of fringe benefits and other indirect costs), the Departments estimate that the cost of reviewing these proposed rules will be $76.20 per hour.[278] The Departments estimate that it will take each reviewing individual approximately 4 hours to review these proposed rules, with an associated cost of approximately $305 (4 hours × $76.20). Therefore, the Departments estimate that the (one-time) total cost of reviewing these proposed rules will be approximately $76,200 (250 × $305).

The Departments welcome comments on this approach to estimating the total burden and cost for interested parties to read and interpret these proposed rules.

C. Regulatory Alternatives—Departments of Health and Human Services and Labor

In developing the proposed rules, the Departments considered various alternative approaches.

With respect to the proposed amendments to the definition of STLDI, the Departments considered leaving in place the duration standards established in the 2018 final rules, but concluded that the 2018 final rules' duration standards were too lengthy for the reasons described in section III.A.2 of this preamble. The Departments also considered proposing to limit the maximum duration of STLDI policies to a less-than-6-month period to minimize disruption for consumers in some (but not all) States that have implemented a less-than-6-month period, a less-than-3-month period as implemented in the 2016 final rules, or otherwise shortening the maximum duration to a time period shorter than allowed under current regulations. However, the Departments ultimately decided to propose a maximum duration of no more than 4 months to align with the rules regarding the 90-day waiting period limitation and the optional reasonable and bona fide employment-based orientation period that is permitted under the ACA.[279]

The Departments considered proposing to limit stacking of STLDI coverage, whether sold by the same or different issuer. However, after considering the potential challenges issuers and State regulators would face in attempting to determine whether an individual had previously enrolled in an STLDI policy with a different issuer, the Departments decided to propose to limit stacking only where STLDI is sold to an individual by the same issuer, while seeking comments on whether the Departments should extend the limit on stacking to STLDI sold to an individual by issuers that are members of the same controlled group.

The Departments considered proposing a limit on the marketing and/or sale of STLDI during the individual health insurance coverage open enrollment period. The Departments are concerned that aggressive and deceptive marketing practices by some issuers have lured consumers, looking for comprehensive coverage, into enrolling in STLDI, exposing them to financial risk. The Departments solicit comments on how the Departments can support State efforts to limit the marketing and/or sale of STLDI during the open enrollment period.

With respect to the proposed amendments to the notices provided to consumers considering enrolling in STLDI, the Departments considered including a complete list of Federal protections that apply to consumers enrolled in comprehensive coverage versus STLDI. This approach would more fully distinguish STLDI from comprehensive coverage and highlight in greater detail the risks to consumers of enrolling in STLDI instead of comprehensive coverage. However, after consulting with plain language experts, the Departments are of the view that providing a complete comparison of protections that a consumer would forego by enrolling in STLDI rather than comprehensive coverage would result in a lengthy, complex notice that could be difficult for the typical consumer to understand. Increasing the length and complexity of the notice would also increase burden for issuers to provide the notice on policy documents and marketing and application materials as proposed in these rules. However, the Departments are soliciting comments on all aspects of the revised notice, including whether a different format or presentation would result in a more useful, consumer-friendly notice.

The Departments considered proposing a more detailed notice be provided to consumers who are considering enrolling in fixed indemnity excepted benefits coverage, including language that would highlight in greater detail the differences between fixed indemnity excepted benefits coverage and comprehensive coverage and include a reference to potential financial support available for Exchange coverage, similar to the proposed consumer notice for STLDI. However, the Departments ultimately determined that the value of providing a more concise, readable notice for fixed indemnity excepted benefits coverage outweighed the benefits of providing that more detailed information. Because fixed indemnity excepted benefits coverage differs so significantly in purpose and scope from comprehensive coverage, the Departments were also concerned that providing the additional details could suggest to consumers that fixed indemnity excepted benefits coverage is something more than a form of income replacement or financial support.

Doctor in the Past 12 Months Because of Cost by Race/Ethnicity,'' available at: *https://www.kff.org/other/state-indicator/percent-of-adults-reporting-not-seeing-a-doctor-in-the-past-12-months-because-of-cost-by-raceethnicity/*.

[276] National Association of Insurance Commissioners (2022). ''2021 Accident and Health Policy Experience Report,'' available at: *https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf*.

[277] *Id.* The Departments assume that all issuers of other non-comprehensive coverage will review these proposed rules.

[278] *See* Bureau of Labor Statistics (2022). ''National Occupational Employment and Wage Estimates,'' available at: *https://www.bls.gov/oes/current/oes_nat.htm*.

[279] 26 CFR 54.9815–2708, 29 CFR 2590.715–2708, and 45 CFR 147.116.

The Departments also considered proposing alternative applicability dates for the proposed changes to the fixed indemnity excepted benefits regulations, including a uniform applicability date for new and existing coverage, either aligned with the effective date of the final rules or with a longer transition. The Departments acknowledge that consumers may have purchased fixed indemnity excepted benefits coverage in reliance on requirements in place prior to the publication of the final rules, and that changes to the regulations may affect the availability of such coverage, benefit design, and costs. Plans and issuers, similarly, have designed and sold fixed indemnity excepted benefits coverage on the basis of the current regulatory framework, on which State regulators have also developed enforcement policies. In light of these reliance interests, the Departments are of the view that it is appropriate to adopt the special rule for existing coverage to delay applicability for certain changes to January 1, 2027, in order to provide a transition period with respect to fixed indemnity excepted benefits coverage sold or issued before the effective date of the final rules. However, such reliance interests would not be present with respect to new fixed indemnity excepted benefits coverage sold or issued on or after the effective date of the final rules. Further, delaying application of the final rules prolongs the risk of harm to new consumers and would frustrate the purpose of these proposed rules to distinguish between comprehensive coverage and fixed indemnity excepted benefits coverage and promote consumer access to high-quality, affordable, comprehensive coverage. In addition, as discussed in section III.B.1.g of this preamble, there are certain proposed changes (such as the applicable notice requirements, technical amendments, and the severability provisions) that do not raise concerns about reliance interests and therefore the Departments propose an earlier applicability date for those proposals for fixed indemnity excepted benefits coverage sold or issued before the effective date of the final rules.

The Departments considered proposing to apply the fixed indemnity excepted benefits coverage proposals in these proposed rules to specified disease excepted benefits coverage, to apply uniform standards to both statutorily-defined forms of independent, noncoordinated excepted benefits. However, the Departments determined that additional information about specified disease excepted benefits coverage would be useful prior to engaging in rulemaking. Therefore, the Departments have included a comment solicitation aimed at gathering information about specified disease excepted benefits coverage, including whether additional guidance or rulemaking on this type of coverage may be necessary.

D. Paperwork Reduction Act

These proposed rules provide that to be considered STLDI for coverage periods beginning on or after the effective date of the final rules, a revised consumer notice must be prominently displayed (in either paper or electronic form) on the first page of the policy, certificate, or contract of insurance and in any marketing, application, and enrollment materials (including reenrollment materials) provided to individuals at or before the time an individual has the opportunity to enroll (or reenroll) in the coverage.

These proposed rules also provide that to be considered fixed indemnity excepted benefits coverage in the group market for plan years beginning on or after the effective date of the final rules, a notice must be included in any marketing, application, or enrollment materials provided to participants at or before the time participants are given an opportunity to enroll in the coverage. The notice would indicate that the hospital indemnity or other fixed indemnity insurance is not comprehensive coverage and does not have to include most Federal consumer protections for health insurance, outline the availability of other health coverage options, and explain that individuals may contact the State department of insurance for questions or complaints. These proposed rules would propose revisions, comparable to the group market standards, for the notice that must be provided for hospital indemnity and other fixed indemnity insurance to be considered an excepted benefit in the individual market for notices required with respect to coverage periods beginning on or after the effective date of the final rules. The proposed rules provide that the individual market fixed indemnity excepted benefits notice must be included on the first page of any marketing, application, and enrollment or reenrollment materials that are provided at or before the time an individual has the opportunity to enroll or reenroll in the coverage, and on the first page of the policy, certificate, or contract of insurance.

The Departments propose to provide the exact text for these notices, and the language would not need to be customized. The burden associated with these notices would therefore not be subject to the Paperwork Reduction Act of 1995 in accordance with 5 CFR 1320.3(c)(2) because they do not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3). Consequently, this document need not be reviewed by OMB under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

These proposed rules also amend 26 CFR 1.105–2 to clarify that, for amounts to be excluded from income under section 105(b) of the Code, the payment or reimbursement must be substantiated by the health plan. Any information required to substantiate the expenses under this regulation is considered a usual and customary business practice and a record provided during the normal course of business in administering health plans. These customary business records impose no additional burden on respondents and are not required to be reviewed by OMB in accordance with 5 CFR 1320.3(b)(2).

The Departments seek comments on potential burden on issuers if the final rules were to include required notices with language that would need to be customized.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), (5 U.S.C. 601, *et seq.*), requires agencies to analyze options for regulatory relief of small entities to prepare an initial regulatory flexibility analysis to describe the impact of a proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

The provisions in these proposed rules would affect issuers of STLDI and issuers of fixed indemnity excepted benefits coverage. Health insurance issuers are generally classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers).

According to SBA size standards,[280] entities with average annual receipts of $47 million or less are considered small entities for this NAICS code. The Departments expect that few, if any, insurance companies underwriting health insurance policies fall below these size thresholds. Based on data from MLR annual report submissions for the 2021 MLR reporting year, approximately 87 out of 483 issuers of health insurance coverage nationwide had total premium revenue of $47 million or less.[281] However, it should be noted that over 77 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding $47 million. The Departments expect this to be the case for issuers of STLDI and issuers of fixed indemnity excepted benefits coverage. However, as noted earlier in this RIA, due to a lack of data, the Departments are unable to estimate how many small issuers of STLDI and small issuers of fixed indemnity excepted benefits coverage would be affected by these proposed rules. The Departments seek comments on this analysis, and seek information on the number of small issuers of STLDI and the number of small issuers of fixed indemnity excepted benefits coverage.

Agents and brokers would be classified under NAICS code 524210 (Insurance Agencies and Brokerages), with a size standard of $15 million or less. There is the potential for the compensation [282] of small agents and brokers associated with the sale of STLDI and fixed indemnity excepted benefits coverage to be negatively affected by these proposed rules, if there is a reduction in sales of that coverage. There is also the potential for the compensation of small agents and brokers associated with the sale of individual health insurance coverage to be positively affected by these proposed rules, if there is an increase in sales of that coverage. However, due to a lack of data, the Departments are unable to precisely estimate how many agents and brokers might be affected by these proposed rules and the magnitudes of the potential changes in compensation.[283] The Departments seek information on the number of agents and brokers who sell STLDI, fixed indemnity excepted benefits coverage, and individual health insurance coverage, respectively, and how their compensation might be affected by these proposed rules, if finalized.

In addition, section 1102(b) of the Social Security Act requires agencies to prepare a regulatory impact analysis if a rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. While these rules are not subject to section 1102 of the Social Security Act, the Departments are of the view that these proposed rules would not have a significant impact on the operations of a substantial number of small rural hospitals. The Departments seek comments on this

F. Special Analyses—Department of the Treasury

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule that includes any Federal mandate that may result in expenditures in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. That threshold is approximately $177 million in 2023. The Departments anticipate the combined impact on State, local, or Tribal governments and the private sector would not be above the threshold.

H. Federalism

Executive Order 13132 establishes certain requirements that Federal agencies must meet when they issue proposed rules that impose substantial direct costs on State and local governments, preempt State law, or otherwise have federalism implications.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy-making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the NAIC.

In the Departments' view, these proposed rules have Federalism implications because they would have direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. Under these proposed rules, health insurance issuers offering STLDI or fixed indemnity excepted benefits coverage would be required to follow the minimum Federal standards for such coverage to not be subject to the Federal consumer protections and requirements for comprehensive coverage.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating an employee benefit plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and sections 2724 and 2762 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a) and 148.210(b)) apply so that the Federal consumer protections and requirements for comprehensive coverage are not to be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a Federal requirement.[284] The conference report accompanying HIPAA, when this Federal preemption standard was first established for the requirements in title XXVII of the PHS Act, indicates that this is intended to be

[280] Small Business Administration (2023). ''Table of Size Standards (last updated March 2023),'' available at: *https://www.sba.gov/document/support--table-size-standards.*

[281] Based on internal calculations. Source: CMS, Medical Loss Ratio Data and System Resources, available at: *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

[282] Compensation includes commissions, fees, or other incentives (for example, rewards or bonuses) as established in the relevant contract between an issuer and the agent or broker.

[283] Previously, in 86 FR 51730, 51756, the Departments noted that a total of 55,541 agents and brokers work with issuers. Many of these agents and brokers are likely to be employed by small entities.

[284] A similar preemption provision was established for the Exchange and other Federal health insurance requirements that are codified outside of title XXVII of the PHS Act. *See* sections 1311(k) and 1321(d) of the ACA.

the ''narrowest'' preemption of State laws.[285]

States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Federal requirements that are the subject of this rulemaking. In general, State insurance requirements that are more stringent or more consumer protective than the Federal requirements are unlikely to ''prevent the application of'' the Federal provisions, and therefore are unlikely to be preempted.[286] Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive or more consumer protective than the Federal requirements.[287] States that have current requirements for STLDI or fixed indemnity excepted benefits coverage that are the same as or more restrictive or consumer protective than the Federal standards in these proposed rules could thus continue to apply such State law requirements. States would also have the flexibility to require additional consumer disclosures and to establish additional restrictions under State law in response to market-specific needs or concerns, as long as those requirements would not prevent the application of the Federal requirements. For example, a State law or regulation cannot require issuers to remove language from the Federal consumer notice, as that would prevent the application of the Federal notice requirements.

These proposed rules, if finalized, would not impose requirements on STLDI. Rather, they would define STLDI. Therefore, to the extent a State were to permit or require an issuer of STLDI to issue a policy, certificate, or contract of insurance that has a longer initial contract term or a longer total coverage period than these proposed rules, if finalized, would specify, that would not constitute a State law that is more generous or consumer-protective than Federal requirements. Rather, any such policy would not fall within the Federal definition of STLDI, and the policy would therefore be subject to all the Federal consumer protections and requirements that apply to individual health insurance coverage.

The Departments are of the view that there is a need for regulatory action at the Federal level given, among other factors, the prevalence of marketing of and enrollment in STLDI through out-of-State associations, and the potential inability of States to regulate and collect information about these associations.[288] There is also limited State-level information about STLDI enrollment and premiums.[289]

While developing these proposed rules, to the extent feasible within the applicable preemption provisions, the Departments have attempted to balance States' interests in regulating health insurance issuers and their health insurance markets, with Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Child support, Employee benefit plans, Health care, Health insurance, Maternal and child health, Penalties, Pensions, Privacy, Reporting and recordkeeping requirements.

45 CFR Parts 144 and 146

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 148

Administrative practice and procedure, Health care, Health insurance, Insurance companies, Penalties, Reporting and recordkeeping requirements.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Xavier Becerra,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 and 54 as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.105–2 is revised to read as follows:

§ 1.105–2 Amounts expended for medical care.

(a) *In general.* Section 105(b) provides an exclusion from gross income with respect to the amounts referred to in section 105(a) (see § 1.105–1) which are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred for the medical care (as defined in section 213(d)) of the taxpayer, the taxpayer's spouse, the taxpayer's dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) (dependents), and any child of the taxpayer who, as of the end of the taxable year, has not attained age 27. Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of section 105(b). (All references to the taxpayer's medical expenses in this section include the medical expenses of the taxpayer, the taxpayer's spouse, the taxpayer's dependents, and any child of the taxpayer who, as of the end of the taxable year, has not attained age 27.) However, the exclusion does not apply to amounts which are attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year. See section 213 and the regulations in this chapter under section 213. Section 105(b) applies only to amounts which are paid specifically to reimburse the taxpayer for section

[285] *See* House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018 and available at *https://www.congress.gov/congressional-report/104th-congress/house-report/736/1.*

[286] *See, e.g.,* 62 FR 16904 (April 8, 1997), 69 FR 78739 (Dec. 30, 2004), 79 FR 10303 (Feb. 24, 2014), and 86 FR 36872, 36887 (July 13, 2021).

[287] *Ibid.*

[288] Keith, Katie (2020). ''New Congressional Investigation of Short-Term Plans,'' *Health Affairs,* available at: *https://www.healthaffairs.org/do/10.1377/forefront.20200626.227261/full/. See also* Curran, Emily, Dania Palanker, and Sabrina Corlette (2019). ''Short-Term Health Plans Sold Through Out-of-State Associations Threaten Consumer Protections,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2019/short-term-health-plans-sold-through-out-state-associations-threaten-consumer-protections.*

[289] Government Accountability Office (2022). ''Private Health Insurance: Limited Data Hinders Understanding of Short-Term Plans' Role and Value During the COVID–19 Pandemic,'' available at: *https://www.gao.gov/products/gao-22-104683. See also* Palanker, Dania and Christina Goe (2020). ''States Don't Know What's Happening in Their Short-Term Health Plan Markets and That's a Problem,'' Commonwealth Fund, available at: *https://www.commonwealthfund.org/blog/2020/states-dont-know-whats-happening-their-short-term-health-plan-markets-and-thats-problem. See also* Congressional Budget Office (2020). ''CBO's Estimates of Enrollment in Short-Term, Limited-Duration Insurance,'' available at: *https://www.cbo.gov/publication/56622.*

213(d) medical care expenses that have been incurred by the taxpayer and that are substantiated by the plan. Thus, section 105(b) does not apply to amounts that the taxpayer would be entitled to receive irrespective of the amount of medical care expenses the taxpayer incurs or that are paid to reimburse the taxpayer for incurred section 213(d) medical care expenses if the medical care expenses have not been substantiated by the plan. For example, if under a wage continuation plan the taxpayer is entitled to regular wages during a period of absence from work due to sickness or injury, amounts received under such plan are not excludable from the taxpayer's gross income under section 105(b) even though the taxpayer may have incurred medical expenses during the period of illness. Any amounts received under a fixed indemnity plan treated as an excepted benefit under section 9832(c)(3), or any plan that pays amounts regardless of the amount of section 213(d) medical care expenses actually incurred, are not payments for medical care under section 105(b) and are included in the employee's gross income under section 105(a). If the taxpayer incurs an obligation for medical care, payment to the obligee in discharge of such obligation shall constitute indirect payment to the taxpayer as reimbursement for medical care. Similarly, payment to or on behalf of the taxpayer's spouse or dependents or any child of the taxpayer who, as of the end of the taxable year, has not attained age 27 shall constitute indirect payment to the taxpayer.

(b) *Applicability date.* The regulations in this section apply as of the later of [DATE OF PUBLICATION OF THE FINAL RULE], or January 1, 2024.

PART 54—PENSION AND EXCISE TAX

■ 3. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 4. Section 54.9801–2 is amended by revising the definition of ''Short-term, limited-duration insurance'' to read as follows:

§ 54.9801–2 Definitions.

* * * * *

Short-term, limited-duration insurance means health insurance coverage provided pursuant to a policy, certificate, or contract of insurance with an issuer that:

(1) Has an expiration date specified in the policy, certificate, or contract of insurance that is no more than 3 months after the original effective date of the policy, certificate, or contract of insurance, and taking into account any renewals or extensions, has a duration no longer than 4 months in total. For purposes of this paragraph (1), a renewal or extension includes the term of a new short-term, limited-duration insurance policy, certificate, or contract of insurance issued by the same issuer to the same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance; and

(2) Displays prominently on the first page (in either paper or electronic form, including on a website) of the policy, certificate, or contract of insurance, and in any marketing, application, and enrollment materials (including reenrollment materials) provided to individuals at or before the time an individual has the opportunity to enroll (or reenroll) in the coverage, in at least 14-point font, the language in the following notice:

BILLING CODE 4120–01–, 4150–29–, 4830–1–P

Notice to Consumers About Short-Term, Limited-Duration Insurance

IMPORTANT: This is short-term, limited-duration insurance. This is temporary insurance. **It isn't comprehensive health insurance.** Review your policy carefully to make sure you understand what is covered and any limitations on coverage.

- This insurance might not cover or might limit coverage for:
  - preexisting conditions; or
  - essential health benefits (such as pediatric, hospital, emergency, maternity, mental health, and substance use services, prescription drugs, or preventive care).
- You won't qualify for Federal financial help to pay for premiums or out-of-pocket costs.
- You aren't protected from surprise medical bills.
- When this policy ends, you might have to wait until an open enrollment period to get comprehensive health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

(3) If any provision of this definition of *short-term, limited-duration insurance* is held to be invalid or unenforceable by its terms, or as applied to any entity or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, along with other provisions not found invalid or unenforceable, including as applied to entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of the definition and shall not affect the remainder thereof.

* * * * *

■ 5. Section 54.9831–1 is amended by:
■ a. Revising paragraph (c)(4)(i);
■ b. Adding paragraph (c)(4)(ii)(D);
■ c. Revising paragraph (c)(4)(iii); and
■ d. Adding paragraphs (c)(4)(iv) and (v).

The revisions and additions read as follows:

§ 54.9831–1 Special rules relating to group health plans.

* * * * *

(c) * * *

(4) * * *

(i) *Excepted benefits that are not coordinated.* Coverage for only a specified disease or illness (for example, cancer-only policies) or hospital indemnity or other fixed indemnity insurance is excepted only if it meets each of the applicable conditions specified in paragraph (c)(4)(ii) of this section.

(ii) * * *

(D) With respect to hospital indemnity or other fixed indemnity insurance—

(*1*) The benefits are paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day) regardless of the actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered participant or beneficiary, or other characteristics particular to a course of treatment received by a covered participant or beneficiary, and not on any other basis (such as on a per-item or per-service basis).

(*2*) The plan or issuer displays prominently on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll in the coverage, in at least 14-point font, the language in the following notice:

Notice to Consumers About Fixed Indemnity Insurance

IMPORTANT: This is fixed indemnity insurance. **This isn't comprehensive health insurance** and **doesn't** have to include most Federal consumer protections for health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

(*3*) If participants are required to reenroll (in either paper or electronic form) for purposes of renewal or reissuance of the insurance, the notice described in paragraph (c)(4)(ii)(D)(*2*) of this section is displayed in any marketing and reenrollment materials provided at or before the time participants are given the opportunity to reenroll in coverage.

(*4*) If a plan or issuer provides a notice satisfying the requirements in paragraphs (c)(4)(ii)(D)(*2*) and (*3*) of this section to a participant, the obligation to provide the notice is considered to be satisfied for both the plan and issuer.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples:

(A) *Example 1*—(*1*) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits only related to hospital stays at a fixed percentage of hospital expenses up to a maximum of $100 a day.

(*2*) *Conclusion.* Even if the other conditions in paragraph (c)(4)(ii) of this section are satisfied, because benefits are paid based on a percentage of expenses incurred rather than a fixed dollar amount per day (or per other time period, such as per week), the policy does not qualify as an excepted benefit under this paragraph (c)(4). This is the result even if, in practice, the policy pays the maximum of $100 for every day of hospitalization.

(B) *Example 2*—(*1*) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits when a person receives certain specific items and services in a fixed amount, such as $50 per blood test or $100 per visit. The fixed amounts apply to each specific item or service and are not paid per day or per other time period of hospitalization or illness.

(*2*) *Conclusion.* Even if the other conditions in paragraph (c)(4)(ii) of this section are satisfied, the policy does not qualify as an excepted benefit under this paragraph (c)(4) because the benefits are not paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness, and are not paid without regard to the services or items received. The conclusion would be the same even if the policy added a per day (or per other time period) term to the benefit description (for example, ''$50 per blood test per day''), because the benefits are not paid regardless of the services or items received.

(C) *Example 3*—(*1*) *Facts.* An employer sponsors a group health plan that provides two benefit packages. The first benefit package includes benefits only for preventive services and excludes benefits for all other services. The second benefit package provides coverage through an insurance policy that pays a fixed dollar amount per day of hospitalization for a wide variety of illnesses that are not preventive services covered under the first benefit package. The two benefit packages are offered to

employees at the same time and can be elected together. The benefit packages are not subject to a formal coordination of benefits arrangement.

(*2*) *Conclusion.* Even if the other conditions in paragraph (c)(4)(ii) of this section are satisfied, the second benefit package's insurance policy does not qualify as an excepted benefit under this paragraph (c)(4) because the benefits under the second benefit package are coordinated with an exclusion of benefits under another group health plan maintained by the same plan sponsor (that is, the preventive-services-only benefit package). The conclusion would be the same even if the benefit packages were not offered to employees at the same time or if the second benefit package's insurance policy did not pay benefits associated with a wide variety of illnesses.

(iv) *Applicability date.* (A) For hospital indemnity or other fixed indemnity insurance sold or issued on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (c)(4) apply for plan years beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(B) For hospital indemnity or other fixed indemnity insurance sold or issued before [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (c)(4) apply for plan years beginning on or after January 1, 2027, except that the requirements of paragraphs (c)(4)(ii)(D)(*2*) through (*4*) and (c)(4)(v) of this section, apply for plan years beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(C) Until the relevant applicability dates set out in paragraphs (c)(4)(iv)(A) and (B) of this section for the requirements of this paragraph (c)(4), plans and issuers are required to continue to comply with § 54.9831–1(c)(4) contained in 26 CFR part 54, revised as of April 1, 2023.

(v) *Severability.* If any provision of this paragraph (c)(4) is held to be invalid or unenforceable by its terms, or as applied to any entity or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, along with other provisions not found invalid or unenforceable, including as applied to entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this paragraph (c)(4) and shall not affect the remainder thereof.

* * * * *

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 6. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a–n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Pub. L. 116–260 134 Stat. 1182; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

7. Section 2590.701–2 is amended by revising the definition of ''Short-term, limited-duration insurance'' to read as follows:

§ 2590.701–2 Definitions.

* * * * *

Short-term, limited-duration insurance means health insurance coverage provided pursuant to a policy, certificate, or contract of insurance with an issuer that:

(1) Has an expiration date specified in the policy, certificate, or contract of insurance that is no more than 3 months after the original effective date of the policy, certificate, or contract of insurance, and taking into account any renewals or extensions, has a duration no longer than 4 months in total. For purposes of this paragraph (1), a renewal or extension includes the term of a new short-term, limited-duration insurance policy, certificate, or contract of insurance issued by the same issuer to the same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance; and

(2) Displays prominently on the first page (in either paper or electronic form, including on a website) of the policy, certificate, or contract of insurance, and in any marketing, application, and enrollment materials (including reenrollment materials) provided to individuals at or before the time an individual has the opportunity to enroll (or reenroll) in the coverage, in at least 14-point font, the language in the following notice:

BILLING CODE 4120–01–, 4150–01–, 4830–01–P

Notice to Consumers About Short-Term, Limited-Duration Insurance

IMPORTANT: This is short-term, limited-duration insurance. This is temporary insurance. **It isn't comprehensive health insurance.** Review your policy carefully to make sure you understand what is covered and any limitations on coverage.

- This insurance might not cover or might limit coverage for:
  - preexisting conditions; or
  - essential health benefits (such as pediatric, hospital, emergency, maternity, mental health, and substance use services, prescription drugs, or preventive care).
- You won't qualify for Federal financial help to pay for premiums or out-of-pocket costs.
- You aren't protected from surprise medical bills.
- When this policy ends, you might have to wait until an open enrollment period to get comprehensive health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

(3) If any provision of this definition of *short-term, limited-duration insurance* is held to be invalid or unenforceable by its terms, or as applied to any entity or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, along with other provisions not found invalid or unenforceable, including as applied to entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of the definition and shall not affect the remainder thereof.

* * * * *

■ 8. Section 2590.732 is amended by:
■ a. Revising paragraph (c)(4)(i);
■ b. Adding paragraph (c)(4)(ii)(D);
■ c. Revising paragraph (c)(4)(iii); and
■ d. Adding paragraphs (c)(4)(iv) and (v).

The revisions and additions read as follows:

§ 2590.732 Special rules relating to group health plans.

* * * * *

(c) * * *

(4) * * *

(i) *Excepted benefits that are not coordinated.* Coverage for only a specified disease or illness (for example, cancer-only policies) or hospital indemnity or other fixed indemnity insurance is excepted only if it meets each of the applicable conditions specified in paragraph (c)(4)(ii) of this section.

(ii) * * *

(D) With respect to hospital indemnity or other fixed indemnity insurance—

(*1*) The benefits are paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day) regardless of the actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered participant or beneficiary, or other characteristics particular to a course of treatment received by a covered participant or beneficiary, and not on any other basis (such as on a per-item or per-service basis).

(*2*) The plan or issuer displays prominently on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll in the coverage, in at least 14-point font, the language in the following notice:

Notice to Consumers About Fixed Indemnity Insurance

IMPORTANT: This is fixed indemnity insurance. **This isn't comprehensive health insurance** and **doesn't** have to include most Federal consumer protections for health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

BILLING CODE 4120–01–, 4150–29–, 4830–1–C

(*3*) If participants are required to reenroll (in either paper or electronic form) for purposes of renewal or reissuance of the insurance, the notice described in paragraph (c)(4)(ii)(D)(*2*) of this section is displayed in any marketing and reenrollment materials provided at or before the time participants are given the opportunity to reenroll in coverage.

(*4*) If a plan or issuer provides a notice satisfying the requirements in paragraph (c)(4)(ii)(D)(*2*) and (*3*) of this section to a participant, the obligation to provide the notice is considered to be satisfied for both the plan and issuer.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples:

(A) *Example 1*—(*1*) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits only related to hospital stays at a fixed percentage of hospital expenses up to a maximum of $100 a day.

(*2*) *Conclusion.* Even if the other conditions in paragraph (c)(4)(ii) of this section are satisfied, because benefits are paid based on a percentage of expenses incurred rather than a fixed dollar amount per day (or per other time period, such as per week), the policy does not qualify as an excepted benefit under this paragraph (c)(4). This is the result even if, in practice, the policy pays the maximum of $100 for every day of hospitalization.

(B) *Example 2*—(*1*) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits when a person receives certain specific items and services in a fixed amount, such as $50 per blood test or $100 per visit. The fixed amounts apply to each specific item or service and are not paid per day or per other time period of hospitalization or illness.

(*2*) *Conclusion.* Even if the other conditions in paragraph (c)(4)(ii) of this section are satisfied, the policy does not qualify as an excepted benefit under this paragraph (c)(4) because the benefits are not paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness, and are not paid without regard to the services or items received. The conclusion would be the same even if the policy added a per day (or per other time period) term to the benefit description (for example, ''$50 per blood test per day''), because the benefits are not paid regardless of the services or items received.

(C) *Example 3*—(*1*) *Facts.* An employer sponsors a group health plan that provides two benefit packages. The first benefit package includes benefits only for preventive services and excludes benefits for all other services. The second benefit package provides coverage through an insurance policy that pays a fixed dollar amount per day of hospitalization for a wide variety of illnesses that are not preventive services covered under the first benefit package. The two benefit packages are offered to employees at the same time and can be elected together. The benefit packages are not subject to a formal coordination of benefits arrangement.

(*2*) *Conclusion.* Even if the other conditions in paragraph (c)(4)(ii) of this section are satisfied, the second benefit package's insurance policy does not qualify as an excepted benefit under this paragraph (c)(4) because the benefits under the second benefit package are coordinated with an exclusion of benefits under another group health plan maintained by the same plan sponsor (that is, the preventive-services-only benefit package). The conclusion would be the same even if the benefit packages were not offered to employees at the same time or if the second benefit package's insurance policy did not pay benefits associated with a wide variety of illnesses.

(iv) *Applicability dates.* (A) For hospital indemnity or other fixed indemnity insurance sold or issued on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (c)(4) apply for plans beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(B) For hospital indemnity or other fixed indemnity insurance sold or issued before [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (c)(4) apply for plan years beginning on or after January 1, 2027, except that the requirements of paragraphs (c)(4)(ii)(D)(*2*) through (*4*) and (c)(4)(iii)(A) of this section, apply for plan years beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(C) Until the relevant applicability dates set out in paragraphs (c)(4)(iv)(A) and (B) of this section for the requirements of this paragraph (c)(4), plans and issuers are required to continue to comply with § 2590.732(c)(4) contained in 29 CFR part 2590, revised as of July 1, 2022.

(v) *Severability.* If any provision of this paragraph (c)(4) is held to be invalid or unenforceable by its terms, or as applied to any entity or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, along with other provisions not found invalid or unenforceable, including as applied to entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this paragraph (c)(4) and shall not affect the remainder thereof.

* * * * *

■ 9. Section 2590.736 is revised to read as follows:

§ 2590.736 Applicability dates.

Sections 2590.701–1 through 2590.701–8 and 2590.731 through 2590.736 are applicable for plan years beginning on or after July 1, 2005. Until the applicability dates set out in § 2590.732(c)(4)(iv), plans and issuers are required to continue to comply with the corresponding sections of 29 CFR part 2590, revised as of July 1, 2022. Notwithstanding the previous sentence, for short-term, limited-duration insurance sold or issued on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the definition of *short-term, limited-duration insurance* in § 2590.701–2 applies for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]. For short-term, limited-duration insurance sold or issued before [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] (including any subsequent renewal or extension consistent with applicable law), the definition of *short-term, limited-duration insurance* in § 2590.701–2 contained in 29 CFR part 2590, revised as of July 1, 2022, continues to apply, except that paragraph (2) of the definition of *short-term, limited-duration insurance* in § 2590.701–2 applies for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 144, 146, and 148 as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 10. The authority citation for part 144 continues to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–91, 300gg–92, and 300gg–111 through 300gg–139, as amended.

■ 11. Section 144.103 is amended by revising the definition of ''Short-term, limited-duration insurance'' to read as follows:

§ 144.103 Definitions.

* * * * *

Short-term, limited-duration insurance means health insurance coverage provided pursuant to a policy, certificate, or contract of insurance with an issuer that:

(1) Has an expiration date specified in the policy, certificate, or contract of insurance that is no more than 3 months after the original effective date of the policy, certificate, or contract of insurance, and taking into account any renewals or extensions, has a duration no longer than 4 months in total. For purposes of this paragraph (1), a renewal or extension includes the term of a new short-term, limited-duration insurance policy, certificate, or contract of insurance issued by the same issuer to the same policyholder within the 12-month period beginning on the original effective date of the initial policy, certificate, or contract of insurance; and

(2) Displays prominently on the first page (in either paper or electronic form, including on a website) of the policy, certificate, or contract of insurance, and in any marketing, application, and enrollment materials (including reenrollment materials) provided to individuals at or before the time an individual has the opportunity to enroll (or reenroll) in the coverage, in at least 14-point font, the language in the following notice:

Notice to Consumers About Short-Term, Limited-Duration Insurance

IMPORTANT: This is short-term, limited-duration insurance. This is temporary insurance. **It isn't comprehensive health insurance.** Review your policy carefully to make sure you understand what is covered and any limitations on coverage.

- This insurance might not cover or might limit coverage for:
  - preexisting conditions; or
  - essential health benefits (such as pediatric, hospital, emergency, maternity, mental health, and substance use services, prescription drugs, or preventive care).
- You won't qualify for Federal financial help to pay for premiums or out-of-pocket costs.
- You aren't protected from surprise medical bills.
- When this policy ends, you might have to wait until an open enrollment period to get comprehensive health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

(3) If any provision of this definition of *short-term, limited-duration insurance* is held to be invalid or unenforceable by its terms, or as applied to any entity or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, along with other provisions not found invalid or unenforceable, including as applied to entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of the definition and shall not affect the remainder thereof.

* * * * *

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 12. The authority citation for part 146 continues to read as follows:

Authority: 42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92.

■ 13. Section 146.125 is revised to read as follows:

§ 146.125 Applicability dates.

Section 144.103 of this subchapter and §§ 146.111 through 146.119, 146.143, and 146.145 are applicable for plan years beginning on or after July 1, 2005 (*but see* § 146.145(b)(4)(iv) for the applicability dates for hospital indemnity or other fixed indemnity insurance offered in the group market). Notwithstanding the previous sentence, for short-term, limited-duration insurance sold or issued on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the definition of *short-term, limited-duration insurance* in § 144.103 of this subchapter applies for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]. For short-term, limited-duration insurance sold or issued before [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] (including any subsequent renewal or extension consistent with applicable law), the definition of *short-term, limited-duration insurance* in 45 CFR 144.103, revised as of October 1, 2021, continues to apply, except that paragraph (2) of the definition of *short-term, limited-duration insurance* in 45 CFR 144.103 applies for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

■ 14. Section 146.145 is amended by—
■ a. Revising paragraph (b)(4)(i);
■ b. Adding paragraph (b)(4)(ii)(D);
■ c. Revising paragraph (b)(4)(iii); and
■ d. Adding paragraphs (b)(4)(iv) and (v).

The revisions and additions read as follows:

§ 146.145 Special rules relating to group health plans.

* * * * *

(b) * * *

(4) * * *

(i) *Excepted benefits that are not coordinated.* Coverage for only a specified disease or illness (for example, cancer-only policies) or hospital indemnity or other fixed indemnity insurance is excepted only if it meets each of the applicable conditions specified in paragraph (b)(4)(ii) of this section.

(ii) * * *

(D) With respect to hospital indemnity or other fixed indemnity insurance—

(*1*) The benefits are paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day) regardless of the actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered participant or beneficiary, or other characteristics particular to a course of treatment received by a covered participant or beneficiary, and not on any other basis (such as on a per-item or per-service basis).

(*2*) The plan or issuer displays prominently on the first page (in either paper or electronic form, including on a website) of any marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll in the coverage, in at least 14-point font, the language in the following notice:

Notice to Consumers About Fixed Indemnity Insurance

IMPORTANT: This is fixed indemnity insurance. **This isn't comprehensive health insurance** and **doesn't** have to include most Federal consumer protections for health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

BILLING CODE 4120–01–, 4150–29–, 4830–01–C

(*3*) If participants are required to reenroll (in either paper or electronic form) for purposes of renewal or reissuance of the insurance, the notice described in paragraph (b)(4)(ii)(D)(*2*) of this section is displayed in any marketing and reenrollment materials provided at or before the time participants are given the opportunity to reenroll in coverage.

(*4*) If a plan or issuer provides a notice satisfying the requirements in paragraph (b)(4)(ii)(D)(*2*) and (*3*) of this section to a participant, the obligation to provide the notice is considered to be satisfied for both the plan and issuer.

(iii) *Examples.* The rules of this paragraph (b)(4) are illustrated by the following examples:

(A) *Example 1*—(*1*) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits only related to hospital stays at

a fixed percentage of hospital expenses up to a maximum of $100 a day.

(*2*) *Conclusion.* Even if the other conditions in paragraph (b)(4)(ii) of this section are satisfied, because benefits are paid based on a percentage of expenses incurred rather than a fixed dollar amount per day (or per other time period, such as per week), the policy does not qualify as an excepted benefit under this paragraph (b)(4). This is the result even if, in practice, the policy pays the maximum of $100 for every day of hospitalization.

(B) *Example 2*—(*1*) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits when a person receives certain specific items and services in a fixed amount, such as $50 per blood test or $100 per visit. The fixed amounts apply to each specific item or service and are not paid per day or per other time period of hospitalization or illness.

(*2*) *Conclusion.* Even if the other conditions in paragraph (b)(4)(ii) of this section are satisfied, the policy does not qualify as an excepted benefit under this paragraph (b)(4) because the benefits are not paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness, and are not paid without regard to the services or items received. The conclusion would be the same even if the policy added a per day (or per other time period) term to the benefit description (for example, ''$50 per blood test per day''), because the benefits are not paid regardless of the services or items received.

(C) *Example 3*—(*1*) *Facts.* An employer sponsors a group health plan that provides two benefit packages. The first benefit package includes benefits only for preventive services and excludes benefits for all other services. The second benefit package provides coverage through an insurance policy that pays a fixed dollar amount per day of hospitalization for a wide variety of illnesses that are not preventive services covered under the first benefit package. The two benefit packages are offered to employees at the same time and can be elected together. The benefit packages are not subject to a formal coordination of benefits arrangement.

(*2*) *Conclusion.* Even if the other conditions in paragraph (b)(4)(ii) of this section are satisfied, the second benefit package's insurance policy does not qualify as an excepted benefit under this paragraph (b)(4) because the benefits under the second benefit package are coordinated with an exclusion of benefits under another group health plan maintained by the same plan sponsor (that is, the preventive-services-only benefit package). The conclusion would be the same even if the benefit packages were not offered to employees at the same time or if the second benefit package's insurance policy did not pay benefits associated with a wide variety of illnesses.

(iv) *Applicability dates.* (A) For hospital indemnity or other fixed indemnity insurance sold or issued on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (b)(4) apply for plan years beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(B) For hospital indemnity or other fixed indemnity insurance sold or issued before [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (b)(4) apply for plan years beginning on or after January 1, 2027, except that the requirements of paragraphs (b)(4)(ii)(D)(*2*) through (*4*) of this section apply for plan years beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(C) Until the relevant applicability dates set out in paragraphs (b)(4)(iv)(A) and (B) of this section for the requirements of this paragraph (b)(4), plans and issuers are required to continue to comply with § 146.145(b)(4) contained in 45 CFR part 146, revised as of October 1, 2021.

(v) *Severability.* If any provision of this paragraph (b)(4) is held to be invalid or unenforceable by its terms, or as applied to any entity or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, along with other provisions not found invalid or unenforceable, including as applied to entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this paragraph (b)(4) and shall not affect the remainder thereof.

* * * * *

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 15. The authority citation for part 148 continues to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–11 300gg–91, and 300–gg92, as amended.

■ 16. Section 148.102 is amended by revising paragraph (b) to read as follows:

§ 148.102 Scope and applicability dates.

* * * * *

(b) *Applicability dates.* Except as provided in §§ 148.124 (certificate of creditable coverage), 148.170 (standards relating to benefits for mothers and newborns), and 148.180 (prohibition of health discrimination based on genetic information), the requirements of this part apply to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997. Notwithstanding the previous sentence, for short-term, limited-duration insurance sold or issued on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the definition of *short-term, limited-duration insurance* in § 144.103 of this subchapter applies for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]. For short-term, limited-duration insurance sold or issued before [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] (including any subsequent renewal or extension consistent with applicable law), the definition of *short-term, limited-duration insurance* in 45 CFR 144.103, revised as of October 1, 2021, continues to apply, except that paragraph (2) of the definition of *short-term, limited-duration insurance* in 45 CFR 144.103 applies for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

■ 17. Section 148.220 is amended by revising paragraph (b)(4) to read as follows:

§ 148.220 Excepted benefits.

* * * * *

(b) * * *

(4) Hospital indemnity or other fixed indemnity insurance only if—

(i) There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage maintained by the same issuer with respect to the same policyholder.

(ii) The benefits are paid in a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day) regardless of the actual or estimated amount of expenses incurred, services or items received, severity of illness or injury experienced by a covered individual, or any other characteristics particular to a course of treatment received by the covered individual and not on any other basis (such as on a per-item or per-service basis), and without regard to whether benefits are provided with respect to the event under any other health insurance

coverage maintained by the same health insurance issuer with respect to the same policyholder.

(iii) The issuer displays prominently on the first page of any marketing, application, and enrollment or reenrollment materials that are provided at or before the time an individual has the opportunity to apply, enroll or reenroll in coverage, and on the first page of the policy, certificate, or contract of insurance, in at least 14-point font, the language in the following notice:

Notice to Consumers About Fixed Indemnity Insurance

IMPORTANT: This is fixed indemnity insurance. **This isn't comprehensive health insurance** and **doesn't** have to include most Federal consumer protections for health insurance.

Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) to review your options for comprehensive health insurance. If you're eligible for coverage through your employer or a family member's employer, contact the employer for more information. Contact your State department of insurance if you have questions or complaints about this policy.

(iv)(A) For hospital indemnity or other fixed indemnity insurance sold or issued on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (b)(4) apply for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(B) For hospital indemnity or other fixed indemnity insurance sold or issued before [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], the requirements of this paragraph (b)(4) apply for coverage periods beginning on or after January 1, 2027, except that the requirements of paragraph (b)(4)(iii) of this section apply for coverage periods beginning on or after [DATE 75 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(C) Until the relevant applicability dates set out in paragraphs (b)(4)(iv)(A) and (B) of this section for the requirements of this paragraph (b)(4), issuers are required to continue to comply with § 148.220(b)(4) contained in 45 CFR part 148, revised as of October 1, 2021.

(v) If any provision of this paragraph (b)(4) is held to be invalid or unenforceable by its terms, or as applied to any entity or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, along with other provisions not found invalid or unenforceable, including as applied to entities not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this paragraph (b)(4) and shall not affect the remainder thereof.

* * * * *

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FEDERAL REGISTER

Vol. 88 Wednesday,
No. 132 July 12, 2023

Part IV

The President

Federal Register
Vol. 88, No. 132
Wednesday, July 12, 2023

Presidential Documents

Title 3—

The President

Presidential Permit of July 6, 2023

Authorizing the General Services Administration To Expand and Continue To Operate and Maintain a Vehicular and Pedestrian Border Crossing at the Calexico East Land Port of Entry to Mexico

By virtue of the authority vested in me as President of the United States of America (the ''President''), I hereby grant permission, subject to the conditions set forth herein, to the General Services Administration (the ''permittee'') to expand and continue to operate and maintain a vehicular and pedestrian crossing at the Calexico East Land Port of Entry to Mexico located on the United States border with Mexico in Calexico, California, as described in the ''Application for Presidential Permit Calexico East Land Port of Entry'' dated December 19, 2022 (''December 19, 2022, Application''), by the permittee to the Secretary of State in accordance with Executive Order 13867 and associated procedures.

The term ''Facilities'' as used in this permit means the portion in the United States of the bridge over the All-American Canal and crossing, including two additional commercial and two additional noncommercial lanes to be constructed at the Calexico East Land Port of Entry, and any land, structures, installations, or equipment appurtenant thereto located between the international boundary between the United States and Mexico and a line approximately 1,066 feet north of the international boundary.

This permit is subject to the following conditions:

Article 1. The Facilities herein described and all aspects of their operation are subject to all the conditions, provisions, and requirements of this permit and any subsequent Presidential amendment to it. The construction, operation, and maintenance of the Facilities shall be in all material respects as described in the December 19, 2022, Application.

Article 2. The standards for and the manner of construction, connection, operation, and maintenance of the Facilities are subject to inspection by the representatives of appropriate Federal, State, and local agencies. The permittee shall grant officers and employees of such agencies that are duly authorized and performing their official duties free and unrestricted access to said Facilities.

Article 3. The permittee shall comply with all applicable Federal laws and regulations regarding the construction, operation, and maintenance of the Facilities.

Article 4. The permittee shall immediately notify the President or his designee of any decision to transfer custody and control of the Facilities or any part thereof to any other agency or department of the United States Government. Said notice shall identify the transferee agency or department and seek the approval of the President for the transfer of the permit. In the event of approval by the President of such transfer, this permit shall remain in force and effect, and the Facilities shall be subject to all the conditions, permissions, and requirements of this permit and any amendments thereof. The permittee may transfer ownership or control of the Facilities to a non-Federal entity or individual only upon the prior express approval of such transfer by the President, which approval may include such conditions, permissions, and requirements that the President, in his discretion,

determines are appropriate and necessary for inclusion in the permit, to be effective on the date of transfer.

Article 5. The permittee is responsible for acquiring and maintaining any right-of-way grants or easements, permits, and other authorizations as may become necessary or appropriate. To ensure the safe operation of the Facilities, the permittee shall maintain them and every part of them in a condition of good repair and in compliance with applicable law and use of best management practices.

Article 6. (1) The permittee shall take or cause to be taken all appropriate measures to mitigate adverse impacts on or disruption of the human environment in connection with the construction, operation, and maintenance of the Facilities. Mitigation measures are those that avoid, minimize, or compensate for adverse impacts.

The permittee is responsible for obtaining any required Federal, State, and local permits, approvals, and authorizations prior to commencing construction activities. The permittee shall implement the mitigation identified in any environmental decision documents prepared in accordance with the National Environmental Policy Act and Federal permits, including stormwater permits and permits issued in accordance with section 402 of the Clean Water Act (33 U.S.C. 1342). The permittee shall comply with applicable Federal, State, and local environmental laws.

(2) Before initiating construction, the permittee shall obtain the concurrence of the United States Section of the International Boundary and Water Commission, United States and Mexico.

Article 7. The permittee shall file any applicable statements and reports required by applicable Federal law in connection with the Facilities.

Article 8. Upon request, the permittee shall provide appropriate information to the President or his designee with regard to the Facilities. Such requests could include requests for information concerning current conditions, environmental compliance, mitigation, or anticipated changes in ownership or control, construction, connection, operation, or maintenance of the Facilities.

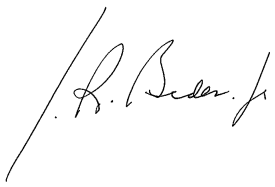
Article 9. The permittee shall not initiate construction until the Department of State has provided notification to the permittee that the Department has completed its exchange of diplomatic notes with the Government of Mexico regarding authorization. The permittee shall provide written notification to the President or his designee at the time that the construction authorized by this permit begins, at such time as such construction is completed, interrupted, or discontinued, and at other times as may be requested by the President.

Article 10. The permittee shall make no substantial change to the Facilities, in the location of the Facilities, or in the operation authorized by this permit unless such changes have been approved by the President. The President may terminate, revoke, or amend this permit at any time at his sole discretion. The permittee's obligation to implement any amendment to this permit is subject to the availability of funds. If the permittee permanently closes the Calexico East Land Port of Entry and it is no longer used as an international crossing, then this permit shall terminate, and the permittee may manage, utilize, or dispose of the Facilities in accordance with its statutory authorities. This permit shall continue in full force and effect for only so long as the permittee continues the operations hereby authorized. This permit shall expire 10 years from the date of its issuance if the permittee has not commenced construction of the Facilities by that date.

Article 11. This permit is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I, JOSEPH R. BIDEN JR., President of the United States of America, have hereunto set my hand this sixth day of July, in

the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2023–14930
Filed 7–11–23; 11:15 am]
Billing code 3395–F3–P

Presidential Documents

Memorandum of July 7, 2023

Delegation of Authority of Certain National Emergency Expenditure Reporting Functions

Memorandum for the Secretary of Homeland Security[,] the Secretary of Health and Human Services[, and] the Secretary of the Treasury

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA) and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Delegations.* The Secretary of Homeland Security is hereby authorized to submit expenditure information to the Congress on the national emergency declared in Proclamation 6867, as amended by Proclamation 7757, Proclamation 9398, and Proclamation 9699, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)). The Secretary of Homeland Security is hereby authorized to submit expenditure information to the Congress on the national emergency declared in Proclamation 10371, consistent with section 401(c) of the NEA. The Secretary of Health and Human Services, in consultation with the Secretary of the Treasury, is hereby authorized to submit expenditure information to the Congress on the national emergency declared in Proclamation 9994, consistent with section 401(c) of the NEA. With respect to the delegations under this section, the Secretaries may consult with the Congress as warranted to ensure that the Congress receives complete and accurate expenditure information as expeditiously as possible.

Sec. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

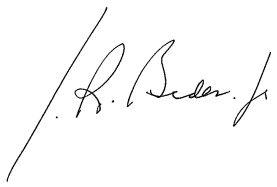
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Homeland Security is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 7, 2023

[FR Doc. 2023–14935
Filed 7–11–23; 11:15 am]
Billing code 4410–10–P

FEDERAL REGISTER

Vol. 88 Wednesday,
No. 132 July 12, 2023

Part V

The President

Notice of July 11, 2023—Continuation of the National Emergency With Respect to Hong Kong

Federal Register
Vol. 88, No. 132
Wednesday, July 12, 2023

Presidential Documents

Title 3—

The President

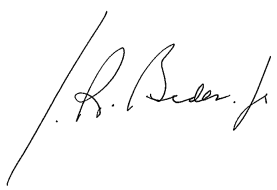
Notice of July 11, 2023

Continuation of the National Emergency With Respect to Hong Kong

On July 14, 2020, by Executive Order 13936, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation with respect to Hong Kong.

The situation with respect to Hong Kong, including recent actions taken by the People's Republic of China to fundamentally undermine Hong Kong's autonomy, continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on July 14, 2020, must continue in effect beyond July 14, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13936 with respect to the situation in Hong Kong.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 11, 2023.

[FR Doc. 2023–14973
Filed 7–11–23; 2:00 pm]
Billing code 3395–F3–P

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